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DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

SEPTEMBER 15, 2020

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by

The Office of the Reporter
Supreme Court
Manila
2023

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DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 8866. September 15, 2020]
(Formerly CBD Case No. 12-3385)

CATHERINE V. VILLARENTE, *Complainant, v.* **ATTY. BENIGNO C. VILLARENTE, JR.**, *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; EVERY LAWYER, BEING AN OFFICER OF THE COURT, MUST NOT ONLY BE IN FACT OF GOOD MORAL CHARACTER, BUT MUST ALSO BE SEEN TO BE OF GOOD MORAL CHARACTER AND LEADING LIVES IN ACCORDANCE WITH THE HIGHEST MORAL STANDARDS OF THE COMMUNITY. — The Code of Professional Responsibility, which all lawyers have vowed to uphold, clearly states that a lawyer shall not engage in immoral conduct. Neither shall he engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. It is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. Specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses, but also to conduct himself in such a way as to avoid scandalizing

the public by creating the belief that he is flouting those moral standards. If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is a member of its ranks should not only master its tenets and principles, but must also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.

2. ID.; JUDGES; A JUDGE'S ACTUATIONS OUGHT TO BE FREE FROM ANY APPEARANCE OF IMPROPRIETY BECAUSE A JUDGE IS THE VISIBLE REPRESENTATION OF THE LAW, AND MORE IMPORTANTLY, OF JUSTICE. — Not only is herein respondent a lawyer, he was also once a member of the Judiciary, a fact that aggravates his infractions. For having occupied a place of honor in the Bench, respondent knew that a judge's actuations ought to be free from any appearance of impropriety. This is because a judge is the visible representation of the law, and more importantly, of justice. Ordinary citizens consider judges as a source of strength that fortifies their will to obey the law. A judge should therefore avoid the slightest infraction of the law in all of his actuations, lest it be a demoralizing example to others.

3. ID.; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; GROSS IMMORALITY; A MARRIED LAWYER'S ABANDONMENT OF HIS SPOUSE IN ORDER TO LIVE AND COHABIT WITH ANOTHER CONSTITUTES GROSS IMMORALITY. — Immorality or immoral conduct is that which is so willful, flagrant or shameless as to show indifference to the opinion of good and respectable members of the community. Grossly immoral conduct is one that is so corrupt that it amounts to a criminal act. It is so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.Without a doubt, a married lawyer's abandonment of his spouse in order to live and cohabit with another, constitutes gross immorality. The offense may even be criminal, amounting to concubinage or adultery. Here, respondent's offense is compounded by the fact that he sired two children with his mistress, one of whom was born after he was warned by the Court about his illicit relationship.

4. ID.; ID.; ID.; GROSS MISCONDUCT; ANY LAWYER GUILTY OF GROSS MISCONDUCT SHOULD BE SUSPENDED OR DISBARRED, EVEN IF THE MISCONDUCT RELATES TO HIS PERSONAL LIFE, FOR AS LONG AS THE MISCONDUCT EVINCES HIS LACK OF MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR.— In keeping with the high standards of morality imposed upon every member of the legal profession, respondent should have desisted with his relationship with his mistress. Instead, he completely ignored the Court's warning and continued with the relationship which even led to the birth of a second child. Any lawyer guilty of gross misconduct should be suspended or disbarred, even if the misconduct relates to his personal life, for as long as the misconduct evinces his lack of moral character, honesty, probity or good demeanor. Any lawyer who cannot abide by the laws in his private life, cannot be expected to do so in professional dealings. Respondent's continuing illicit liaison with a woman other than his lawfully-wedded wife, despite previous sanction and warning, shows his cavalier attitude, even arrogance towards the Court. His act of cohabiting with his mistress while his marriage with complainant subsists, and siring two children with said mistress show his disregard of family obligations, morality and decency, the law and the lawyer's oath. Such misbehavior over a long period of time shows a serious flaw in respondent's character, his moral indifference to scandal in the community, and his outright defiance of established norms. As these acts put the legal profession in disrepute and place the integrity of the administration of justice in peril, the need for strict, but appropriate action is therefore in order.

LEONEN, *J.*, *dissenting opinion:*

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CASES AGAINST MEMBERS OF THE BAR ARE *SUI GENERIS* AND THEIR ULTIMATE GOAL IS THE PROTECTION OF THE PUBLIC GOOD, CONSIDERING THE ESSENTIAL ROLE THAT LAWYERS PLAY IN THE ADMINISTRATION OF JUSTICE AND THEIR PROFESSIONAL DUTY TO UPHOLD THE RULE OF LAW.— [A]dministrative cases involving immorality should be resolved with caution. Disciplinary cases should not be a

license for this Court to police its lawyers' personal lives and intimate relationships, which are often accompanied by very private issues best left outside the scope of this Court's powers. Administrative cases against members of the Bar are *sui generis*. Their ultimate goal is the protection of the public good, considering the essential role that lawyers play in the administration of justice and their professional duty to uphold the rule of law. In certain instances, lawyers' conduct in both their public and private lives can have an adverse effect on their ability to live up to these roles. As its primary purpose is to protect public interest, disbarment cases should not be allowed by this Court to become the vehicle for asserting private rights.

2. ID.; ID.; IMMORALITY; AN OBJECTIVE CRITERION OF IMMORALITY IS THAT WHICH IS TANTAMOUNT TO AN ILLEGAL ACT AND THE HIGHEST PENALTY OF DISBARMENT SHOULD BE RESERVED FOR THOSE WHO COMMIT INDISCRETIONS THAT ARE REPEATED, RESULT IN THE PERMANENT REARRANGEMENTS THAT CAUSE EXTRAORDINARY DIFFICULTIES ON EXISTING LEGITIMATE RELATIONSHIPS, OR ARE *PRIMA FACIE* SHOWN TO HAVE VIOLATED THE LAW. — [A]dministrative cases present an opportunity for this Court to inquire into a lawyer's actions to determine his or her fitness to continue as an attorney. Specifically, in charges of immorality: "[I]mmoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law. In the *ponencia*'s words, a lawyer shall not "engage in conduct that adversely reflects on his [or her] fitness to practice law, nor should he [or she], whether in public [or] private life, behave in a scandalous manner to the discredit of the legal profession." Moreover, the grossly immoral conduct must be so gross as to be "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." It is against this backdrop that I have proposed the use of a clear, objective, and secular standard to govern cases of immorality, lest we run the risk of imposing arbitrary benchmarks for professional conduct. As I have previously stated, "an objective criterion of immorality is that which is tantamount

to an illegal act." x x x In my separate opinion in *Anonymous Complaint v. Dagala*: The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are *prima facie* shown to have violated the law.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHOULD CONDUCT HIMSELF IN A MANNER CONSISTENT WITH THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION, AND THIS APPLIES IN HIS PERSONAL DEALINGS, AS HE MAY STILL BE FOUND LIABLE FOR GROSS MISCONDUCT NOT CONNECTED WITH HIS PROFESSIONAL DUTIES, WHICH SHOW HIM UNFIT FOR THE OFFICE AND UNWORTHY OF THE PRIVILEGES WHICH HIS LICENSE AND THE LAW CONFER TO HIM. — The evidence in this case do not meet the required standard to warrant disbarment. At most, respondent is only guilty of gross misconduct. Atty. Villarente's conduct is not of such degree as would erode the public's confidence in the legal profession and the rule of law. It is important to note that the issues raised in this disbarment complaint are mainly private matters not directly related to respondent's duties as a lawyer. It was also not established how his acts discredit the legal profession and the rule of law. Thus, I cannot agree that he should be disbarred on the ground of gross immorality. This, however, does not mean that respondent should be absolved of any liability as he committed violations of the Code of Professional Responsibility x x x [, particularly] Canon 7, Rule 7.03 x x x. As a lawyer, respondent should conduct himself in a manner consistent with the integrity and dignity of the legal profession. This applies in his personal dealings, as he may still be found liable for "gross misconduct not connected with his professional duties, which [show] him to be unfit for the office and unworthy of the privileges which his license and the law confer to him." Hence, while I do not find the evidence sufficient to disbar respondent for gross immorality, it is my view that it is enough to hold him liable for gross misconduct and suspend him from the practice of law.

APPEARANCES OF COUSEL

Rolindo A. Navarro for respondent.

D E C I S I O N

***Per Curiam*:**

Before the Court is a complaint asking for the disbarment of respondent Atty. Benigno C. Villarente, Jr. (respondent) after the latter continued cohabiting with his mistress and for siring another child, despite the clear warning by the Court against the commission of the same or similar act.

The Antecedents

Catherine V. Villarente (complainant) filed on October 29, 2010 a complaint for Serious Misconduct as a Lawyer and as Judge against her husband, respondent herein, a retired judge, for allegedly delaying Civil Case No. PN-0306 for Nullity of Marriage filed by respondent in the Regional Trial Court (RTC), Branch 17, Palompon, Leyte, and for continuously cohabiting with his concubine and their illegitimate child, despite a previous disbarment case which warned him against continuing such relationship.[1]

Earlier, complainant filed a disbarment case, A.C. No. 10017, against respondent for gross immorality which was decided by the Court's Second Division on September 23, 2013, approving the recommendation of the Integrated Bar of the Philippines (IBP) to impose upon respondent a penalty of suspension from the practice of law for one year with a stern warning that should evidence surface that his alleged conduct be proven grossly immoral, the matter will be dealt with more severely.[2]

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[1] IBP Commission on Bar Discipline Report and Recommendation dated July 21, 2016, *rollo*, p. 404.

[2] Id.

On February 25, 2015, complainant wrote IBP Commissioner Victor D. Cruz stating that respondent "emboldened by the very light penalty in A.C. No. 10017 (formerly CBD Case No. 05-1620 for Gross Immorality), has flaunted his immorality by siring a second illegitimate child with his mistress with whom he has been openly cohabiting since 2002 at No. 28 Sitio NGA, Lahug, Cebu City."[3]

The IBP Report and Recommendation

On November 25, 2015, the case was endorsed to Investigating Commissioner Dominica L. Dumangeng-Rosario (Commissioner Dumangeng-Rosario), who submitted her Report and Recommendation[4] on July 21, 2016.

According to Commissioner Dumangeng-Rosario:

"x x x [M]ore than the paralyzing of the Declaration of Nullity of Marriage whose issues brought out by the complainant had been rendered moot and academic as these had already been resolved by the proper courts, the arguments of both parties centered on the respondent's open and shameless cohabitation with his mistress-concubine and siring two (2) illegitimate sons with her. The younger son was born after the first disbarment case against him, CBD Case No. 05-1620 was filed.

x x x x x x x x x

x x x [A]tty. Villarente, Jr. had been subjected to a disbarment proceeding docketed as CBD Case No. 05-1620 upon complaint for gross immorality, dated December 15, 2005 filed by his wife, complainant herein. There it was alleged that respondent and complainant were married on December 30, 1975 at Pamplona, Leyte and out of such union had four children. Complainant claimed that sometime in 2002, respondent started cohabiting with a certain Maria Ellen Guarin who gave birth to a son, Benigno Junius Guarin on December 25, 2002.

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[3] Id. at 405.

[4] Id. at 404-413.

On May 27, 2010, IBP Commissioner Dennis Siapno recommended disbarment for gross immorality committed by respondent who has completely disregarded and made a mockery of the fundamental institutions of marriage and family. On November 19, 2011, the IBP Board of Governors adopted and approved the recommendation with modification finding respondent guilty of gross immorality and imposing the penalty of indefinite suspension. Respondent filed a motion for reconsideration and on March 22, 2013, the IBP Board of Governors passed a resolution unanimously granting the same and modifying the penalty to suspension from the practice of law for one (1) year with stern warning that should evidence surface that his alleged conduct be proven to be grossly immoral conduct, the matter will be dealt with more severely. This Resolution was adopted and approved by the Supreme Court (Second Division) in a Resolution dated September 25, 2013.

Respondent had also been meted out the penalty of fine of equivalent to his six (6) months salary by the Chairman Gerardo Nograles of the NLRC for the case of Gross Immorality which could not be executed because respondent had already retired and received his benefits in 2010.

Despite being previously penalized with one (1) year suspension from the practice of law by the Supreme Court in CBD Case No. 05-1620 for gross immorality, respondent continued to cohabit with Maria Ellen Guarin who was not his legal wife which led to the birth of their second son. It is to be noted that respondent did not deny siring the first child as even the child's certificate of live birth identified him, "Benigno Jr. Clitar Villarente" as the father with his occupation written as "Lawyer (Ret. RTC Judge)." While the informant for the data on the Certificate of Live Birth was Maria Ellen T. Guarin, mother of Benigno Junius Guarin, respondent signed the Affidavit of Acknowledgment/Admission of Paternity which was duly notarized. While complainant has alleged that respondent has sired a second child but has not submitted evidence in support of the same, it is of public knowledge that certificates of live birth and other civil registry records, save death certificate, can only be requested by a close kin of the record owner. Be that as it may, this information was proposed by complainant for admission in her Mandatory Conference Brief which was admitted by respondent. Also, a Certification was issued by the Barangay Captain of Lahug, Cebu City to the effect that BENIGNO VILLARENTE[, JR.] and MARIA ELLEN T. GUARIN are residents of [No.] 28 Sitio NGA, Lahug, Cebu City.

x x x x x x x x x

Atty. Villarente, Jr. failed to live up to the standards of the profession, not only as a lawyer but as a judge. He is lacking in moral integrity expected of him without due regard for public decency as he continued his illicit liaison with his concubine. It is to be noted that the penalty imposed on respondent in his first disbarment case carried a caveat that should evidence surface that his alleged conduct be proven to be grossly immoral conduct, the matter will be dealt with more severely."[5]

On June 17, 2017, Resolution No. XXII-2017-1205[6] was passed by the IBP Board of Governors:

RESOLVED to ADOPT the findings of fact of the investigating Commissioner imposing the penalty of DISBARMENT.

On November 8, 2018, the IBP Board of Governors issued another Resolution:[7]

> CBD Case No. 12-3385
> (Adm. Case No. 8866)
> Catherine V. Villarente v.
> Judge Benigno C. Villarente (Ret.)

RESOLVED to DENY the Motion for Reconsideration; and ADOPT the findings of fact and recommendation of the Investigating Commissioner to mete out upon the respondent the penalty of DISBARMENT.

The Issue

Whether respondent Atty. Villarente, Jr., a retired judge, should be disbarred.

The Court's Ruling

We rule in the affirmative.

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[5] Id. at 407, 409-410, 413.

[6] Id. at 402-403.

[7] Id. at 400-401.

The Code of Professional Responsibility, which all lawyers have vowed to uphold, clearly states that a lawyer shall not engage in immoral conduct.[8] Neither shall he engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.[9]

It is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. Specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses, but also to conduct himself in such a way as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is a member of its ranks should not only master its tenets and principles, but must also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.[10]

Not only is herein respondent a lawyer, he was also once a member of the Judiciary, a fact that aggravates his infractions. For having occupied a place of honor in the Bench, respondent knew that a judge's actuations ought to be free from any appearance of impropriety. This is because a judge is the visible representation of the law, and more importantly, of justice. Ordinary citizens consider judges as a source of strength that fortifies their will to obey the law. A judge should therefore avoid the slightest infraction of the law in all of his actuations, lest it be a demoralizing example to others.[11]

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[8] *See* Code of Professional Responsibility, Rule 1.01.

[9] Id. at Rule 7.03.

[10] *Advincula v. Atty. Advincula*, 787 Phil. 101, 112 (2016).

[11] *Tapucar v. Atty. Tapucar*, 355 Phil. 66, 73 (1998).

As correctly observed by Commissioner Dumangeng-Rosario and affirmed by the IBP Board of Governors, respondent has been warned unequivocally by no less than this Court that should evidence surface that his alleged conduct be proven to be grossly immoral, the matter shall be dealt with more severely.

Here, complainant was able to show that after the Court slapped respondent with a one-year suspension for immorality, with stern warning against its continued commission, respondent still continued to cohabit with his mistress in Lahug, Cebu City and even begot another child.

Immorality or immoral conduct is that which is so willful, flagrant or shameless as to show indifference to the opinion of good and respectable members of the community.[12] Grossly immoral conduct is one that is so corrupt that it amounts to a criminal act. It is so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.[13]

Without a doubt, a married lawyer's abandonment of his spouse in order to live and cohabit with another, constitutes gross immorality.[14] The offense may even be criminal, amounting to concubinage or adultery.[15] Here, respondent's offense is compounded by the fact that he sired two children with his mistress, one of whom was born after he was warned by the Court about his illicit relationship.

In keeping with the high standards of morality imposed upon every member of the legal profession, respondent should have desisted with his relationship with his mistress. Instead, he completely ignored the Court's warning and continued with the relationship which even led to the birth of a second child.

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[12] *Hierro v. Atty. Nava II*, A.C. No. 9459, January 7, 2020.

[13] *Panagsagan v. Atty. Panagsagan*, A.C. No. 7733, October 1, 2019.

[14] Id.

[15] *Ceniza v. Atty. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019.

Any lawyer guilty of gross misconduct should be suspended or disbarred, even if the misconduct relates to his personal life, for as long as the misconduct evinces his lack of moral character, honesty, probity or good demeanor. Any lawyer who cannot abide by the laws in his private life, cannot be expected to do so in professional dealings.[16]

Respondent's continuing illicit liaison with a woman other than his lawfully-wedded wife, despite previous sanction and warning, shows his cavalier attitude, even arrogance towards the Court. His act of cohabiting with his mistress while his marriage with complainant subsists, and siring two children with said mistress show his disregard of family obligations, morality and decency, the law and the lawyer's oath. Such misbehavior over a long period of time shows a serious flaw in respondent's character, his moral indifference to scandal in the community, and his outright defiance of established norms. As these acts put the legal profession in disrepute and place the integrity of the administration of justice in peril, the need for strict, but appropriate action is therefore in order.[17]

WHEREFORE, the Court finds and declares respondent Atty. Benigno C. Villarente, Jr. **GUILTY** of gross immorality in violation of Rule 1.01 and Rule 7.03 of the Code of Professional Responsibility for which he is **DISBARRED** from the practice of law effective upon receipt of this Decision. His name is **ORDERED** stricken off from the Roll of Attorneys.

Let a copy of this Decision be attached to Atty. Benigno C. Villarente, Jr.'s personal record in the Office of the Bar Confidant.

Furnish a copy of this Decision to the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for dissemination to all courts of the Philippines.

SO ORDERED.

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[16] *Hierro v. Atty. Nava II,* supra.

[17] *Tapucar v. Atty. Tapucar,* supra note 11.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Leonen, J., dissents, see dissenting opinion.

Baltazar-Padilla, J., on sick leave.

DISSENTING OPINION

LEONEN, ***J.:***

I respectfully disagree with the majority's decision to disbar respondent Atty. Benigno C. Villarente (Atty. Villarente) on the ground of immorality.

I have always maintained the position that administrative cases involving immorality should be resolved with caution.[1] Disciplinary cases should not be a license for this Court to police its lawyers' personal lives and intimate relationships, which are often accompanied by very private issues best left outside the scope of this Court's powers.[2]

Administrative cases against members of the Bar are *sui generis*. Their ultimate goal is the protection of the public good,[3] considering the essential role that lawyers play in the administration of justice and their professional duty to uphold the rule of law. In certain instances, lawyers' conduct in both

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[1] *See* J. Leonen, Concurring and Dissenting Opinion in *Zerna v. Atty. Zerna*, A.C. No. 8700, September 8, 2020, <https://sc.judiciary.gov.ph/14203/> [Per Curiam, En Banc]; J. Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

[2] J. Leonen, Concurring and Dissenting Opinion in *Zerna v. Atty. Zerna*, A.C. No. 8700, September 8, 2020, <https://sc.judiciary.gov.ph/14203/> [Per Curiam, En Banc]. *See also* J. Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018 [Per Curiam, En Banc].

[3] *Kimteng v. Young*, 765 Phil. 926, 944 (2015) [Per J. Leonen, Second Division].

their public and private lives can have an adverse effect on their ability to live up to these roles. As its primary purpose is to protect public interest, disbarment cases should not be allowed by this Court to become the vehicle for asserting private rights.[4]

Thus, administrative cases present an opportunity for this Court to inquire into a lawyer's actions to determine his or her fitness to continue as an attorney. Specifically, in charges of immorality:

> "[I]mmoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law.[5]

In the *ponencia*'s words, a lawyer shall not "engage in conduct that adversely reflects on his [or her] fitness to practice law, nor should he [or she], whether in public [or] private life, behave in a scandalous manner to the discredit of the legal profession."[6] Moreover, the grossly immoral conduct must be so gross as to be "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."[7]

It is against this backdrop that I have proposed the use of a clear, objective, and secular standard to govern cases of immorality, lest we run the risk of imposing arbitrary benchmarks for professional conduct.[8] As I have previously stated, "an

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[4] J. Leonen, Concurring and Dissenting Opinion in *Zerna v. Atty. Zerna*, A.C. No. 8700, September 8, 2020, <https://sc.judiciary.gov.ph/14203/> [Per Curiam, En Banc].

[5] *J.* Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 154 (2017) [Per Curiam, En Banc] *citing Perfecto v. Esidera*, 764 Phil. 384 (2015) [Per J. Leonen, Second Division].

[6] *Ponencia*, p. 4.

[7] *Arciga v. Maniwang*, 193 Phil. 730, 735 (1981) [Per J. Aquino, Second Division].

[8] *See Perfecto v. Esidera*, 764 Phil. 384 (2015) [Per J. Leonen, Second Division]; J. Leonen, Concurring and Dissenting Opinion in *Zerna v.*

objective criterion of immorality is that which is tantamount to an illegal act."[9]

In this case, the *ponencia* faults respondent Atty. Villarente mainly for two things: first, his continued cohabitation with another woman who is not his wife; and second, his siring of two children with the same woman. It then finds respondent guilty of gross immorality and imposes on him the penalty of disbarment.

With due respect, I disagree.

In my separate opinion in *Anonymous Complaint v. Dagala*:[10]

> The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are *prima facie* shown to have violated the law.[11]

In *Ceniza v. Atty. Ceniza*[12] cited in the *ponencia,* I concurred in the disbarment of Atty. Eliseo Ceniza (Ceniza) on the ground of immorality.[13] In that case, Ceniza, a legal officer in Mandaue City, was suspended from service by the Ombudsman for disgraceful and grossly immoral conduct, in violation of Republic Act No. 6713 or the Code of Conduct and Ethical Standards

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Atty. Zerna, A.C. No. 8700, September 8, 2020, <https://sc.judiciary.gov.ph/14203/> [Per Curiam, En Banc]; J. Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

[9] J. Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018 [Per Curiam, En Banc] *citing* J. Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

[10] 814 Phil. 103 (2017) [Per Curiam, En Banc].

[11] Id. at 155.

[12] A.C. No. 8335, April 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65158> [Per Curiam, En Banc].

[13] *Ponencia*, p. 5. The ponencia cites *Ceniza* to show that the offense may amount to the crime of concubinage, which justifies disbarment.

for Public Officials and Employees. Ceniza was found to have abandoned his legitimate family in order to live with another woman who was also married. He also callously ignored his own children's pleas, resulting to one of his children attempting suicide due to depression. Despite the pain he had caused his family, Ceniza showed no remorse.

Such circumstances clearly exhibiting gross immoral conduct are not present here. The evidence in this case do not meet the required standard to warrant disbarment. At most, respondent is only guilty of gross misconduct.

Atty. Villarente's conduct is not of such degree as would erode the public's confidence in the legal profession and the rule of law. It is important to note that the issues raised in this disbarment complaint are mainly private matters not directly related to respondent's duties as a lawyer. It was also not established how his acts discredit the legal profession and the rule of law. Thus, I cannot agree that he should be disbarred on the ground of gross immorality.

This, however, does not mean that respondent should be absolved of any liability as he committed violations of the Code of Professional Responsibility. In Canon 7, Rule 7.03:

> Canon 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.
>
> . . . .
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As a lawyer, respondent should conduct himself in a manner consistent with the integrity and dignity of the legal profession. This applies in his personal dealings,[14] as he may still be found

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[14] *See Agno v. Cagatan*, 580 Phil. 1 (2008) [Per J. Leonardo-de Castro, En Banc].

liable for "gross misconduct not connected with his professional duties, which [show] him to be unfit for the office and unworthy of the privileges which his license and the law confer to him."[15]

Hence, while I do not find the evidence sufficient to disbar respondent for gross immorality, it is my view that it is enough to hold him liable for gross misconduct and suspend him from the practice of law.

ACCORDINGLY, I vote to **SUSPEND** respondent Atty. Benigno C. Villarente from the practice of law for three (3) years.

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[15] *Enriquez v. De Vera*, 756 Phil. 1, 13 (2015) [Per J. Leonen, Second Division].

EN BANC

[A.M. No. P-20-4071. September 15, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *Complainant, v.* **ABBA MARIE B. DEL ROSARIO, Court Interpreter I; ATTY. MARIA PAZ V. ZALSOS-UYCHIAT, Former Clerk of Court VI; and ATTY. AISA B. MUSA-BARRAT, Incumbent Clerk of Court VI, All of the Regional Trial Court, Tubod, Lanao Del Norte,** *Respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; MISCONDUCT, DEFINED; IN GRAVE MISCONDUCT, THE ELEMENT OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF THE RULES MUST BE MANIFEST AND ESTABLISHED. –– Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules[] must be manifest and established by substantial evidence.

2. ID.; ID.; ID.; DISHONESTY, DEFINED AND ELUCIDATED; DISHONESTY IS A QUESTION OF INTENTION. –– Dishonesty, as an administrative offense, is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In

ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment. Gross dishonesty on the part of an employee of the Judiciary is a very serious offense that must be severely punished.

3. ID.; ID.; ID.; SIMPLE AND GROSS NEGLECT OF DUTY, DEFINED AND DISTINGUISHED. — [N]eglect of duty can be classified into simple neglect and gross neglect. Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference." On the other hand, gross neglect of duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.

4. ID.; ID.; ID.; DELAY IN THE REMITTANCE OF COURT COLLECTIONS WITHOUT VALID JUSTIFICATION AND TAMPERING OF OFFICIAL RECEIPTS CONSTITUTE GROSS DISHONESTY, GRAVE MISCONDUCT, AND GROSS NEGLECT OF DUTY; PENALTY OF DISMISSAL, IMPOSED. — The safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. . . . Clerks of Court and those acting in this capacity — such as Ms. Del Rosario who was delegated to manage the fiscal matters of the court *a quo* — perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, destruction or impairment of those funds and property makes them accountable. . . .

In delaying the remittance of court collections without advancing any valid or legal justification, and in tampering and falsifying official receipts to make it appear that court payments received were issued the proper receipts, Ms. Del Rosario committed gross dishonesty, grave misconduct and gross neglect of duty. Moreover, her acts may subject her to criminal liability. Verily, her grave misdemeanors justify her severance from the service.

5. ID.; ID.; ID.; DUTIES OF THE CLERK OF COURT. — As the former Clerk of Court of the *court a quo,* Atty. Zalsos-Uychiat performed a delicate function as the designated custodian of the court's funds, revenues, records, properties, and premises. She had the primary responsibility to immediately deposit the funds received by her office with the authorized government depositories. She likewise exercised general administrative supervision over all of the court personnel under her charge.

6. ID.; ID.; ID.; ID.; DELEGATION OF DUTY DOES NOT NEGATE LIABILITY; SHORTAGES AND DELAYS IN THE REMITTANCE OF COLLECTIONS CONSTITUTE GROSS NEGLECT OF DUTY. — The fact that Atty. Zalsos-Uychiat delegated the fiscal matters of the court *a quo* to Ms. Del Rosario does not exonerate her from administrative liability for the numerous grave irregularities that were committed under her watch. As Clerk of Court, it was incumbent upon Atty. Zalsos-Uychiat, at the barest minimum, to ensure that Ms. Del Rosario was properly carrying out her tasks. Her lackadaisical management, indifference to the financial status of the court *a quo*, and overall failure to exercise the required degree of supervision over Ms. Del Rosario ineluctably enabled the latter to sustain her fraudulent machinations for more or less three years. . . .

Atty. Zalsos-Uychiat is, ultimately, "liable for any loss, shortage, destruction or impairment of those entrusted" to her as Clerk of Court. Indeed, it is settled that any shortages in the amounts remitted and any delays incurred in the actual remittance of collections shall constitute gross neglect of duty for which the clerks of court concerned shall be held administratively liable. This principle squarely applies to the instant administrative matter.

7. ID.; ID.; ID.; IF THE PENALTY OF DISMISSAL CAN NO LONGER BE IMPOSED IN VIEW OF THE RESPONDENT'S RESIGNATION, THE PENALTY OF FINE MAY BE IMPOSED IN LIEU THEREOF. — In view of her resignation on January 31, 2017, the penalty of dismissal can no longer be imposed against Atty. Zalsos-Uychiat. This, however, does not free her from administrative liability. . . .

. . . We hereby impose a fine equivalent to Atty. Zalsos-Uychiat's salary for six (6) months in lieu of dismissal from the service. In addition, she is disqualified in perpetuity from holding any future public office.

8. ID.; ID.; ID.; ID.; WHILE FAILURE TO REMIT COLLECTIONS ON TIME ALSO CONSTITUTES GROSS NEGLECT OF DUTY, MITIGATING FACTORS MAY BE CONSIDERED IN IMPOSING A PENALTY. — Atty. Musa-Barrat's failure to remit court collections within the prescribed period also constitutes gross neglect of duty. . . ,

. . . [D]ismissal is too harsh a penalty for Atty. Musa-Barrat. Unlike Ms. Del Rosario and Atty. Zalsos-Uychiat, she sincerely acknowledged her shortcomings, exhibiting genuine remorse and vowing to learn from this undesirable experience. We deem it proper to impose upon her the penalty of suspension for a period of one (1) year without pay, with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

D E C I S I O N

***PER CURIAM*:**

This is an administrative matter stemming from an audit conducted by the Office of the Court Administrator (OCA) on the books of accounts of the Regional Trial Court (RTC) of Tubod, Lanao del Norte, in view of the resignation on January 31, 2017 of Atty. Maria Paz Teresa V. Zalsos-Uychiat (Atty. Zalsos-Uychiat) as Clerk of Court.

The objectives of the financial review were: (1) to determine the accuracy and regularity of the cash transactions of the said

court; (2) to ascertain whether all the judiciary fund collections have been deposited in full within the prescribed period; (3) to examine whether the filing fees collected were in accordance with Rule 141 of the Rules of Court; and (4) to aid the Clerk of Court of the said court on the proper bookkeeping and accounting of judiciary funds.

The audit team of OCA (Financial Audit Team) reported that the following court employees acted as accountable officers with the corresponding accountability period:

ACCOUNTABLE OFFICER	POSITION	ACCOUNTABILITY PERIOD
Atty. Ivy F. Damayo	Former Clerk of Court VI	01/01/04 - 10/07/08
Ms. Abba Marie B. Del Rosario	Former OIC/Court Interpreter I	10/08/08 - 01/27/09
Atty. Maria Paz Teresa V. Zalsos-Uychiat	Former Clerk of Court VI	09/01/10 - 01/22/17
Ms. Florence O. Perocho	OIC/Court Legal Researcher II	01/28/09 - 08/31/10 01/23/17 - 11/30/17
Atty. Aisa B. Musa-Barrat	Incumbent Clerk of Court VI	12/01/17 - 09/30/18

In its Report[1] dated June 18, 2020, the Financial Audit Team found numerous irregularities in the management of judiciary funds, as well as missing or unaccounted amounts from the court *a quo's* bank accounts, to wit:

1. The cash count on October 8, 2018, under the accountability of Atty. Aisa B. Musa-Barrat (Atty. Musa-Barrat), yielded a cash shortage of ₱164,520.00. This represents unremitted collections for the Judiciary Development Fund (JDF), Special Allowance for Judiciary Fund (SAJF), Mediation Fund (MF), Fiduciary Fund (FF), Legal Research Fund (LRF) and Land Registration Authority (LRA).

[1] *Rollo,* pp. 1-35.

2. All official receipts (ORs) requisitioned from the Property Division of the Office of Administrative Services (OAS), OCA, were duly accounted for except for three booklets with serial numbers 86677451 - 86677500 and 6538201-6538300 which were not presented for examination. As of September 30, 2018, 310 out of 437 booklets had been utilized, with 118 booklets unused.

3. An examination of the Undertakings of Cash Bond Deposit, Release Orders from Detention and original ORs show discrepancies in the data shown in the ORs. The Financial Audit Team found that in some instances when a cash bond was posted, the court only issued an Undertaking of Cash Bond Deposit in lieu of the corresponding OR. In other cases, the OR numbers were falsified while the receipts were tampered. These irregularities resulted in a total amount of ₱2,342,500.00 in unremitted and un-receipted cash bond collections. These irregularities occurred between 2014 and January 2017 during the incumbency of Atty. Zalsos-Uychiat as Clerk of Court. However, Ms. Del Rosario admitted to tampering and falsifying some of these receipts.

   In view of this discrepancy, the following amounts were restituted by the respective court employees:

Accountable Officer	**Amount Restituted**	**Date of Restitution**
Ms. Abba Marie B. Del Rosario	₱200,000.00	12/07/18
	500,000.00	12/13/18
	100,000.00	01/11/19
	950,000.00	01/23/19
	155,000.00	02/20/19
	51,500.00	04/23/19
Atty. Aisa B. Musa-Barrat	100,000.00	12/13/18
	190,000.00	01/09/19
TOTAL	**₱2,246,500.00**	

4. With regard to the Sheriffs Trust Fund (STF), the Financial Audit Team found that a total amount of ₱6,000.00 was withdrawn by Atty. Zalsos-Uychiat on April 15, 2016 without matching collection. No supporting document for said STF withdrawals was attached to the file copies of the court's monthly financial reports.

5. As to the JDF Collections, Atty. Zalsos-Uychiat failed to remit a total amount of ₱11,849.00 covering the period of January 1 to 20, 2017.

   On the other hand, Atty. Musa-Barrat under-remitted the amount of ₱l,443.80. Nevertheless, she restituted the amount of ₱l,475.80 on January 9, 2019 and January 29, 2020. The Financial Audit Team observed that Atty. Musa-Barrat incurred delay in the remittance of the JDF collections.

6. With regard to SAJF collections, Atty. Zalsos-Uychiat failed to remit the amounts covering the period of January 1 to 20, 2017, or a total of ₱14,296.00.

   Ms. Perocho had an unremitted amount of ₱91.00 but was able to restitute the same.

   Atty. Musa-Barrat failed to remit on time the amount of ₱1,862.60. She restituted ₱1,662.60 on January 9, 2019 and ₱200.00 on February 14, 2020.

7. For General Fund - New (GF-New), Atty. Zalsos-Uychiat failed to remit the total amount of ₱19,832.00.

8. Atty. Zalsos-Uychiat has an outstanding balance of ₱500.00 for unremitted MF collections.

   Atty. Musa-Barrat failed to remit the amount of ₱1,500.00 but was able to restitute the same on January 10, 2019.

9. An examination of the collections for the LRF and the LRA revealed shortages of ₱3,282.41 and ₱3,790.00, respectively. Ms. Perocho restituted ₱790.00 to the LRA on January 31, 2020. On the other hand, Atty. Musa-Barrat remitted ₱1,000.00 on January 10, 2019.

10. In fine, the unrestitituted accountabilities of Atty. Zalsos-Uychiat and Ms. Perocho are broken down as follows:

Fund	Atty. Zalsos-Uychiat	Ms. Perocho	Total
FF	PHP 672,000.60	PHP 105,000.00	PHP 777,000.00
STF	10,240.00	0.00	10,240.00
JDF	11,849.00	0.00	11,849.00
SAJF	14,296.00	0.00	14,296.00
GF-New	19,832.00	0.00	19,832.00
MF	500.00	0.00	500.00
LRF	3,282.41	0.00	3,282.41
LRA	2,000.00	0.00	2,000.00
Total	**PHP 734,000.01**	**PHP 105,000.00**	**PHP 839,000.01**

The Financial Audit Team found that with regard to the missing amount of ₱672,000.60 from the FF that was initially attributed to Atty. Zalsos-Uychiat, ₱648,000.00 was actually unaccounted for due to the machinations of Ms. Abba Marie B. Del Rosario (Ms. Del Rosario).

11. Further, the Financial Audit Team also made the following findings:

    a. The court incurred delay in the submission of the monthly financial reports for December 2017 to September 2018 to the Accounting Division, Financial Management Office (FMO), OCA;

    b. The court failed to maintain an official cash book for each fund for the recording of financial transactions;

    c. Fines imposed in drug cases and as penalty for the crime committed were receipted and remitted to the FF account instead of the Dangerous Drugs Board (DDB) and GF-New accounts, respectively, pursuant to OCA Circular No. 26-2018 dated 13 February 2018; and

    d. The Victim's Compensation Fund (VCF) of Five Pesos (₱5.00) was not collected in civil cases filed in court, in

violation of Section 20 of Amended Administrative Circular No. 35-2004.

Thereafter, an exit conference was conducted by the Financial Audit Team in order to apprise the accountable officers of its findings, as well as allow them to explain the numerous irregularities in the handling of judiciary funds that were unearthed following the extensive examination of the court *a quo's* books of accounts.

Explanation of Ms. Del Rosario

In her letter dated December 13, 2018, Ms. Del Rosario explained that she made the erasures, tampering and non-issuance of ORs due to the unavailability of court receipts for several months in 2015. She likewise admitted that she failed to issue ORs for some bonds because of her failure to replenish the funds therefor. She also asserted that she was not well acquainted with the process of issuance of receipts.

Explanation of Atty. Zalsos-Uychiat

Atty. Zalsos-Uychiat executed an Affidavit dated December 13, 2018, claiming that she had no knowledge of the irregular practices in the court *a quo* as well as her surprise that the Financial Audit Team arrived at such findings. She asserted that she delegated all fiscal matters to Ms. Del Rosario, believing in good faith that the latter was performing such functions properly. As proof of her innocence, Atty. Zalsos-Uychiat provided screenshots of Ms. Del Rosario's text messages confessing to the irregularities that were discovered by the Financial Audit Team.

Explanation of Atty. Musa-Barrat

Atty. Musa-Barrat explained that because she was new to her job, she was not able to submit the monthly reports on time. She alleged that on her first day as Clerk of Court a bond in the amount of ₱200,000.00 was posted by an accused, which amount she was not able to deposit because the bank closed early. She kept the said amount in her bag for safekeeping but the same was stolen when she had dinner in a fastfood restaurant in Iligan

City. She was unable to restitute the said amount on time because it took months before she received her initial salary. As to her other lapses, Atty. Musa-Barrat acknowledged the same and sought the Court's forgiveness.

On July 1, 2020, the OCA issued a Memorandum[2] adopting the findings of the Financial Audit Team and recommending the following disciplinary actions to be taken:

> 1. [T]his report be **DOCKETED** as a regular administrative matter against the following personnel:
>
> **a.** **Ms. ABBA MARIE B. DEL ROSARIO,** Court Interpreter I, RTC, Tubod, Lanao del Norte, for receiving collections without issuing official receipts (ORs) as an acknowledgment of payments, tampering of the triplicate and duplicate copies of ORs, using one **(1)** OR for **two (2)** different transactions, falsifying of data collections in the Undertaking of Cash Bond Deposits, lapping of collections and remittances, and non-remittance and non-reporting of collections;
>
> **b.** **Atty. MARIA PAZ TERESA V. ZALSOS-UYCHIAT**, former Clerk of Court VI, RTC, Tubod, Lanao del Norte, for failure to exercise reasonable diligence, prudence and due care in the performance of her duties which resulted to the shortages in the judiciary fund; and
>
> **c.** **Atty. AISA B. MUSA-BARRAT,** incumbent Clerk of Court VI, RTC, Tubod, Lanao del Norte, for failure to remit the court collections and submit the monthly financial reports on time, record the financial transactions in the respective book of accounts, exercise prudence in the handling of court's ORs and to take necessary and reasonable measure that could have prevented the loss and misuse of court receipts and the occurrence of unremitted collections.
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> x x x x x x x x x

[2] Id. at 391-401.

5. **Ms. ABBA MARIE B. DEL ROSARIO,** Court Interpreter I, RTC, Tubod, Lanao del Norte, be **METED** the penalty of dismissal from the service with forfeiture of her retirement benefits considering that the infractions committed involve dishonesty, grave misconduct and gross neglect of duty;

6. **Atty. MARIA PAZ TERESA V. ZALSOS-UYCHIAT,** former Clerk of Court VI, RTC, Tubod, Lanao del Norte, be **FINED** in the amount of **Thirty Thousand Pesos (PHP 30,000.00),** considering that the infractions committed constitute simple neglect of duty;

7. **Atty. AISA B. MUSA-BARRAT,** incumbent Clerk of Court VI, RTC, Tubod, Lanao del Norte, be **METED** the penalty of suspension without pay considering that her offenses involve neglect of duty, with stem warning that a repetition of the same or similar act shall be dealt with more severely;

x x x x x x x x x

The Ruling of the Court

Upon appointment to a public office, an officer or employee is required to take his or her oath of office whereby he or she solemnly swears to support and defend the Constitution, bear true faith and allegiance to the same; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; and faithfully discharge to the best of his or her ability the duties of the position he or she will hold.[3] Thus, the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[4]

At the outset, a review of the nature of the offenses involved in this administrative matter is in order.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross

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[3] *City Mayor of Zamboanga v. Court of Appeals,* G.R. No. 80270, February 27, 1990.

[4] *Duque III v. Veloso,* G.R. No. 196201, June 19, 2012.

negligence by the public officer.[5] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.[6] To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling.[7] In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence.[8]

Dishonesty, as an administrative offense, is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties.[9] It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[10] Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention. In ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and circumstances giving rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the consequences of his act, and the degree of reasoning he could have had at that moment.[11] Gross dishonesty

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[5] *Office of the Ombudsman v. De Zosa,* G.R. No. 205433, January 21, 2015.

[6] *Daplas v. Department of Finance,* G.R. No. 221153, April 17, 2017.

[7] *Commission on Elections v. Mamalinta,* G.R. No. 226622, March 14, 2017.

[8] *Office of the Ombudsman-Visayas v. Castro,* G.R. No. 172637, April 22, 2015.

[9] *Field Investigation Office v. Piano,* G.R. No. 215042, November 20, 2017.

[10] *Balasbas v. Monayao,* G.R. No. 190524, February 17, 2014.

[11] *Sabio v. Field Investigation Office, Office of the Ombudsman,* G.R. No. 229882, February 13, 2018.

on the part of an employee of the Judiciary is a very serious offense that must be severely punished.[12]

Lastly, neglect of duty can be classified into simple neglect and gross neglect. Simple neglect of duty means the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[13] On the other hand, gross neglect of duty is defined as "[n]egligence characterized by want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property."[14] Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.[15]

In accordance with Rule 10, Section 46 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the penalty for the offenses of grave misconduct,[16] gross or serious dishonesty,[17] and gross neglect of duty[18] is dismissal from the service, even for first time offenders, and carries with it the forfeiture of retirement benefits, except accrued leave benefits, and the perpetual disqualification for reemployment in the

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[12] *Concerned Citizen v. Catena,* A.M. OCA IPI No. 02-1321-P, July 16, 2013.

[13] *Office of the Ombudsman v. De Leon*, G.R. No. 154083, February 17, 2013.

[14] *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017.

[15] *Philippine Retirement Authority v. Rupa,* G.R. No. 140519, August 21, 2001.

[16] *Office of the Ombudsman v. Castillo,* G.R. No. 221848, August 30, 2016.

[17] *Concerned Citizen v. Catena,* supra.

[18] *Land Bank of the Philippines v. San Juan, Jr.*, G.R. No. 186279, April 2, 2013.

government service.[19] As to simple neglect of duty, it is a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense under Section 46 (D) of the RRACCS.[20]

With these parameters in mind, We now proceed to the administrative liabilities of Ms. Del Rosario, Atty. Zalsos-Uychiat and Atty. Musa-Barrat.

The Court modifies the findings and recommendations of the OCA.

Liability of Ms. Del Rosario

The safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[21] It is for this reason that court circulars and other relevant rules for proper documentation such as by submission to the court of reports of collections of all funds and proper issuance of receipts, among others, were designed.[22] Clerks of Court and those acting in this capacity — such as Ms. Del Rosario who was delegated to manage the fiscal matters of the court *a quo*—perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, destruction or impairment of those funds and property makes them accountable.[23] As such, even the mere delay by the Clerks

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[19] *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities, Tagum City, Davao del Norte,* A.M. OCA IPI No. 09-3138-P, October 22, 2013.

[20] *Olympia-Geronilla v. Montemayor, Jr.,* A.M. No. P-17-3676, June 5, 2017.

[21] *Office of the Court Administrator v. Lometillo,* A.M. No. P-09-2637, March 29, 2011.

[22] *Office of the Court Administrator v. Guian,* A.M. No. P-07-2293, July 15, 2015.

[23] *Office of the Court Administrator v. Dionisio,* A.M. No. P-16-3485, August 1, 2016.

of Court or cash clerks in remitting the funds collected is considered as gross neglect of duty or as grave misconduct.[24]

In delaying the remittance of court collections without advancing any valid or legal justification, and in tampering and falsifying official receipts to make it appear that court payments received were issued the proper receipts, Ms. Del Rosario committed gross dishonesty, grave misconduct and gross neglect of duty. Moreover, her acts may subject her to criminal liability. Verily, her grave misdemeanors justify her severance from the service.[25]

Liability of Atty. Zalsos-Uychiat

We disagree with the OCA's assessment that Atty. Zalsos-Uychiat is guilty only of simple neglect of duty. Her transgression constitutes gross neglect of duty.

As the former Clerk of Court of the *court a quo,* Atty. Zalsos-Uychiat performed a delicate function as the designated custodian of the court's funds, revenues, records, properties, and premises.[26] She had the primary responsibility to immediately deposit the funds received by her office with the authorized government depositories.[27] She likewise exercised general administrative supervision over all of the court personnel under her charge.[28]

The fact that Atty. Zalsos-Uychiat delegated the fiscal matters of the court *a quo* to Ms. Del Rosario does not exonerate her from administrative liability for the numerous grave irregularities

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[24] *Office of the Court Administrator v. Zerrudo,* A.M. No. P-11 -3006, October 23, 2013.

[25] *Office of the Court Administrator v. Nacuray,* A.M. No. P-03-1379, April 7, 2006.

[26] *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan,* A.M. No. P-15-3298, February 4, 2015.

[27] *Office of the Court Administrator v. Zuñiga,* A.M. No. P-10-2800, November 18, 2014.

[28] *Office of the Court Administrator v. Atty. Buencamino,* A.M. No. P-05-2051, January 21, 2014.

that were committed under her watch. As Clerk of Court, it was incumbent upon Atty. Zalsos-Uychiat, at the barest minimum, to ensure that Ms. Del Rosario was properly carrying out her tasks. Her lackadaisical management, indifference to the financial status of the court *a quo*, and overall failure to exercise the required degree of supervision over Ms. Del Rosario ineluctably enabled the latter to sustain her fraudulent machinations for more or less three years. Her theatrical declaration that she was "shocked, surprised, and flabbergasted"[29] by the scale of the loss of judiciary funds only lends credence to the proportionate magnitude of her negligence.

Atty. Zalsos-Uychiat is, ultimately, "liable for any loss, shortage, destruction or impairment of those entrusted"[30] to her as Clerk of Court. Indeed, it is settled that any shortages in the amounts remitted and any delays incurred in the actual remittance of collections shall constitute gross neglect of duty for which the clerks of court concerned shall be held administratively liable.[31] This principle squarely applies to the instant administrative matter.

In view of her resignation on January 31, 2017, the penalty of dismissal can no longer be imposed against Atty. Zalsos-Uychiat. This, however, does not free her from administrative liability. As the Court declared in a case:

> Neglect of duty is the failure to give one's attention to a task expected of him. Gross neglect is such neglect that, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. The term does not necessarily include willful neglect or intentional official wrongdoing. Those responsible for such act or omission cannot escape the disciplinary power of this Court. The imposable penalty for gross neglect of duty is dismissal from the service.

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[29] Affidavit dated December 13, 2018.

[30] *Office of the Court Administrator v. Acampado,* A.M. Nos. P-13-3116 & P-13-3112, November 12, 2013.

[31] *Office of the Court Administrator v. Egipto, Jr.,* A.M. No. P-05-1938, November 7, 2017.

Ordonez resigned effective May 4, 2009, purportedly to migrate to Canada. His resignation would not extricate him from the consequences of his gross neglect of duty, because the Court has not allowed resignation to be an escape or an easy way out to evade administrative liability or administrative sanction. Ordonez remains administratively liable, but his resignation prevents his dismissal from the service. A fine can be imposed, instead, and its amount is subject to the sound discretion of the Court. Section 56(e) of Rule IV of the Revised Uniform Rules provides that fine as a penalty shall be in an amount not exceeding the salary for six months had the respondent not resigned, the rate for which is that obtaining at the time of his resignation. The fine shall be deducted from any accrued leave credits, with the respondent being personally liable for any deficiency that should be directly payable to this Court. He is further declared disqualified from any future government service.[32]

Prescinding from the foregoing pronouncement, We hereby impose a fine equivalent to Atty. Zalsos-Uychiat's salary for six (6) months in lieu of dismissal from the service. In addition, she is disqualified in perpetuity from holding any future public office.

Liability of Atty. Musa-Barrat

Based on the foregoing discussions on the responsibilities of clerks of court with regard to the safeguarding of judiciary funds, Atty. Musa-Barrat's failure to remit court collections within the prescribed period also constitutes gross neglect of duty. Nevertheless, in *Judge Arganosa-Maniego v. Salinas*,[33] the Court held that:

However, in several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse,

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[32] *Alleged Loss of Various Boxes of Copy Paper During their Transfer from the Property Division, Office of Administrative Services (OAS), to the Various Rooms of the Philippine Judicial Academy*, A.M. No. 2008-23-SC, September 30, 2014.

[33] A.M. No. P-07-2400, June 23, 2009.

family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[34]

Conformably with the above pronouncement, dismissal is too harsh a penalty for Atty. Musa-Barrat. Unlike Ms. Del Rosario and Atty. Zalsos-Uychiat, she sincerely acknowledged her shortcomings, exhibiting genuine remorse and vowing to learn from this undesirable experience. We deem it proper to impose upon her the penalty of suspension for a period of one (1) year without pay, with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely.

A final note. Time and again, this Court has made the pronouncement that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced.[35] Accordingly, "[t]he behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their conduct must be guided by strict propriety and decorum at all times in order to merit and maintain the public's respect for and trust in the judiciary. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness."[36] As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service, and in this light, are always expected to act in a manner free from reproach. Any conduct, act, or omission that may diminish the people's faith in the Judiciary should not be tolerated.[37]

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[34] Id. at 346-347.

[35] *Judge Loyao, Jr. v. Manatad,* A.M. No. P-99-1308, May 4, 2000.

[36] *Judge Santos, Jr. v. Mangahas,* A.M. No. P-09-2720, April 17, 2012.

[37] *Hon. Zarate-Fernandez v. Lovendino,* A.M. No. P-16-3530, March 6, 2018.

WHEREFORE, judgment is hereby rendered as follows:

1. Ms. ABBA MARIE B. DEL ROSARIO is found **GUILTY** of gross dishonesty, grave misconduct and gross neglect of duty. She is ordered **DISMISSED** from the service, effective immediately. All benefits — except accrued leave credits, if any — are hereby **FORFEITED**. She is **DISQUALIFIED** from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations. Furthermore, she is **ORDERED** to restitute the shortage in the Fiduciary Fund amounting to **Six Hundred Forty-Eight Thousand Pesos (₱648,000.00),** with a copy of the machine validated deposit slip as proof of restitution. She is **DIRECTED** to **SUBMIT** the following within fifteen (15) days from receipt of notice to FMD, CMO, OCA:

a. Pertinent documents to validate the unidentified withdrawal from the High Yielding Savings Account (HYSA) on 20 August 2009 amounting to **One Hundred Five Thousand Pesos (₱105,000.00)**, otherwise, this will be added to the shortages of **₱648,000.00** and restitute the same; and

b. One (1) booklet of missing ORs with serial numbers **8677451 - 8677500**, otherwise, CAUSE the posting of Notice of Loss of the said booklet at least for a period of **one (1)** month in **three (3)** conspicuous places in Tubod, Lanao del Norte and the publication of the same in the newspaper of local circulation for at least **two (2)** days.

It is likewise **ORDERED** that:

a. Any future withdrawal of cash bond/s pertaining to the collections for the period **2014 to January 2017,** not included in the list of un- receipted and unremitted collections for the said period or in the Statement of Un-withdrawn FF **as of 30 September 2018** be **CHARGED** to Ms. Del Rosario;

b. Any unpaid accountabilities of Ms. Del Rosario be **CHARGED** against her available terminal leave pay and other benefits;

c. The **Employees Leave Division, Office of Administrative Services, OCA** be **DIRECTED** to **COMPUTE** the balance of earned leave credits of Ms. Del Rosario and **FURNISH** the Financial Management Office (FMO), OCA with the Certificate of Leave Credits, computerized service record and Notice of Salary Adjustment; and

d. The FMO, OCA be **DIRECTED** to **APPLY** the monetary value of the accrued leave credits and other benefits of Ms. Del Rosario against her unpaid accountabilities, dispensing with the usual documentary requirements.

2. Atty. MARIA PAZ TERESA V. ZALSOS-UYCHIAT is found **GUILTY** of gross neglect of duty. She is **ORDERED** to pay a **FINE** equivalent to her salary for six (6) months, computed at the salary rate of her former position at the time of her resignation. She is further declared **DISQUALIFIED** from reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations. She is **ORDERED** to restitute the shortages in the Fiduciary Fund, Sheriffs Trust Fund, Judiciary Development Fund, Special Allowance for the Judiciary Fund, General Fund — New, Mediation Fund, Legal Research Fund, and Land Registration Authority Fund in the total amount of **Eighty-Six Thousand Pesos and 1/100 (₱86,000.01)**, with a copy of the machine validated deposit slips as proofs of restitution.

3. Atty. AISA B. MUSA-BARRAT is found **GUILTY** of gross neglect of duty. She is **SUSPENDED** for a period of one (1) year without pay with a stern warning that a repetition of the same or similar acts in the future will be dealt with more severely. She is ordered to **SUBMIT** the **two (2)** booklets of missing ORs with serial numbers **6538201-6538300,** otherwise, **CAUSE** the posting of Notice of Loss of the said booklets at least for a period of **one (1)** month in **three (3**) conspicuous

places in Tubod, Lanao del Norte and the publication of the same in the newspaper of local circulation for at least **two (2)** days. She is likewise ordered to **PAY** and **DEPOSIT** the amount of **Twenty Thousand Three Hundred Twenty Pesos and Eighty-Nine Centavos (₱20,320.89**) representing unearned interests for her delayed remittances in the Fiduciary Fund, Judiciary Development Fund and Special Allowance for the Judiciary Fund computed at **six percent (6%)** *per annum*, to the following accounts:

Fund		**Amount**
FF	PHP	19,012.44
JDF		504.20
SAJF		804.25
Total	**PHP**	**20,320.89**

4. The following accountable officers corresponding to their respective periods of accountabilities are hereby **CLEARED** from any financial accountabilities for handling the judiciary funds insofar as the RTC, Tubod, Lanao del Norte is concerned, subject to the condition of the General Auditing Office General Circular No. 52 dated 23 December 1957, that "*if later on, an official or employee who has been cleared is later discovered still accountable for cash and/or property, the clearance, thus previously issued, will not relieve him/her of said accountability,*" to wit:

ACCOUNTABLE OFFICER	**POSITION**	**ACCOUNTABILITY PERIOD**
Atty. Ivy F. Duque	Former Clerk of Court VI	01/01/04-10/07/08
Ms. Florence O. Perocho	Officer-in-Charge/ Court Legal Researcher II	01/28/09-08/31/10 01/23/17-11/30/17

5. **Ms. FLORENCE O. PEROCHO,** incumbent OlC/Court Legal Researcher II, RTC, Tubod, Lanao del Norte, is **ORDERED** to:

a. **CONDUCT** an inventory of cases listed in the Unwithdrawn Sheriffs Trust Fund (STF) and indicate therein the status of the cases whether already dismissed/ decided; and **NOTIFY** the respective plaintiffs/payors to claim their refunds for any remaining amount in their STF deposits within thirty (30) days from receipt of notice, otherwise, it shall be forfeited in favor of the government. The amount forfeited shall be held in abeyance until further notice from the Court;

b. **REQUIRE** the Sheriff and Process Server of this court to utilize/accomplish the suggested Forms for STF cash advances, liquidations and reimbursements (pending the Court's issuance of an STF Circular), to wit:

b.1. For Cash Advances:

b.1.a. Disbursement Voucher;

b. l.b. Statement of Estimated Transportation and Travel Expenses (SETTE); and

b.l.c. Itinerary of Travel;

b.2. For Liquidations:

b.2.a. Statement of Liquidation;

b.2.b. Itinerary of Travel; and

b.2.c. Certificate of Travel Completed; and

b.3. For Reimbursements (only in cases which need immediate service and the process of cash advance would cause delay or in the absence of the approving officer);

b.3.a. Disbursement Voucher;

b.3.b. Itinerary Travel;

b.3.c. Certificate of Travel Completed; and

b.3.d. SETTE.

c. **STRICTLY FOLLOW** the procedures in the refund of the STF:

c.1. after judgment has been rendered by the court, the Clerk of Court shall notify the plaintiff or petitioner in writing

of any remaining amount from the deposit made by the latter;

c.2. the refund shall be effected only upon surrender by the plaintiff/petitioner of the original copy of the OR and upon order of the judge directing the payment of refund; and

c.3. upon receipt of the balance of the STF deposit, the plaintiff/petitioner shall acknowledge receipt of the refund.

d. **CLOSE** the following FF account[s] with the Land Bank of the Philippines (LBP), Tubod, Lanao del Norte branch and **FURNISH** the FMD, CMO, OCA proof of compliance thereof, to wit:

d.1. existing current account No. 0802-1180-66 and **OPEN** another account, an interest-bearing current account; and

d.2. High Yield Savings Account No. 0801-1096-91 and **TRANSFER** the balance of deposits to the newly opened interest-bearing current account.

e. **WITHDRAW** the following amounts from the FF current account and FURNISH the FMD, CMO, OCA proof of compliance thereof, to wit:

e.1. **Twenty-Four Thousand Six Hundred Sixty-One Pesos and Thirteen Centavos (₱24,661.13)** representing the unwithdrawn interest earned on FF deposits and REMIT the same to the General Fund-New (GF-New) account with proper receipt;

e.2. **Two Hundred Thirty-One Thousand Six Hundred Eighty-Nine Pesos (₱231,689.00)** representing the amount of STF collections deposited in the FF account and **DEPOSIT** the same to the STF account.

f. **INFORM** the FMD, CMO, OCA of any future withdrawal of cash bond/s not included in the list of un-receipted and unremitted collections of in the Statement of Unwithdrawn FF;

g. **ACCOUNT** and **WITHDRAW** all collection of fines deposited in the FF account and **REMIT** the same to the following accounts with proper receipt, to wit:

g.1. Fines imposed as penalty in drug cases to the Dangerous Drugs Board account; and

g.2. Fines imposed as penalty for the crime committed to the GF-New account.

h. **ATTACH** complete supporting documents in the file copies of STF monthly reports for future audit references;

i. **ENSURE** the issuance of OR upon receipt of payment of cash bond/s;

j. **REQUEST** official cash books from the Property Division, OAS, OCA for the recording of financial transactions for each fund;

k. **MAINTAIN** a sound internal control for the safekeeping of all accountable forms and financial records;

l. **REQUEST** ORs from the Department of Justice (DOJ) for collection of fees for the Victim's Compensation Fund (VCF) upon filing of complaints in civil actions pursuant to Section 20 of the Amended Administrative Circular No. 35-2004 dated **20 August 2004;**

m. **REGULARLY REMIT** the Legal Research Fund and Land Registration Authority collections and **SUBMIT** the corresponding reports to their respective agencies pursuant to P.D. 1856 and P.D. 1529, respectively;

n. **STRICTLY ADHERE** to and **FOLLOW** the issuances of the Court on the proper handling and reporting of judiciary funds particularly the prescribed period within which to remit the court collections and submit the monthly financial reports; and

o. **KEEP ABREAST** of the Court circulars on the proper collection and allocation of legal fees.

6. **Hon. RICHIE GAY T. MENDOZA**, Presiding Judge, RTC, Tubod, Lanao del Norte is ORDERED to:

a. **STRICTLY SUPERVISE** and **MONITOR** the financial transactions of **Ms. FLORENCE O. PEROCHO,** OIC/ Court Legal Researcher II, RTC, Tubod, Lanao del Norte, to ensure strict compliance with the circulars and other issuances of the Court regarding the proper handling of judiciary funds, otherwise, she may be held liable for the infractions which may be committed by the employees under her supervision; and

b. **PREPARE** a uniform fare matrix to simplify and expedite the disbursement and liquidation of transportation and travel expenses to be incurred by the Sheriff and Process Server in the service of summons, subpoenas and other court processes to standardize the expenses to be deducted from the court's STF collections in compliance with OCA Circular No. **263-2018** dated **27 December 2018** and **FURNISH** the FMD, CMO, OCA with the same for file and record purposes.

7. The Property Division, OAS, OCA is **ORDERED** to provide, as soon as possible, the RTC, Tubod, Lanao del Norte, official cash books for JDF, SAJF, FF, STF, GF-New and Mediation Fund; and

8. The Office of the Court Administrator is **ORDERED** to coordinate with the prosecution arm of the government to ensure the expeditious prosecution of Ms. Del Rosario's criminal liability, and to update its audit until the present.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Baltazar-Padilla, J., on leave.

EN BANC

[A.M. No. MTJ-18-1914. September 15, 2020]

DISCREET INVESTIGATION REPORT RELATIVE TO THE ANONYMOUS COMPLAINT AGAINST PRESIDING JUDGE RENANTE N. BACOLOD,[1] MUNICIPAL CIRCUIT TRIAL COURT, MANDAON-BALUD, MANDAON, MASBATE

SYLLABUS

1. **LEGAL ETHICS; JUDGES; IMMORALITY; A JUDGE'S ACT OF MAINTAINING A RELATIONSHIP AND COHABITING WITH A WOMAN OTHER THAN HIS LEGAL WIFE CONSTITUTES IMMORALITY. —** Immorality is not limited to sexual matters but also includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude towards good order and public welfare. x x x Judge Bacolod, by his own admission, is clearly guilty of immorality. Certainly, it is morally reprehensible for Judge Bacolod, a married man, to maintain intimate relations and cohabit with a woman other than his legal wife. His actions reflect upon his utter disregard of public opinion of the reputation of the judiciary which he represents. He failed to live up to the moral standards expected of everyone in the judiciary. His act of maintaining a relationship and cohabiting with a woman other than his legal wife brought the judiciary into mockery. His acts tainted the judiciary's integrity for it is highly inconceivable how an immoral man can qualify as a magistrate. Judge Bacolod, being guilty of immorality, shall be held administratively liable therefor.

2. **ID.; ID.; CODE OF JUDICIAL CONDUCT; A JUDGE'S PRIVATE AS WELL AS OFFICIAL CONDUCT MUST AT ALL TIMES BE FREE FROM ALL APPEARANCES OF IMPROPRIETY, AND BE BEYOND REPROACH TO FOSTER PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF**

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[1] Also referred to as "Reynante Bacolod" in some parts of the records.

THE JUDICIARY. — [J]udges are mandated to adhere to the highest tenets of judicial conduct. They must be the embodiment of competence, integrity and independence. A judge's private as well as official conduct must at all times be free from all appearances of impropriety, and be beyond reproach lest public's trust in the judiciary be diminished. The Code of Judicial Conduct mandates that a judge should, at all times, behave in a way that fosters public confidence in the integrity and impartiality of the judiciary. The people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. With this, Judge Bacolod should be reminded that judges' conduct, whether private or official, influence the public's faith in the judiciary.

3. ID.; ID.; MUST FULLY UTILIZE THE COURT'S OFFICIAL TIME TO CONDUCT TRIALS AND HEARINGS IN ORDER TO EFFICIENTLY AND EXPEDITIOUSLY DISPOSE OF CASES. — It is very unlikely that all counsels of litigants, public prosecutors, and public lawyers appearing before his court happen to have complementing schedules only twice a month. In managing their caseload, lawyers have been repeatedly reminded to accept only as much cases as they can efficiently handle in order to sufficiently protect their client's interests. x x x Assuming that lawyers and litigants appearing before his court indeed have complementing schedules only twice a month, what Judge Bacolod could have easily done was to call the attention of these lawyers for unduly delaying the administration of justice and impeding court processes, which court they are officers of. With this warning, the lawyers will have to make an assessment of their efficiency and competence in handling their clients' cases. If they think they cannot punctually attend hearings before Judge Bacolod's court, it is about time they manifest the same to the court and advise their client to find another lawyer who can competitively and efficiently litigate their causes. Unfortunately, Judge Bacolod failed to do this and decided for himself instead to go against the mandated court hearing days and hours. It is important to note that it is the primordial duty of judges to decide cases justly and expeditiously. In *Concerned Lawyers of Bulacan v. Villalon-Pornillos,* judges were again reminded that circulars prescribing hours of work are not just empty pronouncements. They are

there for the purpose of promoting efficiency and speed in the administration of justice, and requiring prompt and faithful compliance by all concerned. In order to efficiently and expeditiously dispose of cases, judges must fully utilize the court's official time to conduct trials and hearings. With Judge Bacolod's predicament of holding hearings only twice a month, he is likely to introduce undue delay in the disposition of cases in his court. As a consequence, party litigants' right to speedy disposition of their cases will be violated.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; HABITUAL ABSENTEEISM; AN EMPLOYEE IS CONSIDERED HABITUALLY ABSENT IF HE INCURS UNAUTHORIZED ABSENCES EXCEEDING THE 2.5 DAYS ALLOWED PER MONTH FOR THREE MONTHS IN A SEMESTER OR AT LEAST THREE CONSECUTIVE MONTHS DURING THE YEAR. — The Court x x x finds Judge Bacolod guilty of habitual absenteeism. As revealed by the Clerk of Court and Clerk II of MCTC, Mandaon-Balud, Masbate, Judge Bacolod reports to court only twice a month, on the 3rd and 4th Monday of every month — their hearing days. Interestingly, this was not refuted by Judge Bacolod. Thus, Judge Bacolod is deemed to have effectively admitted that he only reports to the court twice a month just as the hearings in his court are scheduled twice a month only. Administrative Circular No. 14-2002 provides that an employee is considered habitually absent if the employee incurred unauthorized absences exceeding the 2.5 days allowed per month for three (3) months in a semester or at least three (3) consecutive months during the year. In trying to justify his act of holding only two (2) hearing days, and effectively reporting to the court for only twice a month, he contends that the ABC Session Hall where they were temporarily holding hearings was available only for morning sessions from April 2015 until June 2016. From this, it can be deduced that Judge Bacolod's court attendance of only twice a month has been going on for more than three (3) months in a semester or even more than three (3) consecutive months in a year. The period of April 2015 to June 2016 covers at least 15 months. Evidently, it can be concluded that Judge Bacolod's habit of reporting to work only twice a month has been rolling for at least 15 months which is a clear case of habitual absenteeism. Each month has at least 20 working days. It was unreasonable for Judge Bacolod to have decided for himself

to report to court, and conduct hearings, only twice a month. The number of his absences was way more than his attendance in court. Judge Bacolod's habit of reporting to court twice a month only is clearly prejudicial to his duty to timely and expeditiously dispose of cases as well as to the general administration of justice. Given Judge Bacolod's failure to deny the charge of habitual absenteeism against him and coupled with the findings of the Investigating Judge, and based on the statements of the Clerk of Court and Clerk II of MCTC, Mandaon-Balud, Masbate, that he reports to court only on hearing days which were scheduled only twice a month, the Court finds it well established that Judge Bacolod is guilty of habitual absenteeism.

5. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; IN ADMINISTRATIVE CASES, THE BURDEN OF PROVING RESPONDENT'S ADMINISTRATIVE CULPABILITY RESTS ON THE COMPLAINANT AND THE EVIDENCE NEEDED TO SUPPORT AN ADMINISTRATIVE CHARGE IS SUBSTANTIAL EVIDENCE. — Well-settled is the rule that in administrative cases, the burden of proving respondent's administrative culpability rests on the complainant. The evidence needed to support an administrative charge is substantial evidence. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.

6. LEGAL ETHICS; JUDGES; IF A JUDGE IS TO BE DISCIPLINED FOR GRAVE OFFENSE, THE EVIDENCE AGAINST HIM SHOULD BE COMPETENT AND SHOULD BE DERIVED FROM DIRECT KNOWLEDGE. — Judge Bacolod is also being charged for corruption, drug involvement, and grave misconduct for solemnizing marriages outside his jurisdiction. These three (3) charges are all grave offenses. If a judge is to be disciplined for a grave offense, the evidence against him or her should be competent and should be derived from direct knowledge. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. Here, complainant have not shown, much less submitted, any evidence to support his/her allegation of Judge Bacolod's alleged corrupt practices, drug involvement, and act of solemnizing marriages outside his jurisdiction. Even the Investigation Report revealed absence, not mere paucity, of evidence to support the allegation

of corrupt practices and drug involvement charges against Judge Bacolod.

7. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE PENALTIES; WHERE THE PENALTY OF DISMISSAL HAS BEEN EARLIER IMPOSED, ANOTHER PENALTY OF DISMISSAL OR SUSPENSION CAN NO LONGER BE IMPOSED, BUT IN LIEU THEREOF, FINE SHALL BE IMPOSED. — We impose upon Judge Bacolod the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service. x x x [A]fter earlier imposing upon Judge Bacolod the penalty of dismissal for habitual absenteeism with falsification of certificates of service, this Court can no longer impose upon him another penalty of dismissal or suspension. But in lieu thereof, fine shall be imposed. Immorality is a serious charge under Section 8 (8), Rule 140 of the Rules of Court which, under Section 11(1) of the same Rule, may be sanctioned with dismissal, suspension from the service, or fine. x x x [T]he Court can no longer impose upon him another penalty of dismissal or suspension from the service. In lieu thereof, Judge Bacolod is fined in the amount of Forty Thousand Pesos (₱40,000.00). As regards Judge Bacolod's act of maintaining irregular calendar of court hearings, Section 9(2) (4) of Rule 140 provides that violation of Supreme Court rules, directives and circulars, is a less serious charge which, under Section 11(B) of the same Rule, is punishable by either suspension or fine. Again, Judge Bacolod is fined in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of suspension.

D E C I S I O N

PER CURIAM:

The Case and The Proceedings Below

This case stemmed from an anonymous complaint[2] (written in Tagalog) dated August 24, 2015 filed against Judge Renante

[2] *Rollo,* p. 9.

N. Bacolod (Judge Bacolod), Presiding Judge of Municipal Circuit Trial Court (MCTC), Mandaon-Balud, Masbate, before the Office of the Court Administrator (OCA) charging him with immorality, maintaining irregular calendar of court hearings and trials, corrupt practices, drug involvement, and grave misconduct, *i.e.*, solemnizing marriages outside his jurisdiction.

Complainant essentially alleged that: He/She is a resident of Mandaon, Masbate. Judge Bacolod is a presiding judge in one of the courts in their place. Judge Bacolod is a married man but is cohabiting with a woman other than his legal wife.

Judge Bacolod goes to court only on Mondays. Moreover, he immediately leaves by noontime and returns only on the following Monday. With this set-up, court hearings are scheduled only on Mondays. Nevertheless, Judge Bacolod still failed to attend some of the scheduled hearings.

Judge Bacolod engages in corrupt practices and employs a personal assistant who receives money from litigants. Also, Judge Bacolod was a notorious drug user and pusher before he was appointed as a judge.

Lastly, Judge Bacolod solemnizes marriages outside his jurisdiction and accepts fees for it.

The OCA referred the complaint to Executive Judge Manuel L. Sese (Judge Sese) of Regional Trial Court (RTC), Masbate City, Masbate, for discreet investigation and report.[3]

Investigation and Report of Executive Judge Manuel L. Sese

Judge Sese's Investigation Report[4] contained the following findings:

1. Judge Bacolod is separated from his legal wife who is now residing abroad. At present, he is cohabiting with another woman, with whom he has a common child, without the benefit of marriage;[5]

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[3] Id. at 10.

[4] Id. at 15-16.

[5] Id. at 16.

2. Judge Bacolod holds only two (2) hearing days every month. These hearings are scheduled in the morning of the 3rd and 4th Mondays of every month. But most of the time, hearings get cancelled for unknown reasons. According to the Clerk of Court and Clerk II of MCTC, Mandaon-Balud, Masbate, Judge Bacolod immediately leaves right after his hearing and no longer reports to court for the rest of the week. He would report back only on the next scheduled hearing day;[6]
3. There is no direct evidence to prove that Judge Bacolod engaged in corrupt practices and that he was a notorious drug user and pusher. Judge Bacolod, however, made some palpably erroneous orders in some cases before his court;[7] and
4. Lastly, Judge Bacolod solemnized the marriage of Neleen Estipona of Mandaon, Masbate, and a foreigner, which marriage, however, was refused registration by the Local Civil Registrar of the Municipality of Mandaon, Masbate, the latter believing that Judge Bacolod did not have the authority to solemnize marriages outside of Mandaon, Masbate.[8]

In his Comment,[9] **Judge Bacolod countered, in the main that**: He was separated-in-fact from his legal wife. With his legal wife being married to another man abroad and having children of their own, he indicated in all pertinent papers "separated" as his civil status. This was the case even before he applied as an MCTC judge. This event in his family life does not affect his work as a judge.[10]

Hearing of cases in his court are held only on the 3rd and 4th Mondays of every month in harmony with the available calendars of attending lawyers who also have to attend hearings in other courts. Likewise, the cancellation of scheduled hearings in his

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[6] Id. at 15.

[7] Id. at 15-16.

[8] Id. at 16.

[9] Id. at 21-23.

[10] Id. at 22.

court is due to the absence of either or both counsels of litigants, public prosecutors, public lawyers, or for the reason that he himself is indisposed or on official business or due to the directive in OCA Circular No. 142-2015 with respect to monthly disposal period.

Also, the court building where they are supposed to hold hearings was under repair. From April 2015 until June 2016, they were using the ABC Session Hall of the Municipality of Mandaon which was then only available for morning sessions. He was also attending to two (2) inhibited cases at MCTC Aroroy-Baleno, Aroroy, Masbate, scheduled on Tuesdays; six (6) inhibited civil cases and two (2) criminal cases at MCTC Mobo-Milagros, Mobo, Masbate, scheduled on Thursdays; and more than 30 inhibited cases at the Municipal Trial Court in Cities (MTCC) scheduled on Fridays.

He only has his driver with him going to and from the office. And most of the time, his driver is outside the court premises and has no knowledge about his official business. He also only allows parties and counsels inside his chamber when they are called for mediation or settlement purposes to promote the speedy administration of justice.[11]

He did not use nor sell illegal drugs. The allegation that he is a notorious drug pusher and user is baseless and tainted with malice and is a form of harassment to stop him from applying as RTC judge of Branch 48 and Branch 49 of Cataingan, Masbate.[12]

Lastly, he cannot recall having officiated marriages outside his jurisdiction, and have collected only ₱300.00 as court fees for the marriages he had officiated.

To prove his clean criminal record, he submitted some of his government-issued clearances.[13]

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[11] Id. at 21-22.

[12] Id. at 22-23.

[13] Id. at 24-28.

Acting on the anonymous complaint, Investigation Report, and Judge Bacolod's Comment, the OCA Chief of Legal Office, Wilhelmina D. Geronga, issued a Memorandum[14] dated September 23, 2016, addressed to the Court Administrator, recommending that the complaint be considered closed and terminated for lack of substantial evidence to prove the administrative culpability of Judge Bacolod relative to the charges of immorality, corrupt practices, and drug peddling but recommended that Judge Bacolod be sternly warned to be more circumspect in the performance of his duties and to strictly comply with the rules on office hours.[15]

Report and Recommendation of the OCA

In its Administrative Matter for Agenda (AMFA)[16] dated March 26, 2018, the OCA recommended the following:

> 1. The instant administrative complaint against Judge Bacolod be re-docketed as a regular administrative matter;
>
> 2. Judge Bacolod be found guilty for violating Section 9 (4), Rule 140 of the Revised Rules of Court, and be required to pay a fine of Ten Thousand Pesos (₱10,000.00);[17]
>
> 3. Judge Bacolod be found guilty of immorality and be suspended for six (6) months without salary and other benefits, with stern warning that a repetition of the same or similar offenses shall be dealt with more severely; and
>
> 4. The charges of corruption and drug peddling against Judge Bacolod be dismissed for lack of substantial evidence.[18]

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[14] Id. at 1-7.

[15] Id. at 7.

[16] Id. at 31-37.

[17] Appears as ₱5,000.00 in the discussion of the OCA's Report and Recommendation.

[18] *Rollo*, p. 37.

The OCA found Judge Bacolod guilty of immorality. The OCA noted his own admission that his wife is already living with another man and that they are both *in pari delicto*. By saying "*in pari delicto*," he admitted that he is cohabiting with another woman just the same as his wife is cohabiting with another man abroad. Based on his own admission, Judge Bacolod clearly failed to adhere to the exacting standards of morality and decency which every member of the judiciary is expected to observe.[19]

The OCA also found Judge Bacolod guilty of habitual absenteeism and/or maintaining irregular calendar of court hearings. Citing Administrative Circular No. 3-99 dated January 15, 1999, which provides that session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Court in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts shall be from 8:30 A.M. to noon and from 2:00 P.M. to 4:30 P.M. from Monday to Friday, the OCA noted that Judge Bacolod's act of conducting hearings only twice a month miserably falls short of what is required by the rules on office attendance. The OCA also cited Administrative Circular Nos. 1-99, 2-99, and 3-99, OCA Circular No. 63-2001 dated October 3, 2001, and OCA Circular No. 09-2015 which reiterated the rule on office hours in courts and its strict observance.

The OCA was not convinced with Judge Bacolod's excuse that he had other court stations to report to. The period when he had to report to other court stations covers the months of April and June of 2009 which was clearly more than five (5) years ahead the date of the anonymous complaint which is August 24, 2015. To add, the OCA gathered that as of May 2016, Judge Bacolod had a total caseload of 155 only. Taken together, these circumstances clearly do not work to exonerate him from being administratively liable.[20]

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[19] Id. at 36-37.

[20] Id. at 33-36.

On the other hand, the OCA recommended that the charges of (1) corrupt practices, and (2) drug involvement against Judge Bacolod be dismissed for lack of substantial evidence.[21]

In the same AMFA dated March 26, 2018, however, the OCA made no discussion regarding Judge Bacolod's alleged act of solemnizing marriages outside his jurisdiction.

The Court's Ruling

The Court adopts the findings and recommendations of the OCA but with modification as to the penalty to be imposed on Judge Bacolod.

The OCA correctly found Judge Bacolod guilty of immorality, habitual absenteeism and/or maintaining irregular calendar of court hearings. In the same vein, the OCA correctly recommended the dismissal of the (1) corrupt practices, and (2) drug involvement charges against Judge Bacolod. With respect to his alleged act of solemnizing marriages outside his jurisdiction amounting to grave misconduct, which the OCA failed to discuss in its report and recommendation, the Court finds Judge Bacolod likewise not guilty of the same.

Judge Bacolod is guilty of immorality.

Judge Bacolod did not deny the allegation that he is cohabiting with a woman other than his legal wife. He admitted he is only separated *de facto* from his legal wife, who is currently cohabiting with another man abroad. He calls their current situation as being both *in pari delicto* or equally at fault. By this, he impliedly admitted that he is cohabiting with a woman other than his legal wife just the same as his wife is also living with another man abroad. Worse, he made false representation in pertinent papers, including government or official records, indicating "separated" as his civil status when in fact his marriage still subsists there being no judicial declaration of nullity or annulment

[21] Id. at 37.

of their marriage yet. With audacity, he contends that this event in his life did not affect his work as a judge.

Judge Bacolod is gravely mistaken.

Immorality is not limited to sexual matters but also includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness; or is willful, flagrant or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude towards good order and public welfare.[22]

To begin with, judges are mandated to adhere to the highest tenets of judicial conduct. They must be the embodiment of competence, integrity and independence. A judge's private as well as official conduct must at all times be free from all appearances of impropriety, and be beyond reproach lest public's trust in the judiciary be diminished.[23]

The Code of Judicial Conduct mandates that a judge should, at all times, behave in a way that fosters public confidence in the integrity and impartiality of the judiciary. The people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess.[24] With this, Judge Bacolod should be reminded that judges' conduct, whether private or official, influence the public's faith in the judiciary.

Judge Bacolod, by his own admission, is clearly guilty of immorality. Certainly, it is morally reprehensible for Judge Bacolod, a married man, to maintain intimate relations and cohabit with a woman other than his legal wife. His actions reflect upon his utter disregard of public opinion of the reputation of the judiciary which he represents.[25] He failed to live up to the

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[22] *Regir v. Regir*, 612 Phil. 771, 778-779 (2009).

[23] See *Liguid v. Camano, Jr.*, 435 Phil. 695 (2002).

[24] See *Dela Cruz v. Judge Bersamira*, 402 Phil. 671 (2001).

[25] See *Jamin v. Judge De Castro*, 562 Phil. 344 (2007).

moral standards expected of everyone in the judiciary. His act of maintaining a relationship and cohabiting with a woman other than his legal wife brought the judiciary into mockery. His acts tainted the judiciary's integrity for it is highly inconceivable how an immoral man can qualify as a magistrate.

Judge Bacolod, being guilty of immorality, shall be held administratively liable therefor.

Judge Bacolod is guilty of maintaining irregular calendar of court hearings and habitual absenteeism with falsification of official documents (Certificates of Service).

As discussed by the OCA in its Report and Recommendation, several Administrative Circulars and OCA Circulars mandate that trial court sessions shall be from 8:30 A.M. to 12:00 noon and 2:00 P.M. to 4:30 P.M. from Monday to Friday. Surely, Judge Bacolod failed to comply with this.

Judge Bacolod does not deny, but in fact admits, holding only two (2) hearing days every month. He, however, pleads for compassion claiming he only came up with this kind of schedule to harmonize the allegedly conflicting schedules of lawyers appearing in his court who also have to attend hearings in other courts. He likewise attributes the cancellation of the scheduled hearings to the absence of these lawyers, or sometimes his own indisposition, or to his compliance with the requirements of OCA with respect to monthly disposal period.

The Court is not persuaded.

Judge Bacolod's attempt to completely exonerate himself from administrative liability miserably failed.

It is very unlikely that all counsels of litigants, public prosecutors, and public lawyers appearing before his court happen to have complementing schedules only twice a month.

In managing their caseload, lawyers have been repeatedly reminded to accept only as much cases as they can efficiently handle in order to sufficiently protect their client's interests.[26] In *Sps. Adecer v. Atty. Akut*,[27] this Court have ruled that if a lawyer is faced with personal matters which require prioritization over the lawyer's professional engagements to his clients, it is only fair that a lawyer should lighten his case load lest he prejudice his clients' cases.

Assuming that lawyers and litigants appearing before his court indeed have complementing schedules only twice a month, what Judge Bacolod could have easily done was to call the attention of these lawyers for unduly delaying the administration of justice and impeding court processes, which court they are officers of. With this warning, the lawyers will have to make an assessment of their efficiency and competence in handling their clients' cases. If they think they cannot punctually attend hearings before Judge Bacolod's court, it is about time they manifest the same to the court and advise their client to find another lawyer who can competitively and efficiently litigate their causes. Unfortunately, Judge Bacolod failed to do this and decided for himself instead to go against the mandated court hearing days and hours.

It is important to note that it is the primordial duty of judges to decide cases justly and expeditiously.[28] In *Concerned Lawyers of Bulacan v. Villalon-Pornillos*,[29] judges were again reminded that circulars prescribing hours of work are not just empty pronouncements. They are there for the purpose of promoting efficiency and speed in the administration of justice, and requiring prompt and faithful compliance by all concerned.

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[26] See *Lijauco v. Atty. Terrado*, 532 Phil. 1 (2006).

[27] 522 Phil. 542 (2006).

[28] See *Tauro v. Colet*, 366 Phil. 1 (1999).

[29] 805 Phil. 688 (2017).

In order to efficiently and expeditiously dispose of cases, judges must fully utilize the court's official time to conduct trials and hearings. With Judge Bacolod's predicament of holding hearings only twice a month, he is likely to introduce undue delay in the disposition of cases in his court. As a consequence, party litigants' right to speedy disposition of their cases will be violated.

As if not enough, and to further his attempt to be excused from administrative liability, Judge Bacolod raised the unavailability for afternoon sessions of ABC Session Hall where they were temporarily holding hearings. Interestingly, he likewise fronts the inhibited cases he allegedly had to attend to in other court stations.

Again, Judge Bacolod's desperate attempt to completely exonerate himself from administrative liability failed.

Assuming that ABC Session Hall was really unavailable for afternoon sessions, Judge Bacolod could have easily asked the OCA or the Court for a temporary place where hearings may be held both in the morning and afternoon. Unfortunately, there was no showing that Judge Bacolod exerted effort to the same end and instead had just let things be. Worse, although ABC Session Hall can be used for morning sessions only, Judge Bacolod still failed to utilize the five (5) morning court sessions he could have held every week. This clearly showed Judge Bacolod's indifference to the strict observance of trial court session hours.

Anent his duty to other court stations, the OCA found that it was in April and June 2009 when Judge Bacolod had to attend to inhibited cases in other court stations. This period clearly was not covered by the anonymous complaint which is dated August 24, 2015, or five (5) years later. For sure, the allegations in the complaint cover happenings and occurrences which took place not very long before August 24, 2015. Evidently, Judge Bacolod cannot excuse himself from the strict observance of the mandatory trial court session hours by invoking his case assignments in other courts which covered a different period of time.

Undoubtedly, Judge Bacolod violated the Court's directive regarding trial court session hours.

The Court likewise finds Judge Bacolod guilty of habitual absenteeism.

As revealed by the Clerk of Court and Clerk II of MCTC, Mandaon-Balud, Masbate, Judge Bacolod reports to court only twice a month, on the 3rd and 4th Monday of every month — their hearing days. Interestingly, this was not refuted by Judge Bacolod. Thus, Judge Bacolod is deemed to have effectively admitted that he only reports to the court twice a month just as the hearings in his court are scheduled twice a month only.

Administrative Circular No. 14-2002[30] provides that an employee is considered habitually absent if the employee incurred unauthorized absences exceeding the 2.5 days allowed per month for three (3) months in a semester or at least three (3) consecutive months during the year.

In trying to justify his act of holding only two (2) hearing days, and effectively reporting to the court for only twice a month, he contends that the ABC Session Hall where they were temporarily holding hearings was available only for morning sessions from April 2015 until June 2016. From this, it can be deduced that Judge Bacolod's court attendance of only twice a month has been going on for more than three (3) months in a semester or even more than three (3) consecutive months in a year.

The period of April 2015 to June 2016 covers at least 15 months. Evidently, it can be concluded that Judge Bacolod's habit of reporting to work only twice a month has been rolling for at least 15 months which is a clear case of habitual absenteeism.

Each month has at least 20 working days. It was unreasonable for Judge Bacolod to have decided for himself to report to

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[30] Reiterating the Civil Service Commission's Policy on Habitual Absenteeism, issued on March 18, 2002 and took effect on April 1, 2002.

court, and conduct hearings, only twice a month. The number of his absences was way more than his attendance in court. Judge Bacolod's habit of reporting to court twice a month only is clearly prejudicial to his duty to timely and expeditiously dispose of cases as well as to the general administration of justice.

Given Judge Bacolod's failure to deny the charge of habitual absenteeism against him and coupled with the findings of the Investigating Judge, and based on the statements of the Clerk of Court and Clerk II of MCTC, Mandaon-Balud, Masbate, that he reports to court only on hearing days which were scheduled only twice a month, the Court finds it well established that Judge Bacolod is guilty of habitual absenteeism.

Per certification issued by the Employees' Leave Division, Office of Administrative Services (OAS), OCA, Judge Bacolod incurred a total of only 17 ½ days of approved leave of absences for the period of April 2015 to June 2016, *viz.*:

Republic of the Philippines
Supreme Court
Office of the Court Administrator

Office of Administrative Services
Employees' Leave Division

CERTIFICATION

This is to certify that according to the records of the Employees' Leave Division, Office of Administrative Services, Office of the Court Administrator, Honorable REYNANTE N. BACOLOD, Presiding Judge, Municipal Circuit Trial Court, Mandaon-Balud, Masbate, has incurred the following approved leave of absences for the period of April 2015 up to June 2016:

Vacation Leave with pay
2015 December 1-4, 7-11, 14-18, 21-22, 28, 29 ½ = 17 ½ days

This further certifies that Judge Bacolod requested for commutation for monetization for the period April 2015 up to June 2016.

MONETIZATIONs
July 2015 = 20-day Charge to Sick Leave
June 2016 = 20-day Charge to Vacation Leave

It can be deduced from the above certification that Judge Bacolod made untruthful statements in his own Certificates of Service for the period of April 2015 to June 2016 to cover for the actual number of his absences.

In *Amante-Descallar v. Ramas*,[31] the Court discussed that:

> A judge's submission of false certificates of service seriously undermines and reflects on the honesty and integrity expected of an officer of the court. This is so because a certificate of service is not merely a means to one's paycheck but is an instrument by which the Court can fulfill the constitutional mandate of the people's right to a speedy disposition of cases.[32]

It has already been established above that for the period of April 2015 to June 2016, Judge Bacolod reported to work only twice a month. This makes him absent for at least 18 days per month during said period. The above certification from the Employees' Leave Division, OAS, OCA, however, states that Judge Bacolod incurred a total of only 17½ days of approved leave of absences for the entire period of April 2015 to June 2016. The logical conclusion is that the above-cited certification did not reflect Judge Bacolod's actual number of absences due to his own act of making untruthful statements in his own Certificates of Service. He did not state the fact that he reported to work only twice a month from April 2015 to June 2016. This is falsification of official documents, to which Judge Bacolod is administratively liable. We stress that falsification of an official document is also punishable under the Revised Penal Code.

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[31] 653 Phil. 26 (2010).

[32] Id. at 34.

No substantial evidence to prove Judge Bacolod's alleged corrupt practices, drug involvement, and grave misconduct, i.e., solemnizing marriages outside his jurisdiction.

Well-settled is the rule that in administrative cases, the burden of proving respondent's administrative culpability rests on the complainant.[33] The evidence needed to support an administrative charge is substantial evidence. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[34]

Judge Bacolod is also being charged for corruption, drug involvement, and grave misconduct for solemnizing marriages outside his jurisdiction. These three (3) charges are all grave offenses.[35] If a judge is to be disciplined for a grave offense, the evidence against him or her should be competent and should be derived from direct knowledge. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.[36]

Here, complainant have not shown, much less submitted, any evidence to support his/her allegation of Judge Bacolod's alleged corrupt practices, drug involvement, and act of solemnizing marriages outside his jurisdiction. Even the Investigation Report revealed absence, not mere paucity, of evidence to support the allegation of corrupt practices and drug involvement charges against Judge Bacolod.

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[33] See *Re: Letter-complaint of Atty. Cayetuna*, 654 Phil. 207 (2011).

[34] *Office of the Court Administrator v. Umblas*, 815 Phil. 27, 35 (2017), citing *COMELEC v. Mamalinta*, 807 Phil. 304 (2017).

[35] See *Guerrero v. Ong*, 623 Phil. 168 (2009); *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor*, 719 Phil. 96 (2013); and *Keuppers v. Murcia*, A.M. No. MTJ-15-1860, April 3, 2018.

[36] *Mikrostar Industrial Corporation v. Mabalot*, 514 Phil. 203, 208 (2005).

In *Sps. Pan v. Salamat*,[37] We ruled that in administrative cases, before a respondent's silence could be deemed an admission of the allegations against him, there must be substantial evidence to support the allegations.

In the instant case, although Judge Bacolod failed to deny the allegation that he solemnized marriages outside his jurisdiction, complainant nonetheless failed to present sufficient evidence to prove this allegation. The Investigation Report is likewise insufficient to hold Judge Bacolod guilty of this charge for failure to state its basis for arriving at such conclusion. Thus, the Court cannot find Judge Bacolod guilty of corruption, drug involvement, and grave misconduct, *i.e.*, solemnizing marriages outside his jurisdiction, for lack of substantial evidence to prove his administrative culpability therefor.

The penalty.

In *Office of the Court Administrator v. Breta*,[38] the Court explained:

> Supreme Court Administrative Circular No. 2-99 provides that absenteeism and tardiness even if such is not habitual or frequent shall be dealt with severely, and any falsification of daily time records to cover up for such absenteeism or tardiness shall constitute gross dishonesty or serious misconduct. Dishonesty, being in the nature of grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.[39]

Thus, We impose upon Judge Bacolod the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service.

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[37] 525 Phil. 540 (2006).

[38] 519 Phil. 106 (2006).

[39] Id. at 109.

Before We proceed to the penalty for Judge Bacolod's other offenses, We cite the Court's discussion in *Office of the Court Administrator v. Umblas*[40] regarding subsequent impositions of administrative penalties after an earlier imposition of dismissal from the service, *viz.*:

> At this juncture, it must be noted that in an earlier case decided by the Court entitled *OCA v. Umblas*, Umblas was already meted the penalty of dismissal along with its accessory penalties. Further, in *Garingan-Ferreras v. Umblas*, Umblas was supposed to be meted the same penalty as well, if not for the earlier imposition thereof. Thus, he was instead meted with the penalty of a fine in the amount of [₱]40,000.00. Hence, the Court can no longer impose the penalty of dismissal with its accessory penalties to Umblas in this case. In lieu thereof, a penalty of a fine in the amount of [₱]40,000.00 shall be imposed on him instead, which amount shall be deducted from his accrued leave credits and if such is insufficient, he shall be ordered to pay the balance.[41]

In fine, after earlier imposing upon Judge Bacolod the penalty of dismissal for habitual absenteeism with falsification of certificates of service, this Court can no longer impose upon him another penalty of dismissal or suspension. But in lieu thereof, fine shall be imposed.

Immorality is a serious charge under Section 8(8), Rule 140 of the Rules of Court which, under Section 11 (1) of the same Rule, may be sanctioned with dismissal, suspension from the service, or fine.[42] As earlier discussed, the Court can no longer

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[40] Supra note 34.

[41] Id. at 38.

[42] SEC. 8. *Serious charges*. — Serious charges include:

x x x x x x x x x

8. Immorality;

x x x x x x x x x

SEC. 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or

impose upon him another penalty of dismissal or suspension from the service. In lieu thereof, Judge Bacolod is fined in the amount of Forty Thousand Pesos (₱40,000.00).

As regards Judge Bacolod's act of maintaining irregular calendar of court hearings, Section 9 (2) (4) of Rule 140 provides that violation of Supreme Court rules, directives and circulars, is a less serious charge which, under Section 11(B) of the same Rule, is punishable by either suspension or fine.[43] Again, Judge Bacolod is fined in the amount of Twenty Thousand Pesos (₱20,000.00) in lieu of suspension.

WHEREFORE, the Court hereby **ORDERS** the following:

1.) Respondent Judge Renante N. Bacolod be **DISMISSED** from the service for Dishonesty with **FORFEITURE** of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in any government agency or instrumentality, including any

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appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

[43] SEC. 9. *Less Serious Charges*. — Less serious charges include:

x x x x x x x x x

2. Frequent and unjustified absences without leave or habitual tardiness;

x x x x x x x x x

4. Violation of Supreme Court rules, directives, and circulars;

x x x x x x x x x

6. Untruthful statements in the certificate of service;

x x x x x x x x x

SEC. 11. *Sanctions*. —

x x x x x x x x x

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

government-owned and controlled corporation or government financial institution, effective immediately;

2.) Respondent Judge Renante N. Bacolod is found **GUILTY** of Immorality. He is hereby **ORDERED** to pay a fine of Forty Thousand Pesos (₱40,000.00), to be paid within thirty (30) days from Notice;

3.) Respondent Judge Renante N. Bacolod is found **GUILTY** of maintaining irregular calendar of court hearings (violation of Supreme Court rules, directives and circulars). He is hereby **ORDERED** to pay a fine of Twenty Thousand Pesos (₱20,000.00), to be paid within thirty (30) days from Notice;

4.) The charges against Judge Renante N. Bacolod for (a) corrupt practices, (b) drug involvement, and (c) grave misconduct for solemnizing marriages outside his jurisdiction, be **DISMISSED** for lack of substantial evidence.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.*, concur.

Baltazar-Padilla, J., on leave.

EN BANC

[A.M. No. RTJ-15-2438. September 15, 2020]
(Formerly OCA I.P.I. No. 11-3681-RTJ)

SHARON FLORES-CONCEPCION, *Complainant, v.* **JUDGE LIBERTY O. CASTAÑEDA, Regional Trial Court, Branch 67, Paniqui, Tarlac**, *Respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS. — In this jurisdiction, due process has "no controlling and precise definition" but is "a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid." It is, in its broadest sense, "a law which hears before it condemns."

2. ID.; ID.; ID.; ID.; CONCEPTS OF DUE PROCESS; PROCEDURAL DUE PROCESS; SUBSTANTIAL DUE PROCESS. — Due process encompasses two concepts: substantial due process and procedural due process. Substantive due process is generally premised on the "freedom from arbitrariness" or "the embodiment of the sporting idea of fair play." It "inquires whether the government has sufficient justification for depriving a person of life, liberty, or property."

Procedural due process, on the other hand, "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere." It is "[a]t its most basic . . . about fairness in the mode of procedure to be followed."

3. ID.; ID.; ID.; ID.; ID.; ID.; REQUIREMENTS OF PROCEDURAL DUE PROCESS; REQUIREMENTS FOR JUDICIAL PROCEEDINGS. — The requirements of procedural due process depend on the nature of the action involved. For judicial proceedings:

> [First,] [t]here must be a court or tribunal clothed with judicial power to hear and determine the matter before it; [second] jurisdiction must be lawfully acquired over the

person of the defendant or over the property which is the subject of the proceeding; [third,] the defendant must be given an opportunity to be heard; and [fourth,] judgment must be rendered upon lawful hearing. . . .

4. ID.; ID.; ID.; ID.; ID.; ID.; IN ADMINISTRATIVE CASES, THE ESSENCE OF PROCEDURAL DUE PROCESS IS MERELY ONE'S RIGHT TO BE GIVEN THE OPPORTUNITY TO BE HEARD. — In administrative cases, however, the essence of procedural due process is merely one's right to be *given the opportunity* to be heard. In *Casimiro v. Tandog*:

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

5. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PROCEDURAL DUE PROCESS; THE FAILURE TO STRICTLY APPLY THE CARDINAL PRIMARY RIGHTS WILL NOT NECESSARILY RESULT IN THE DENIAL OF DUE PROCESS, AS LONG AS THE RESPONDENT IS GIVEN THE OPPORTUNITY TO BE HEARD. — The sufficiency of pleadings in lieu of actual hearings does not imply that administrative proceedings require a "lesser" standard of procedural due process. On the contrary, *Ang Tibay v. Court of Industrial Relations* requires that in administrative trials and investigations, seven cardinal primary rights be present for the requirements of due process to be satisfied: . . .

Nonetheless, this Court clarified in *Gas Corporation of the Philippines v. lnciong* that the failure to strictly apply the regulations required by *Ang Tibay* will not necessarily result in the denial of due process, as long as the elements of fairness are not ignored. . . .

Thus, while *Ang Tibay* requires the application of no less than seven cardinal rights, it is generally accepted that due process in administrative proceedings merely requires that the respondent is *given the opportunity* to be heard.

6. ID.; ID.; ID.; ID.; THE OPPORTUNITY TO BE HEARD MUST BE PRESENT EVEN AFTER JUDGMENT SO AS TO GIVE THE RESPONDENT AN OPPORTUNITY TO SEEK RECONSIDERATION OF THE JUDGMENT. — This opportunity to be heard, however, must be present *at every single stage of the proceedings.* It cannot be lost even after judgment. . . .

The opportunity to be heard is an intrinsic part of the constitutional right to due process. Thus, in criminal cases, cases against the accused are immediately dismissed upon death since the accused can no longer participate in all aspects of the proceedings.

Administrative proceedings require that the respondent be informed of the charges and be given an opportunity to refute them. Even after judgment is rendered, due process requires that the respondent not only be informed of the judgment but also be given the opportunity to seek reconsideration of that judgment. This is the true definition of the opportunity to be heard.

7. ID.; ID.; ID.; ID.; EFFECTS OF RESPONDENT'S DEATH ON THE CASE; THE DOCTRINE THAT A DISCIPLINARY CASE MAY CONTINUE EVEN IF THE RESPONDENT HAS CEASED TO HOLD OFFICE DOES NOT APPLY TO DEAD RESPONDENTS. — It is a settled doctrine that a disciplinary case against a court official or employee may continue, even if the officer has ceased to hold office during the pendency of the case.

. . .

[However,] the opportunity to be heard can only be exercised by those who have resigned or retired. . . .

Dead respondents have no other recourse. They will never know how the proceedings will continue, let alone submit responsive pleadings. They cannot plead innocence or beg clemency.

Death forecloses *any* opportunity to be heard. To continue with the proceedings is a violation of the right to due process.

8. ID.; ID.; ID.; ID.; ID.; AN ADMINISTRATIVE CASE AGAINST DEAD RESPONDENTS MAY CONTINUE IF IT IS MORE BENEFICIAL TO THEIR HEIRS. — [The ruling in] *Gonzales v. Escalona* has often been misquoted as basis to state that a respondent's death will not preclude a finding of administrative liability. . . .

. . . [H]owever, [it also] explicitly provides the several exceptions to this rationale, foremost of which is the denial of due process. . . .

Thus, *Gonzales* not only lays the basis for the *dismissal* of the administrative case due to respondent's death, but also states the basis for continuing the administrative case *despite* death: (1) when the respondent was given the opportunity to be heard; or (2) when the continuation of the proceedings is more advantageous and beneficial to respondent's heirs.

9. ID.; ID.; ID.; ID.; ID.; IT IS THE IMPRACTICABILITY OF THE PUNISHMENT THAT MUST GUIDE THE COURT IN ASSESSING WHETHER DISCIPLINARY PROCEEDINGS CAN CONTINUE. — [I]n *Loyao, Jr. v. Caube*, on which *Gonzales* hinges to justify the rule that death does not cancel out administrative liability, this Court was actually constrained to *dismiss the case and consider it closed and terminated* because the penalty could not be carried out. . . .

. . .

It is the impracticability of the punishment that must guide this Court in assessing whether disciplinary proceedings can continue. To determine this, we must first examine our underlying assumptions on the imposition of penalties for offense against the State or its private citizens.

10. POLITICAL LAW; ADMINISTRATIVE LAW; PURPOSE OF ADMINISTRATIVE PENALTIES; THE OBJECTIVE OF THE IMPOSITION OF PENALTIES IN ADMINISTRATIVE CASES IS PUBLIC ACCOUNTABILITY. — [T]he imposition of penalties in administrative cases takes on a slightly different character than that of criminal penalties. . . .

The objective of the imposition of penalties on erring public officers and employees is not punishment, but *accountability*. . . .

To remain in public service requires the continuous maintenance of the public trust. . . .

For this reason, the worst possible punishment for erring public officials and employees is not imprisonment or monetary recompense. It is *removal* from the public service. . . .

The purpose of administrative penalties is to restore and preserve the public trust in our institutions. Thus, it is in the public interest to remove from service all individuals who diminish the public trust. This is the extent of the punishment in administrative disciplinary cases.

11. ID.; ID.; ID.; ID.; ID.; THE PENALTY OF DISMISSAL ATTACHES ONLY TO THE ERRING PUBLIC SERVANT. — The justification for the imposition of dismissal from service is neither prevention, nor self-defense, nor exemplarity, nor retribution, nor reformation. It is part of public accountability, which arises from the State's duty to preserve the public trust. The penalty attaches to the erring public officer or employee and to no other. Only that erring public officer or employee is dismissed from service.

When that public officer or employee dies, there is no one left for the State to dismiss from service.

12. ID.; ID.; ID.; ID.; ID.; THE RULING THAT RESPONDENT'S DEATH DURING THE PENDENCY OF AN ADMINISTRATIVE PROCEEDING IS CAUSE TO DISMISS THE CASE APPLIES TO MEMBERS OF THE JUDICIARY. — [I]n *Government Service Insurance System v. Civil Service Commission*, this Court pronounced that a respondent's death during the pendency of an administrative proceeding was cause to dismiss the case, due to the futility of the imposition of any penalty. . . . .

The same rationale should apply to members of the Judiciary, as they are held to an even higher standard than other public officers and employees.

13. ID.; ID.; AM NO. 01-8-10-SC; PENALTY FOR JUSTICES AND JUDGES FOUND GUILTY OF SERIOUS CHARGES;

THE AVAILABILITY OF THE PENALTY OF A FINE IS OFTEN THE JUSTIFICATION TO CONTINUE WITH THE CASE OF A RESPONDENT WHO IS NO LONGER IN SERVICE. — A.M. No. 01-8-10-SC provides that justices and judges found guilty of serious charges are punishable by the following penalties:

. . .

The first two penalties, dismissal and suspension, are forms of negative reinforcement. They are meant to make the respondent suffer. . . .

Dismissal from service also carries with it the accessory penalties of perpetual disqualification from public office and forfeiture of retirement benefits. . . .

This presupposes, of course, that the erring judge or justice is still a member of the Bench when the penalty is imposed. There is, thus, a third penalty, that of a fine, which may be imposed when the erring judge or justice is no longer in service.

It is the availability of the penalty of a fine that is often the justification for this Court to continue with cases despite the respondent no longer being connected with the Judiciary. . . .

. . .

. . . . The fine is a punishment, not a repayment. It is meant to replace the penalties, which can no longer be imposed.

14. ID.; ID.; ID.; ID.; SINCE THE PUNISHMENT FOR ADMINISTRATIVE INFRACTIONS IS PERSONAL TO THE RESPONDENT, IT IS IRRATIONAL AND ILLOGICAL FOR THE COURT TO CONTINUE WITH DISCIPLINARY PROCEEDINGS DESPITE THE RESPONDENT'S DEATH. — The punishment for administrative infractions, therefore, is *personal* to the respondent. As all punishments are tempered with mercy, this Court metes them with the fervent hope that the erring judge or justice learns their lesson and repents on all of their mistakes.

Remorse is impossible when the erring judge or justice dies before this Court can hand down its judgment. It is, thus, *irrational* and *illogical* for this Court to continue with disciplinary proceedings despite the respondent's death. There is no one left to punish.

15. CIVIL LAW; SUCCESSION; THE PROPERTIES OF DEAD RESPONDENTS, LIKE ACCRUED LEAVE BENEFITS, BELONG TO THEIR ESTATE AT THE TIME OF THEIR DEATH. — Article 777 of the Civil Code provides that "[t]he rights to the succession are transmitted from the moment of the death of the decedent." Here, all of respondent Judge Castañeda's properties were no longer hers at the time of her death. They belonged to her estate, of which her heirs had an inchoate right.

16. ID.; ID.; CHARGES AGAINST THE ESTATE; ADMINISTRATIVE FINES CANNOT BE CHARGED AGAINST THE ESTATE OF A RESPONDENT. — Charges against the estate include "claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expense for the last sickness of the decedent, and judgment for money against the decedent." Penalties, such as administrative fines, are not included in this enumeration. They are not, strictly speaking, claims for money arising from contracts or judgments for money. To categorize them as such would make this Court a creditor of the decedent.

Upon her death, all of respondent's prospective assets, like her accrued leave benefits, have already passed on to her estate. To impose the fine on her would be to make a claim against the estate.

17. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; EFFECT OF THE DEATH OF A RESPONDENT ON THE CASE; IT WOULD BE CRUEL FOR THE RESPONDENT'S HEIRS TO BEAR THE BRUNT OF RESPONDENT'S PUNISHMENT SHOULD THE COURT PROCEED WITH THE CASE AND IMPOSE A PENALTY UPON A GUILTY VERDICT. — In any case, from a moral standpoint, it would be cruel for this Court to make respondent's heirs bear the brunt of her punishment. They are not under investigation. They are not the ones who committed respondent's infractions. They are, from the findings of the investigation, innocent of the charges. And yet, should this Court proceed with the case and impose a penalty upon a guilty verdict, it is respondent's heirs who would bear that punishment.

> Admittedly, respondent's infraction in this case is severe. The Office of the Court Administrator conclusively found that complainant's nullity case was resolved with undue haste, having been resolved less than a year after the petition had been filed. . . . Respondent would have been dismissed for her blatant and gross ignorance of the law.
>
> . . .
>
> Here, respondent is no longer in a position to refute the findings of the Office of the Court Administrator. She could no longer know of the proceedings against her. She would not know of the conclusions of this Court and of the punishment that she would have so rightly deserved. She could no longer move for reconsideration, admit to the charges, plead her innocence, not even beg for clemency. There is no more reason for this Court to proceed with this case.
>
> Respondent is dead. She could no longer evade liability. She could no longer pollute the courts with her incompetence and corrupt ways. She could no longer betray the public trust.

DELOS SANTOS, *J., concurring opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; JURISDICTION; EFFECT OF THE SUPERVENING DEATH OF THE RESPONDENT; THE DISMISSAL OF A CASE FOLLOWING THE RESPONDENT'S DEATH IS AN EXERCISE OF JURISDICTION, AND DOES NOT STEM FROM BEING OUSTED FROM JURISDICTION. — Jurisdiction, once obtained, continues until the final disposal of a case. To clarify, the dismissal of the administrative complaint in this case does not stem from the Court being ousted from jurisdiction following respondent's death. Rather, it is in the very exercise of its jurisdiction that the Court finds it proper to dismiss the administrative complaint in light of the demands of procedural due process and the impracticability of punishment.

2. ID.; ID.; ID.; DISCIPLINARY SANCTIONS ARE IMPOSED TO PRESERVE PUBLIC ACCOUNTABILITY AND THE PUBLIC'S FAITH AND CONFIDENCE IN OUR JUDICIAL SYSTEM. — The paramount interest to be protected in an administrative case is the preservation of the Constitutional

mandate that a public office is a public trust. Public officers must, at all times, be accountable to the people. As implementers of the law, members of the Judiciary are held to an even higher standard; which no less than the High Court is tasked to uphold. Hence, the conduct of members of the Judiciary are highly scrutinized whether they pertain to their professional or private capacities; the only requirement being, that the administrative complaint be filed against them during their incumbency. After all, the Court cannot countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary. It is precisely because of this accountability that in imposing disciplinary sanctions, punishment is merely a secondary objective; the primary being, the preservation of the public's faith and confidence in our judicial system.

3. ID.; ID.; ID.; ANY ADMINISTRATIVE PENALTY SHOULD ATTACH TO THE ERRING PUBLIC OFFICER OR EMPLOYEE ONLY, NOT TO THE HEIRS; CASE AT BAR. — [J]udges were penalized with a fine which was deducted from their accrued leave credits since their retirement benefits had been previously forfeited. It is worth noting, however, that these judges were alive at the time their respective administrative liabilities were determined by the Court with finality. Thus, it is my view that the imposition of fine for their infractions was only proper and more significantly, contributes towards public confidence in the Judiciary as the erring judges themselves are made to suffer the penalty of a fine. Any administrative penalty should attach to the erring public officer or employee alone. This is in stark contrast to herein respondent's case, where it is her heirs who would be shouldering the burden. This stems from the fact that respondent has forfeited her retirement benefits with the exception of her accrued leave credits. Following respondent's death in 2018 and while this case was being deliberated by the Court, respondent's remaining properties, which would include accrued leave credits, have already been transmitted to her heirs under the Civil Code. Thus, as it stands, any fine to be imposed by the Court shall be borne by respondent's heirs who have nothing to do with her transgressions. It would be highly unjust to allow her family, who arguably already bear the brunt of her tarnished reputation,

to be further burdened by a pecuniary sanction for misconduct which they neither participated nor benefitted in. Needless to state, respondent's faults should not be transmitted to her heirs. The Court cannot close its eyes to the effect of its judgments; particularly in disciplinary proceedings, where the imposition of penalties is largely within its discretion. While the Court is guided by the gravity of the offense and prior penalties it has imposed for similar cases, it remains mindful of the peculiar circumstances in each case. It can hardly be said that penalizing respondent's family will serve to uphold the integrity and dignity of the Judiciary, which, after all, is the primary purpose of imposing disciplinary sanctions among its ranks.

4. ID.; ID.; ID.; CRIMINAL LAW; EFFECT OF THE ACCUSED'S OR RESPONDENT'S SUPERVENING DEATH; EXTINGUISHMENT OF CRIMINAL AND ADMINISTRATIVE LIABILITY; THE DEATH OF THE ACCUSED OR RESPONDENT BEFORE THE RENDITION OF A FINAL JUDGMENT EXTINGUISHES CRIMINAL LIABILITY OR ADMINISTRATIVE LIABILITY, RESPECTIVELY. — In criminal cases, the death of the accused before the rendition of a final judgment extinguishes criminal liability, precisely because the juridical condition of a penalty is that it is personal. I find no cogent reason not to apply the same treatment to disciplinary cases. After all, any administrative complaint against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment. Similarly, administrative proceedings are akin to criminal prosecutions in the sense that no compromise may be entered into between the parties as regards the penal sanction. Generally speaking, in both criminal and administrative cases, complainants are mere witnesses such that regardless of their subsequent desistance, the Court will not desist from imposing the appropriate penalties. Finally, it must be underscored that in either case, absent a final determination by the Court itself, there is no final determination of liability to speak of for which the appropriate penalty can be determined and thereafter, implemented.

5. ID.; ID.; ID.; ADMINISTRATIVE LIABILITY; THE DEATH OF RESPONDENT DURING THE PENDENCY OF THE CASE SHOULD SERVE AS A BAR FROM ANY FURTHER

FINDING OF ADMINISTRATIVE LIABILITY. — [D]eath during the pendency of the case should nonetheless serve as a bar from any further finding of administrative liability. This is not to diminish the gravity of any misconduct or impropriety, but rather from the recognition that ultimately, disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare and to save courts of justice from persons unfit to practice law or as in this case, those tasked to implement it. Necessarily, the administrative penalty attaches to the erring public officer or employee alone. Thus, the erring public officer or employee must personally suffer the sanction imposed by the Court to achieve the objective of disciplinary cases — to cleanse its ranks and preserve the public's faith and confidence in the judicial system. Indubitably, this purpose cannot be achieved when the death of the respondent intervenes and it is the respondent's heirs who will be made to suffer, *albeit* in a financial capacity.

6. LEGAL ETHICS; JUDGES; MALFEASANCE; NULLIFYING MARRIAGE WITHOUT CONDUCTING PROPER JUDICIAL PROCEEDINGS AMOUNTS TO MALFEASANCE. — There is no doubt that respondent's act of nullifying complaint's marriage without the conduct of proper judicial proceedings is reprehensible. Such malfeasance not only makes a mockery of marriage and its life-changing consequences but likewise grossly violates the basic norms of truth, justice, and due process.

PERLAS-BERNABE, *J., dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; EFFECT OF THE DEATH OF RESPONDENT DURING THE PENDENCY OF THE CASE; THE COURT SHOULD PROCEED TO RESOLVE THE PENDING ADMINISTRATIVE CASE. — Pending administrative cases are not *automatically* mooted solely by the fact of a respondent-court employee's supervening death. The consequences of administrative misconduct have a *persisting and surviving effect on the integrity of public service*; hence, once jurisdiction is acquired and the respondent is duly given the opportunity to be heard, the Court should proceed to resolve the case. Accordingly, any administrative liability, if so found

to be established based on the facts on record, should be pronounced and **remain on public record** in order to memorialize the public affront, so as to deter future deleterious conduct by would-be erring public officers.

2. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; IT IS SATISFIED WHEN A PERSON IS NOTIFIED OF THE CHARGE AGAINST HIM AND GIVEN AN OPPORTUNITY TO EXPLAIN OR DEFEND ONESELF. — "In administrative proceedings, [procedural] due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and *giving reasonable opportunity* for the person so charged to answer the accusations against him constitute the minimum requirements of due process." Hence, "[t]he essence of [procedural] due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, *or* an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard." In this regard, case law further clarifies that any initial defects in procedural due process — *i.e.*, deprivation of opportunity to be heard — may be cured by the filing of a motion for reconsideration that tackles the merits of the case. Otherwise stated, there is a violation of due process if a respondent was not given the opportunity to be heard.

3. ID.; ID.; ID.; ID.; ID.; RESPONDENT'S INABILITY TO MOVE FOR RECONSIDERATION DUE TO UNFORTUNATE SUPERVENING DEATH DOES NOT ERASE THE FACT THAT DUE PROCESS HAD ALREADY BEEN SUBSERVED. — In this case, there was no violation of procedural due process. Records clearly show that respondent failed to file any responsive pleading despite being given multiple opportunities to do so. Since respondent was given several chances to meet the accusations against her from the very beginning, there was no deprivation of due process. Contrary to the *ponencia*, respondent's inability to move for reconsideration due to her unfortunate supervening death does not erase the fact that due process had already been subserved. To say that due process is only subserved when a respondent is given the opportunity to be heard *at every stage of the*

proceedings, as the *ponencia* holds, is — in my opinion — a dangerous precedent that may have far-reaching implications. Lack of due process means that the entire proceedings are void; thus, the *ponencia*'s loose statements may be indiscriminately invoked by litigants to nullify any type of proceeding based on one's failure to move for reconsideration despite already being given the chance to explain his side at the onset of the case.

4. CRIMINAL LAW; CRIMINAL LIABILITY; CONSEQUENCES OF THE ACCUSED'S SUPERVENING DEATH; THE DISMISSAL OF A CRIMINAL CASE DUE TO THE ACCUSED'S DEATH IS PREDICATED ON THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE. — I disagree with the *ponencia*'s parallelism between the legal consequences of death in criminal cases and administrative cases.

. . .

However, it should be stressed that the dismissal of a criminal case (even on appeal) due to the accused's supervening death is not grounded on his inability to participate in all aspects of the proceedings. Rather, the dismissal is predicated on the constitutional presumption of innocence.

. . .

The presumption only applies to criminal cases. The rationale therefor is that a person accused of a crime is always pitted against the awesome prosecutorial machinery of the State. More importantly, unlike in administrative cases, the accused stands to face grave penalties affecting his own life and liberty when found guilty. Thus, when an average person stands accused for a public offense before a tribunal with the power to take his life or liberty, he is afforded the right to be presumed innocent until his guilt is proven beyond reasonable doubt.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; THERE'S NO CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN ADMINISTRATIVE CASES. — There is, however, no constitutional presumption of innocence when it comes to administrative cases.

. . . [T]he purpose of administrative cases against public officials is to exact accountability for the wrongful acts that they have committed in the performance of their official

functions. Public office is not property within the protection of the constitutional guarantees of due process of law as public office is a privilege burdened with numerous duties and prohibitions. Respondents in administrative cases, unlike the accused in criminal cases, will lose neither their liberty nor their property if an adverse decision be rendered against them.

6. ID.; ID.; ID.; FINDING OF ADMINISTRATIVE LIABILITY AND IMPOSITION OF PENALTIES, DISTINGUISHED; FAILURE TO RECOGNIZE ADMINISTRATIVE LIABILITY BY THE AUTOMATIC DISMISSAL OF THE CASE IS TANTAMOUNT TO THE CONDONATION OF SAID LIABILITY. — I submit that a finding of administrative liability on the one hand, may be differentiated from the imposition of penalties on the other. While the latter is generally a consequence of the former, exceptional circumstances may justify a finding of liability without necessarily proceeding to impose the penalty therefor. As in this case, it is my view that the Court should have proceeded with the determination of respondent's administrative liability and enter the same in the public record. The constitutional mandate that public office is a public trust demands complete closure and accountability for the wrongdoings committed against public service. The failure to recognize this liability by the automatic dismissal of these cases is tantamount to the liability's condonation.

7. ID.; ID.; ID.; ADMINISTRATIVE PENALTIES; THE COURT MAY DECIDE NOT TO EXECUTE THE FINE PENALTY AGAINST THE ERRING OFFICER. — This notwithstanding, the administrative penalties — which are either fines or non-monetary penalties converted to fines — need not be imposed anymore. After all, retribution by punishment is not the sole purpose of administrative proceedings; *recognition of the taint to the integrity of the service is restorative justice on its own.* Thus, the Court, within the bounds of its constitutional authority to supervise court personnel, may decide not to execute the fine penalty against the erring officer. The reasons for this are two-fold: (*1*) it would be impracticable to institute a claim during the settlement proceedings which usually involve lengthy litigation and costs; and (*2*) the punitive aspect of the penalty should be personal to the offender and hence, should no longer bear unintended effects to the bereaved loved ones of the deceased person. Anent the latter, it is discerned that the Court

employee's name or using a confidential pseudonym in the published decision if only to avoid further insult to the grieving family. Indeed, the Court can implement these measures to balance the necessity to exact public accountability whilst preserving the humanity of its decisions.

CAGUIOA, *J., dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE DEATH OF THE RESPONDENT JUDGE DOES NOT *IPSO FACTO* LEAD TO THE DISMISSAL OF THE ADMINISTRATIVE CASE; FACTORS TO CONSIDER FOR THE EXCEPTION TO APPLY. — I reiterate my position in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan Del Norte (Abul)* that there is no pressing reason for the Court to abandon the prevailing rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case.

. . . . [D]ue process considerations are among the already recognized exceptions to the rule that death does not lead to the dismissal of the administrative case. As the Court explained in *Limliman v. Ulat-Marrero (Limliman)* the death of the respondent would necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) depending on the kind of penalty imposed.

2. ID.; ID.; ID.; DUE PROCESS; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS IS DIFFERENT FROM THAT IN CRIMINAL PROCEEDINGS. — [T]he concept of due process in administrative proceedings has always been recognized as different from the concept of due process in criminal proceedings. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.

3. ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; THE ESSENCE THEREOF IS EMBODIED IN THE BASIC

REQUIREMENT OF NOTICE AND A REAL OPPORTUNITY TO BE HEARD. — The essence of procedural due process is embodied in the basic requirement of **notice and a real opportunity to be heard.** In administrative proceedings, procedural due process simply means the **opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of.** "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

Thus, notice to respondent is an absolute requirement. At the same time, if a respondent is given the opportunity to explain his or her side, then his or her right to due process is *deemed* satisfied. If, on the other hand, a respondent was not originally heard but was eventually heard in a motion for reconsideration, his or her right to due process is *deemed* satisfied.

4. ID.; ID.; ID.; EFFECT OF RESPONDENT'S SUPERVENING DEATH IN THE CASE; THE COURT MAY STILL MAKE A FINDING OF ADMINISTRATIVE LIABILITY AND EXERCISE DISCRETION IN NOT IMPOSING THE PENALTY. — [T]he supervening death of a respondent during the course of the proceedings does not, by itself, render the imposition of a penalty impossible or impracticable. True, there are cases which the Court dismissed on account of the death of the respondents therein. It is significant to note, however, that **the Court still made a finding of administrative liability in those cases but merely exercised its discretion in not imposing the penalty, mainly on humanitarian and equitable grounds.** This determination by the Court is precisely provided in the exceptions laid down in *Limliman.* As I have previously advanced in *Abul,* these exceptions are already sufficient to safeguard against any unfairness that may shroud the Court's judgment in ruling against a deceased respondent. The Court is also certainly not precluded from weighing in other factors or exceptions in the future.

5. ID.; ID.; ID.; ID.; PENALTY; A FINE OR FORFEITURE OF RETIREMENT BENEFITS MAY STILL BE IMPOSED ON DECEASED RESPONDENTS AND ENFORCED AGAINST THEIR ESTATE. — [T]he imposition of a penalty is not altogether impossible. In *Report on the Financial Audit*

Conducted in the Municipal Trial Court in Cities, Tagum City, Davao del Norte, the Court had the occasion to rule that if the imposable penalty is to be considered to determine if the instant cases against the deceased respondents therein should still continue, a fine or even a forfeiture of their retirement benefits, if deemed proper, may still be imposed. In *Gonzales v. Escalona,* the Court likewise found it proper to impose a fine against the deceased respondent therein after determining that the Court has "observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate."

. . .

Thus, contrary to the sentiments in the *ponencia,* the fine to be imposed on a deceased respondent should not be viewed as a punishment to be borne by the heirs.

6. ID.; ID.; ID.; ID.; ID.; WHILE THE COURT SHOULD STILL MAKE AN ADMINISTRATIVE FINDING OF LIABILITY, IT CAN NO LONGER IMPOSE ANY FINE TO BE TAKEN FROM THE ACCRUED LEAVE CREDITS OF RESPONDENT. — [I]t should be recalled that in 2012, respondent had already been dismissed from the service with forfeiture of retirement benefits, except accrued leave benefits. In view of this, I submit that while the Court should not be deterred from making an administrative finding against the liability of respondent, it can, however, no longer impose any fine that can be taken from her accrued leave credits. Section 11 A(1) of Rule 140, as amended by A.M. No. 01-8-10-SC is clear in this regard. . . .

Consequently, while forfeiture of other benefits may be allowed, in whole or in part, the forfeiture of accrued leave credits is not. The language of the prohibition in Section 11 (A)(1), in using the phrase "in no case" signifies an absolute and unqualified proscription.

Be that as it may, the Court should still make a finding of administrative liability even if only to impress upon the members of the bench the importance of their duties and to restore the confidence of the public in the judiciary. . . .

All told, it is my view that the Court should not lose sight of its longheld ratio that an automatic dismissal of an administrative case on account of the respondent's death would

be fraught with injustices and pregnant with dreadful and dangerous implications.

7. ID.; ID.; ID.; ID.; THE COURT MUST STILL ASSERT AND MAINTAIN ITS JURISDICTION, AS THE OFFENSE IN AN ADMINISTRATIVE CASE IS PRINCIPALLY AN OFFENSE TO THE PUBLIC OFFICE BEING A SACRED PUBLIC TRUST. — The offense in an administrative case is principally an offense to the public office being a sacred public trust. This is the reason why the Court has consistently held that in administrative cases, no investigation shall be interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same. The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense, only witnesses. This same imperative rings true as well when the Court is confronted with a case in which the respondent has since died. Indeed, if only for reasons of public policy, the Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.

REYES, J. JR., *J., dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; JURISDICTION IN ADMINISTRATIVE CASES; ONCE ACQUIRED, JURISDICTION CONTINUES UNTIL THE FINAL RESOLUTION OF THE CASE; EXCEPTIONS. — Well settled is the rule that jurisdiction over the subject matter of the case is not lost by mere fact that the respondent public official ceases to hold office during the pendency of the case. In other words, jurisdiction, once acquired, continues to exist until [the] final resolution of the case. However, this rule is not iron-clad as certain exceptions are recognized by the Court in *Gonzales*:

> "The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*,

> where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed."

2. ID.; ID.; ID.; DUE PROCESS; THE ESSENCE OF DUE PROCESS IS SIMPLY THE OPPORTUNITY TO BE HEARD EITHER THROUGH ORAL ARGUMENTS OR PLEADINGS. — In administrative proceedings, the essence of due process is simply the opportunity to explain one's side or to be heard, either through oral arguments or pleadings. Thus, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him or her constitute the ***minimum requirements*** of due process.

3. ID.; ID.; ID.; ID.; EFFECT OF THE DEATH OF THE RESPONDENT DURING THE PENDENCY OF THE ADMINISTRATIVE CASE; THE DISMISSAL OF THE CASE IS WARRANTED ONLY IF THE RESPONDENT DIED WHILE THE INVESTIGATION WAS NOT YET COMPLETED. — In *Limliman v. Judge Ulat-Marrero*, the Court recognized that the death of the respondent during the pendency of the administrative case warrants the dismissal of the case on the ground of violation of due process only if the respondent died while the investigation was not yet completed:

> Concluding, the Court dismissed the Complaint against Judge Rendon, holding that to "allow the investigation to proceed against [the judge] who could no longer be in any position to defend himself would be a denial of his right to be heard, our most basic understanding of due process." The outcome in *Rendon* might have, of course, been different had the investigation therein been completed prior to the demise of the respondent.

4. ID.; ID.; ID.; ID.; THE SILENCE OF THE RESPONDENT DESPITE OPPORTUNITIES TO REFUTE THE CHARGES SHALL NOT DETER AN IMPOSITION OF A PENALTY IF DEEMED PROPER; CASE AT BAR. — Based on the facts of this case, respondent was afforded due process. It was because of her own volition that the Court received no comment

on the complaint against her. From the time of the filing of the complaint until the conclusion of the investigation conducted by the OCA, respondent was in the position to defend herself and refute the charge against her, but [she] remained silent. Despite the window of opportunities, respondent obviously opted to evade the case against her. Emphatically, the constitutional requirement of due process in administrative cases is thus satisfied.

Moreover, there was likewise no manifestation whatsoever that respondent was in poor health or under difficult circumstances, necessitating the operation of the second factor, that is, humanitarian and equitable consideration. Lastly, if the imposable penalty is to be considered to determine if the instant cases against her should still continue, a fine may still be imposed or even a forfeiture of their retirement benefits if deemed proper.

5. ID.; ID.; ID.; ID.; WHILE DEATH EXTINGUISHES CRIMINAL LIABILITY IN CRIMINAL CASES, THE SAME IS NOT SO IN ADMINISTRATIVE CASES. — I respectfully submit that the doctrine enunciated in *Gonzales v. Escalona, i.e.*, death of respondent does not automatically preclude a finding of administrative liability save for certain exceptions, is more in line with our laws and our Constitution.

In *Gonzales*, the Court was undeterred in imposing administrative liability despite death of the respondent by reason of law and public interest. In ruling so, the Court made a delineation between **criminal cases and administrative cases.** That while the death of the accused in a criminal case extinguishes criminal liability, the same is not so in administrative cases.

6. ID.; ID.; ID.; A VIOLATION OF DUTY OF PUBLIC OFFICIALS OFFENDS THE PEOPLE'S DELEGATED SOVEREIGNTY. — Unlike in criminal law in which the basis of categorizing an act as a "crime" or an "offense" is its being inherently immoral or its being regulated by State for the promotion of common good, in administrative law, an act which is violative of such sacrosanct duty of public officials offends the people's delegated sovereignty. It is a violation of their oath of duty.

7. CRIMINAL LAW; CRIMINAL LIABILITY; THE DEATH OF THE ACCUSED BEFORE THE RENDITION OF FINAL JUDGMENT EXTINGUISHES CRIMINAL LIABILITY

BECAUSE THE PENALTY IS PERSONAL. — [I]n criminal cases, the death of the accused before the rendition of final judgment extinguishes criminal liability precisely because the juridical condition of a penalty is that it is personal. The penalties imposable upon persons convicted of crimes affect one's right to life and liberty, consisting of deprivation or restriction of their freedom or deprivation of rights or even death. Thus, the gravity and severance of such penalties, thus, exacts the highest degree of proof, that is, proof beyond reasonable doubt, for the conviction of the accused. Such high legal standard required in criminal cases must be understood in relation to the constitutional presumption of innocence afforded to the accused.

8. REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE; WHILE PROOF BEYOND REASONABLE DOUBT IS REQUIRED IN CRIMINAL CASES BECAUSE OF THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE, IN ADMINISTRATIVE CASES, ONLY SUBSTANTIAL PROOF IS REQUIRED TO EXACT A PENALTY. — [T]he highest degree of proof is required because the constitutional presumption of innocence is tilted in favor of the accused, which must be overcome by the prosecution before the court renders a verdict of conviction.

In administrative cases, there exists no such presumption in favor of the respondent. That being so, only substantial proof is required. In consonance with the constitutional adage that public office is a public trust, any defiance therefor, which could be proven by such relevant evidence as a reasonable mind may accept as adequate to support a conclusion, exacts a penalty.

To underline, administrative cases are entirely different from criminal cases. To treat them in parallel insofar as it concerns the extinguishment of liability by reason of death has no legal basis.

9. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; PENALTY THEREFOR; THE PENALTY OF FINE MAY BE IMPOSED WHEN THE RESPONDENT HAD EARLIER BEEN DISMISSED FROM THE SERVICE. — [I]t is my submission that respondent committed gross ignorance of the law, which is classified as a serious charge, [and] is punishable by: (a) dismissal from service with forfeiture of all or part of the benefits as the Court may determine;

(b) disqualification from reinstatement or appointment to any public office; (c) suspension from office for more than three but not exceeding six months, without salary and other benefits; or (c) imposition of the penalty of a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

While the respondent has earlier been dismissed from the service in the 2012 *Judge Castañeda* case, she can still be fined for gross ignorance of the law and violation of the Canons of Judicial Ethics committed while in office because of her commission of the aforementioned infractions. According to the rules, the imposition of the maximum fine of ₱40,000.00 is proper.

In several cases wherein the respondent judges were meted out with the penalty of dismissal with forfeiture of retirement benefits except accrued benefits, the Court nevertheless imposed the penalty of fine, but ordered that it be deducted from the accrued leave benefits.

10. ID.; ID.; POLITICAL LAW; ADMINISTRATIVE LAW; NON-ENTITLEMENT BY ERRANT PUBLIC OFFICERS TO BENEFITS ARISING FROM EMPLOYMENT; WHEN THE RESPONDENT PUBLIC OFFICERS ARE FOUND ADMINISTRATIVELY LIABLE, THE GRANT OF EMPLOYMENT BENEFITS IS UNWARRANTED AND THE ENTITLEMENT THERETO OF THEIR HEIRS IS NOT JUSTIFIED. — [The] **entitlement to benefits arising from employment in the government service presupposes the proper discharge of the public officers' duties, for the grant of such benefits are afforded only to employees who rightfully fulfilled their duties and obligations.** In cases where the public officers were found liable therefor, the grant of benefits is unwarranted.

As it was found in this case that respondent is liable of violating her duty, her entitlement to benefits is not established. Likewise, the entitlement of her heirs thereto is not justified. Corollary, the imposition of fine despite the death of the respondent should not be considered as depriving the heirs of their right to the proceeds of respondent's benefits.

11. ID.; ID.; AUTOMATIC CONVERSION OF AN ADMINISTRATIVE CASE INTO A DISBARMENT CASE;

ABSENT RESPONDENT'S COMMENT, THE DISBARMENT CASE MUST BE DISMISSED. — As to the recommendation of respondent's disbarment, it is my submission that the same [is] improper.

While A.M. No. 02-9-02-SC *(Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar)* relevantly states that some administrative cases against judges may be considered as disciplinary actions against them as members of the bar, it is still indispensable that the respondent be required to file a comment on the latter in observance of the constitutional right to due process, . . .

In this case, the administrative case against respondent was considered by the OCA as a disbarment case. However, respondent was not required to comment on the latter case; thus, due process was not afforded to her. In view of her death, the dismissal of the disbarment case is warranted.

R E S O L U T I O N

LEONEN, *J.*:

Death, be not proud, though some have called thee
Mighty and dreadful, for thou art not so;
For those whom thou think'st thou dost overthrow
Die not, poor Death, nor yet canst thou kill me.
From rest and sleep, which but thy pictures be,
Much pleasure; then from thee much more must flow,
And soonest our best men with thee do go,
Rest of their bones, and soul's delivery.
Thou art slave to fate, chance, kings, and desperate men,
And dost with poison, war, and sickness dwell,
And poppy or charms can make us sleep as well
And better than thy stroke; why swell'st thou then?
One short sleep past, we wake eternally
And death shall be no more; Death, thou shalt die.

Holy Sonnets: Death, Be Not Proud
By John Donne

Death is a far graver and more powerful judgment than anything that this Court has jurisdiction to render.

Hence, when the respondent in a pending administrative case dies, the case must be rendered moot. Proceeding any further would be to violate the respondent's fundamental right to due process. Should it be a guilty verdict, any monetary penalty imposed on the dead respondent's estate only works to the detriment of their heirs. To continue with such cases would not punish the perpetrator, but only subject the grieving family to further suffering by passing on the punishment to them.

This Court resolves the Administrative Complaint[1] against Judge Liberty O. Castañeda (Judge Castañeda), then the judge of the Regional Trial Court of Paniqui, Tarlac, Branch 67. She was sued by Sharon Flores-Concepcion (Concepcion), whose marriage the judge had nullified without her even knowing about it.

In particular, Concepcion claimed that in November 2010, she received a July 30, 2010 Decision[2] in Civil Case No. 459-09, declaring her marriage to Vergel Concepcion as void *ab initio*. The Decision surprised her as she did not know that her husband had filed any petition.[3] She added that neither she nor her husband was a resident of Paniqui.[4] Seeking answers, Concepcion went to Branch 67 on December 8, 2010, and there discovered that, based on the records, no hearing was conducted on the case at all.[5]

Thus, Concepcion filed a Petition for Relief from Judgment[6] on January 19, 2011 before the same court.[7] Due to this incident, she also filed a Complaint-Affidavit[8] against Judge Castañeda.

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[1] *Rollo*, pp. 1-11.

[2] Id. at 105-110.

[3] Id. at 17-25.

[4] Id. at 3.

[5] Id. at 4 and 9.

[6] Id. at 122-130.

[7] Id. at 4.

[8] Id. at 2-16.

On June 29, 2011, the Office of the Court Administrator directed the judge to comment, but she failed to comply despite notice.[9]

In 2012, as this case was pending, Judge Castañeda was dismissed from the service in another case, *Office of the Court Administrator v. Judge Liberty O. Castañeda*.[10] There, she was found guilty of dishonesty, gross ignorance of the law, gross misconduct, and incompetency for, among others, disposing of nullity and annulment marriages with "reprehensible"[11] haste. This Court forfeited her retirement benefits, except accrued leave credits, and barred her from reemployment in any government branch or instrumentality, including government-owned and controlled corporations.[12]

Given her dismissal, the Office of the Court Administrator recommended that Concepcion's Complaint be dismissed.[13] However, this Court later resolved to return this administrative matter to the Office of the Court Administrator to reevaluate the case on its merits.[14]

In its July 7, 2015 Memorandum,[15] the Office of the Court Administrator found that Judge Castañeda willfully and contumaciously disregarded the "laws and rules intended to preserve marriage as an inviolable social institution and safeguard the rights of the parties."[16] It found that the judge hastily resolved the nullity case despite several glaring procedural defects. Moreover, it noted her "act of defiance"[17] in refusing to submit

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[9] Id. at 151-152.

[10] 696 Phil. 202 (2012) [Per Curiam, En Banc].

[11] Id. at 225.

[12] Id. at 229.

[13] *Rollo*, p. 155.

[14] Id. at 156.

[15] Id. at 156-166.

[16] Id. at 162.

[17] Id.

a comment despite a directive. It stated that while the judge had since been dismissed from service, penalties could still be imposed since this Complaint had been filed before the 2012 ruling.[18] It noted that a judge's lack of moral fitness may likewise be basis for disbarment.[19]

The Office of the Court Administrator recommended the following:

> 1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against respondent Judge Liberty O. Castañeda, former Presiding Judge, Branch 67, RTC, Paniqui, Tarlac;
>
> 2. respondent Judge Castañeda be found **GUILTY** of gross ignorance of the law for which she would have been **DISMISSED FROM THE SERVICE** with forfeiture of her retirement benefits, except leave credits, if any, and disqualified from reinstatement or appointment to any public office, branch or instrumentality of the government, including government-owned or controlled corporations had she not been previously dismissed from the service in a Decision dated 9 October 2012 in A.M. No. RTJ-12-2316; and
>
> 3. respondent Judge Casta[ñ]eda be likewise **DISBARRED** for violation of Canons 1 and 11 and Rules 1.01 and 10.01 of the Code of Professional Responsibility and her name be **ORDERED STRICKEN** from the Roll of Attorneys.[20] (Emphasis in the original)

While the Memorandum was pending with this Court, Judge Castañeda died on April 10, 2018 from acute respiratory failure.[21]

The sole issue here is whether or not the death of respondent Judge Liberty O. Castañeda warrants the dismissal of the Administrative Complaint lodged against her.

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[18] Id.

[19] Id. at 164-165.

[20] Id. at 165-166.

[21] Id. at 180. According to the death certificate, respondent died on April 10, 2018. She was 72 years old.

In the 2019 case of *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr.*,[22] this Court initially held that the respondent's death will not extinguish a pending administrative case, since this Court is not ousted from its jurisdiction by the mere fact that the respondent had ceased to hold public office. Thus, the respondent in *Re: Judge Abul* was found guilty of gross misconduct, and all his benefits, excluding accrued leaves, were forfeited.

On reconsideration, however, this Court *reversed* its earlier ruling and held that the respondent's death while the case was pending effectively renders the case moot. Thus, the complaint was dismissed.[23] We now apply the same ruling to this case.

The imposition of a penalty on a public officer after death does not punish the public officer. Public trust is not magically restored by punishing the public officer's heirs — persons who most likely have nothing to do with that public officer's infractions.

Prudence dictates that this case should be rendered moot as respondent Judge Castañeda died. She could no longer be in a position to defend herself from these charges in a motion for reconsideration. She could no longer admit to the charges, express remorse, or beg for clemency. Proceeding any further would be a gross violation of her constitutionally guaranteed right to due process.

I

Every person is guaranteed the right to due process before any judgment against them is issued. Article III, Section 1 of the Constitution declares:

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[22] A.M. No. RTJ-17-2486, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65676> [Per Curiam, En Banc].

[23] *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr.*, A.M. No. RTJ-17-2486, September 3, 2020 [Per J. Hernando, En Banc].

ARTICLE III
Bill of Rights

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In this jurisdiction, due process has "no controlling and precise definition"[24] but is "a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid."[25] It is, in its broadest sense, "a law which hears before it condemns."[26] In *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*:[27]

There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty "to those strivings for justice" and judges the act of officialdom of whatever branch "in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought." It is not a

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[24] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 318 (1967) [Per J. Fernando, En Banc].

[25] Id.

[26] J. Carson, Dissenting Opinion in *U.S. v. Chauncey McGovern*, 6 Phil. 621, 629 (1906) [Per C.J. Arellano, Second Division].

[27] 127 Phil. 306 (1967) [Per J. Fernando, En Banc].

narrow or "technical conception with fixed content unrelated to time, place and circumstances," decisions based on such a clause requiring a "close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.[28]

Due process encompasses two concepts: substantial due process and procedural due process. Substantive due process is generally premised on the "freedom from arbitrariness"[29] or "the embodiment of the sporting idea of fair play."[30] It "inquires whether the government has sufficient justification for depriving a person of life, liberty, or property."[31]

Procedural due process, on the other hand, "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[32] It is "[a]t its most basic . . . about fairness in the mode of procedure to be followed."[33] *Medenilla v. Civil Service Commission*[34] summarizes procedural due process as:

. . . the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property in its most comprehensive sense; to be heard, by testimony

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[28] Id. at 318-319 citing Frankfurter, *Mr. Justice Holmes and the Supreme Court*, (1938) pp. 32-33; J. Frankfurter, Concurring Opinion in *Hannah v. Larche*, 363 U.S. 420, 487 (1960); *Cafeteria Workers v. McElroy*, (1961) 367 U.S. 1230; and *Bartkus v. Illinois*, (1959) 359 U.S. 121.

[29] Id. at 319.

[30] Id. citing Frankfurter, *Mr. Justice Holmes and the Supreme Court* (1938), pp. 32-33.

[31] *White Light Corporation, et al. v. City of Manila*, 596 Phil. 444, 461 (2009) [Per J. Tinga, En Banc] citing *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289 (2005) [Per J. Tinga, En Banc]; and CHEMERINSKY, ERWIN, CONSTITUTIONAL LAW PRINCIPLES AND POLICIES, 2nd Ed. 523 (2002).

[32] Id.

[33] J. Brion, Concurring Opinion in *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 545-546 (2009) [Per J. Corona, En Banc].

[34] 272 Phil. 107 (1991) [Per J. Gutierrez, Jr., En Banc].

or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.[35]

The requirements of procedural due process depend on the nature of the action involved. For judicial proceedings:

> [First,] [t]here must be a court or tribunal clothed with judicial power to hear and determine the matter before it; [second,] jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; [third,] the defendant must be given an opportunity to be heard; and [fourth,] judgment must be rendered upon lawful hearing.[36] (Citation omitted)

In administrative cases, however, the essence of procedural due process is merely one's right to be *given the opportunity* to be heard.[37] In *Casimiro v. Tandog*:[38]

> The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[39]

The sufficiency of pleadings in lieu of actual hearings does not imply that administrative proceedings require a "lesser" standard of procedural due process. On the contrary, *Ang Tibay*

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[35] Id. at 115 citing BLACK'S LAW DICTIONARY, 590 (4th ed.).

[36] *Rabino v. Cruz*, 294 Phil. 480, 487 (1993) [Per J. Melo, Third Division].

[37] *See Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc].

[38] 498 Phil. 660 (2005) [Per J. Chico-Nazario, Second Division].

[39] Id. at 666 citing *Fabella v. Court of Appeals*, 346 Phil. 940 (1997) [Per J. Panganiban, Third Division]; *Padilla v. Hon. Sto. Tomas*, 312 Phil. 1095 (1995) [Per J. Kapunan, En Banc]; and *Salonga v. Court of Appeals*, 336 Phil. 154 (1997) [Per J. Panganiban, Third Division].

v. Court of Industrial Relations[40] requires that in administrative trials and investigations,[41] seven cardinal primary rights be present for the requirements of due process to be satisfied:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Hughes, in *Morgan v. U.S.*, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. In the language of this court in *Edwards vs. McCoy*, "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."

(3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached." This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be "substantial." "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

. . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. But this assurance of a desirable

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[40] 69 Phil. 635 (1940) [Per J. Laurel, En Banc].

[41] Id. at 641-642.

flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence.

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. . . .

(6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .

(7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it.[42] (Citations omitted)

Nonetheless, this Court clarified in *Gas Corporation of the Philippines v. Inciong*[43] that the failure to strictly apply the regulations required by *Ang Tibay* will not necessarily result in the denial of due process, as long as the elements of fairness are not ignored:

1. The vigor with which counsel for petitioner pressed the claim that there was a denial of procedural due process is inversely proportional to the merit of this *certiorari* and prohibition suit as is quite evident from the Comment of the office of the Solicitor General. It is undoubted that the due process mandate must be satisfied by an administrative tribunal or agency. So it was announced by Justice Laurel in the landmark case of *Ang Tibay v. Court of Industrial*

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[42] Id. at 642-644.

[43] 182 Phil. 215 (1979) [Per C.J. Fernando, Second Division].

Relations. That is still good law. It follows, therefore, that if procedural due process were in fact denied, then this petition must prosper. It is equally well-settled, however, that the standard of due process that must be met in proceedings before administrative tribunals allows a certain latitude as long as the element of fairness is not ignored. So the following recent cases have uniformly held: *Maglasang v. Ople, Nation Multi Service Labor Union v. Agcaoili, Jacqueline Industries v. National Labor Relations Commission, Philippine Association of Free Labor Unions v. Bureau of Labor Relations, Philippine Labor Alliance Council v. Bureau of Labor Relations,* and *Montemayor v. Araneta University Foundation*. From the Comment of the office of the Solicitor General, it is quite clear that no imputation of arbitrariness can be justified. The opportunity to present its side of the case was given both parties to the controversy. If, for reasons best known to itself, petitioner did not avail of its right to do so, then it has only itself to blame. No constitutional infirmity could then be imputed to the proceeding before the labor arbiter.[44] (Citations omitted)

Thus, while *Ang Tibay* requires the application of no less than seven cardinal rights, it is generally accepted that due process in administrative proceedings merely requires that the respondent is *given the opportunity* to be heard.[45] This opportunity to be heard, however, must be present *at every single stage of the proceedings*. It cannot be lost even after judgment. In *Lumiqued v. Exevea*:[46]

In administrative proceedings, the essence of due process is simply the opportunity to explain one's side. One may be heard, not solely by verbal presentation but also, and perhaps even much more creditably as it is more practicable than oral arguments, through pleadings. An actual hearing is not always an indispensable aspect of due process. As long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, *this constitutional mandate is deemed satisfied if a person*

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[44] Id. at 220-221.

[45] *See Legarda v. Court of Appeals*, 345 Phil. 890, 905 (1997) [Per J. Romero, En Banc].

[46] 346 Phil. 807 (1997) [Per J. Romero, En Banc].

is granted an opportunity to seek reconsideration of the action or ruling complained of. [47] (Emphasis supplied)

The opportunity to be heard is an intrinsic part of the constitutional right to due process. Thus, in criminal cases, cases against the accused are immediately dismissed upon death[48] since the accused can no longer participate in all aspects of the proceedings.

Administrative proceedings require that the respondent be informed of the charges and be given an opportunity to refute them. Even after judgment is rendered, due process requires that the respondent not only be informed of the judgment but also be given the opportunity to seek reconsideration of that judgment. This is the true definition of the opportunity to be heard.

II

This Court's disciplinary powers must always be read alongside the guarantee of any respondent's fundamental rights. Any attempt to exercise our disciplinary powers must always take into account the provisions of the Constitution, from which these disciplinary powers are derived.

It is a settled doctrine that a disciplinary case against a court official or employee may continue, even if the officer has ceased to hold office during the pendency of the case.[49]

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[47] Id. at 828 citing *Concerned Officials of MWSS v. Vasquez*, 310 Phil. 549 [Per J. Vitug, En Banc]; *Mutuc v. Court of Appeals*, 268 Phil. 37 (1990) [Per J. Paras, Second Division]; *Pamantasan ng Lungsod ng Maynila (PLM) v. Civil Service Commission*, 311 Phil. 573 [Per J. Vitug, En Banc]; and *Legarda v. Court of Appeals*, 345 Phil. 90 (1997) [Per J. Romero, En Banc].

[48] REV. PEN. CODE, Art. 89(1) provides:

ARTICLE 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment[.]

[49] *Perez v. Abiera*, 159-A Phil. 575, 580-581 [Per J. Muñoz Palma, En Banc].

Cessation from office may either be voluntary or involuntary. Thus, the doctrinal safeguard against the dismissal of disciplinary cases prevents erring officers and employees from escaping liability by voluntarily ceasing to hold office, either through resignation or optional retirement.

Compulsory retirement is likewise covered by this doctrinal safeguard, even though this is an involuntary cessation from office. After all, retirees know when they will retire. Prospective retirees could attempt to escape liability for infractions by committing them near retirement.

However, death, unless self-inflicted, is an involuntary cessation from office. It is not like resignation or optional retirement. Unlike compulsory retirement, no one knows when they will die. In death, there is no certainty as to when one ceases holding office.

The opportunity to be heard can only be exercised by those who have resigned or retired. The reason is obvious: They are still alive. Even if they cease to hold public office, they can still be made aware of the proceedings and actively submit pleadings.

Dead respondents have no other recourse. They will never know how the proceedings will continue, let alone submit responsive pleadings. They cannot plead innocence or beg clemency.

Death forecloses *any* opportunity to be heard. To continue with the proceedings is a violation of the right to due process.

III

Unfortunately, *Gonzales v. Escalona*[50] has often been misquoted as basis to state that a respondent's death will not preclude a finding of administrative liability. In that case, where one of the two respondents had died, this Court stated:

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[50] 587 Phil. 448 (2008) [Per J. Brion, Second Division].

While [Sheriff IV Edgar V. Superada's] death intervened after the completion of the investigation, it has been settled that the Court is not ousted of its jurisdiction over an administrative matter by the mere fact that the respondent public official ceases to hold office during the pendency of the respondent's case; jurisdiction once acquired, continues to exist until the final resolution of the case. In *Layao, Jr. v. Caube*, we held that the death of the respondent in an administrative case does not preclude a finding of administrative liability:

> This jurisdiction that was ours at the time of the filing of the administrative complainant was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declared him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications . . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[51] (Citations omitted)

The continuation of the quoted portion in *Gonzales*, however, explicitly provides the several exceptions to this rationale, foremost of which is the denial of due process:

> The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*, where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first, the observance of respondent's right to due process*; second, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and third, it may also depend on the kind of penalty imposed. None of these exceptional considerations are present in the case.
>
> *The dismissal of an administrative case against a deceased respondent on the ground of lack of due process is proper under the circumstances of a given case when, because of his death, the*

[51] Id. at 462-463.

respondent can no longer defend himself . Conversely, the resolution of the case may continue to its due resolution notwithstanding the death of the respondent if the latter has been given the opportunity to be heard, as in this case, or in instances where the continuance thereof will be more advantageous and beneficial to the respondent's heirs.[52] (Emphasis supplied)

Thus, *Gonzales* not only lays the basis for the *dismissal* of the administrative case due to respondent's death, but also states the basis for continuing the administrative case *despite* death: (1) when the respondent was given the opportunity to be heard; or (2) when the continuation of the proceedings is more advantageous and beneficial to respondent's heirs.

In fact, in *Loyao, Jr v. Caube*,[53] on which *Gonzales* hinges to justify the rule that death does not cancel out administrative liability, this Court was actually constrained to *dismiss the case and consider it closed and terminated* because the penalty could not be carried out. In *Loyao, Jr.*:

To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. *However, since the penalty can no longer be carried out, this case is now declared closed and terminated*.[54] (Emphasis supplied, citations omitted)

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[52] Id. at 463-464 citing *Limliman v. Ulat-Marrero*, 443 Phil. 732 (2003) [Per J. Vitug, First Division]; *Camsa v. Judge Rendon*, 427 Phil. 518 (2002) [Per J. Vitug, Third Division]; *Apiag v. Judge Cantero*, 335 Phil. 591 (1997) [Per J. Panganiban, Third Division]; *Judicial Audit Report, Branches 21, 32 & 36, et al.*, 397 Phil. 476 (2000) [Per J. Vitug, En Banc]; *Hermosa v. Paraiso*, 159 Phil. 417 (1975) [Per J. Teehankee, First Division]; *Report on the Judicial Audit Conducted in RTC, Br. 1, Bangued, Abra*, 388 Phil. 60 (2000) [Per J. Vitug, En Banc]; and *Mañozca v. Judge Domagas*, 318 Phil. 744 (1995) [Per J. Padilla, First Division].

[53] 450 Phil. 38 (2003) [Per Curiam, En Banc].

[54] Id. at 47.

There have been several other administrative cases where the impracticability of imposing the punishment was reason for this Court to just dismiss the case.

In *Camsa v. Judge Rendon*,[55] this Court found it inappropriate to proceed with investigating a judge "who could no longer be in any position to defend himself"; otherwise, it "would be a denial of his right to be heard, our most basic understanding of due process."[56]

In *Apiag v. Cantero*,[57] this Court dismissed an administrative case against an erring judge and allowed the release of his retirement benefits to his heirs due to his death. It explained:

> . . . [This Court] cannot just gloss over the fact that he was remiss in attending to the needs of his children of his first marriage — children whose filiation he did not deny. He neglected them and refused to support them until they came up with this administrative charge. For such conduct, this Court would have imposed a penalty. But in view of his death prior to the promulgation of this Decision, dismissal of the case is now in order.[58]

In *Report on the Judicial Audit Conducted in the Municipal Trial Court of Tambulig and the 11th Municipal Circuit Trial Court of Mahayag-Dumingag-Josefina, Zamboanga del Sur*,[59] this Court was constrained to dismiss the case against the deceased judge and release his retirement benefits to his heirs. This was despite finding him guilty of gross inefficiency and gross ignorance of the law.

It is the impracticability of the punishment that must guide this Court in assessing whether disciplinary proceedings can continue. To determine this, we must first examine our underlying

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[55] 427 Phil. 518 (2002) [Per J. Vitug, Third Division].

[56] Id. at 525.

[57] 335 Phil. 511 (1997) [Per J. Panganiban, Third Division].

[58] Id. at 526.

[59] 509 Phil. 401 (2005) [Per C.J. Davide, Jr., First Division].

assumptions on the imposition of penalties for offenses against the State or its private citizens.

IV

In criminal law, "penalty" has been defined as "the suffering that is inflicted by the state for the transgression of the law."[60] Crime and punishment are inseparable concepts, embodied by the Latin precept, *nullum crimen nulla poena sine lege*.[61]

Several theories justify the imposition of a penalty. One theory is that of *prevention*, where the State punishes an offender to prevent or suppress danger to society arising from that person's criminal act. Similarly, under another theory, that of *self-defense*, the State punishes the offender to protect society from the threat inflicted by the criminal.[62] These two theories underlie the imposition of penalties for attempted or frustrated crimes, as a measure of protection to society against the potential harm that could have been inflicted by the offender.

Another set of theories is punitive in nature. The first of these is *exemplarity*, where the imposition of the penalty acts as a deterrent to discourage others from committing the crime. Another theory is *retribution* or retributive justice, where the State punishes the offender as an act of vindication or revenge for the harm done.[63] Finally, there is the theory of *reformation*,[64] or what is now referred to as restorative justice. The State's objective in restorative justice "is not to penalize," but to "engage in a sincere dialogue toward the formulation of a reparation plan. A reparation plan typically includes both monetary reparation and a rehabilitative program" and even community work.[65]

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[60] Lorenzo Relova, *Imposition of Penalties: Indeterminate Sentence Law*, 22 ATENEO L.J. 1 (1978).

[61] There is no crime where there is no law punishing it.

[62] Lorenzo Relova, *Imposition of Penalties: Indeterminate Sentence Law*, 22 ATENEO L.J. 1 (1978).

[63] Id.

[64] Id.

[65] Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 CARDOZO LAW REVIEW 2321 (2013).

At first glance, the aim of criminal law in this jurisdiction appears to be retributive, in line with the sovereign's role "to regulate behavior, and in doing so, to determine guilt and punishment."[66] The severity of the penalty is often measured against the severity of the crime. This Court once remarked:

> It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. "The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community."[67] (Citations omitted)

In *People v. Godoy*,[68] the purpose of penalty imposition was used to differentiate whether an act of indirect contempt is considered a criminal offense or a civil one. The prevailing doctrine is that indirect contempt is a criminal offense if the purpose of punishment is punitive, aiming to seek retribution for an offense committed against the State or its officers. It is a civil offense if the purpose of punishment is merely remedial, aiming to restore the rights of the private offended party.[69]

While this discussion only applied to indirect contempt, looking into the purpose of the penalty can be a useful tool to determine whether a proceeding is criminal or civil: If the purpose is punishment, it is criminal in nature; if the purpose is remedial, it is civil in nature.

This may create the false impression that our criminal justice system has always been solely punitive in nature. On the contrary, as early as 1933, this Court has recognized that the imposition of criminal penalties in this jurisdiction is aimed toward restorative justice:

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[66] Id. at 2317.

[67] *People v. Estoista*, 93 Phil. 647, 655 (1953) [Per J. Tuason, En Banc] citing 24 C.J.S., 1187-1188.

[68] *People v. Godoy*, 312 Phil. 977 (1995) [Per J. Regalado, En Banc].

[69] Id.

[I]t is necessary to consider the criminal, first, as an individual and, second, as a member of society. This opens up an almost limitless field of investigation and study which it is the duty of the court to explore in each case as far as is humanly possible, with the end in view that penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order.

. . . .

In considering the criminal as a member of society, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, his relationship towards society at large and the State are important factors. The State is concerned not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends.[70]

On the other hand, the imposition of penalties in administrative cases takes on a slightly different character than that of criminal penalties. For instance, disciplinary cases filed against lawyers have always been considered restorative, not punitive, as "the objective of a disciplinary case is not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court."[71] It is this protection of a higher ideal that animates the purpose behind the imposition of administrative penalties.

The objective of the imposition of penalties on erring public officers and employees is not punishment, but *accountability*. The Constitution declares:

SECTION 1. Public office is a public trust. — Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[72]

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[70] *People v. Ducosin*, 59 Phil. 109, 117-118 (1933) [Per J. Butte, En Banc].

[71] *Gamilla v. Mariño*, 447 Phil. 419, 433 (2003) [Per J. Bellosillo, Second Division].

[72] CONST., Art. XI, Sec. 1.

To remain in public service requires the continuous maintenance of the public trust. In *Office of the Ombudsman v. Regalado*:[73]

> The fundamental notion that one's tenure in government springs exclusively from the trust reposed by the public means that continuance in office is contingent upon the extent to which one is able to maintain that trust. As Chief Justice Enrique Fernando eloquently wrote in his concurrence in *Pineda v. Claudio*:
>
> > [W]e must keep in mind that the Article on the Civil Service, like other provisions of the Constitution, was inserted primarily to assure a government, both efficient and adequate to fulfill the ends for which it has been established. That is a truism. It is not subject to dispute. It is in that sense that a public office is considered a public trust.
> >
> > Everyone in the public service cannot and must not lose sight of that fact. While his right as an individual although employed by the government is not to be arbitrarily disregarded, he cannot and should not remain unaware that the only justification for his continuance in such service is his ability to contribute to the public welfare.[74]

For this reason, the worst possible punishment for erring public officials and employees is not imprisonment or monetary recompense. It is *removal* from the public service. Thus, Section 46(A) of the Revised Rules on Administrative Cases in the Civil Service provides:

> SECTION 46. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:

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[73] G.R. Nos. 208481-82, February 7, 2018, 855 SCRA 54 [Per J. Leonen, Third Division].

[74] Id. at 69-70 citing J. Fernando, Concurring Opinion in *Pineda v. Claudio*, 138 Phil. 37, 58 (1969) [Per J. Castro, En Banc].

1. Serious Dishonesty;
2. Gross Neglect of Duty;
3. Grave Misconduct;
4. Being Notoriously Undesirable;
5. Conviction of a crime involving moral turpitude;
6. Falsification of official document;
7. Physical or mental incapacity or disability due to immoral or vicious habits;
8. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws;
9. Contracting loans of money or other property from persons with whom the office of the employee has business relations;
10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his/her official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature;
11. Nepotism; and
12. Disloyalty to the Republic of the Philippines and to the Filipino people.

The purpose of administrative penalties is to restore and preserve the public trust in our institutions. Thus, it is in the public interest to remove from service all individuals who diminish the public trust. This is the extent of the punishment in administrative disciplinary cases.

The justification for the imposition of dismissal from service is neither prevention, nor self-defense, nor exemplarity, nor retribution, nor reformation. It is part of public accountability, which arises from the State's duty to preserve the public trust. The penalty attaches to the erring public officer or employee and to no other. Only that erring public officer or employee is dismissed from service.

When that public officer or employee dies, there is no one left for the State to dismiss from service.

Thus, in *Government Service Insurance System v. Civil Service Commission*,[75] this Court pronounced that a respondent's death during the pendency of an administrative proceeding was cause to dismiss the case, due to the futility of the imposition of any penalty. It said:

> *The Court agrees that the challenged orders of the Civil Service Commission should be upheld, and not merely upon compassionate grounds, but simply because there is no fair and feasible alternative in the circumstances*. To be sure, if the deceased employees were still alive, it would at least be arguable, positing the primacy of this Court's final dispositions, that the issue of payment of their back salaries should properly await the outcome of the disciplinary proceedings referred to in the Second Division's Resolution of July 4, 1988.
>
> Death, however, has already sealed that outcome, foreclosing the initiation of disciplinary administrative proceedings, *or the continuation of any then pending*, against the deceased employees. Whatever may be said of the binding force of the Resolution of July 4, 1988 so far as, to all intents and purposes, it makes exoneration in the administrative proceedings a condition precedent to payment of back salaries, it cannot exact an impossible performance or decree a useless exercise. Even in the case of crimes, the death of the offender extinguishes criminal liability, not only as to the personal, but also as to the pecuniary, penalties if it occurs before final judgment. *In this context, the subsequent disciplinary proceedings, even if not assailable on grounds of due process, would be an inutile, empty*

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[75] 279 Phil. 866 (1991) [Per J. Narvasa, En Banc].

procedure in so far as the deceased employees are concerned; they could not possibly be bound by any substantiation in said proceedings of the original charges: irregularities in the canvass of supplies and materials. The questioned orders of the Civil Service Commission merely recognized the impossibility of complying with the Resolution of July 4, 1988 and the legal futility of attempting a post-mortem investigation of the character contemplated.[76] (Emphasis supplied)

The same rationale should apply to members of the Judiciary, as they are held to an even higher standard than other public officers and employees. As early as 1903, this Court has imposed upon court officers their duty to uphold public order:

> The maintenance of public order and the existence of the commonwealth itself, depend upon the enforcement of the mandates of the courts and require prompt obedience to them, not only by private citizens, but in a special manner by the Government officers who are particularly charged with a knowledge of the law and with the duty of obeying it.[77]

About a century later, this judicial fiat has not wavered. In *Astillazo v. Jamlid*:[78]

> The Court has said time and time again that the conduct and behavior of everyone connected with an office charged with the administration and disposition of justice — from the presiding judge to the lowliest clerk — should be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the well-guarded image of the judiciary. It has always been emphasized that the conduct of judges and court personnel must not only be characterized by propriety and decorum at all times, but must also be above suspicion. Verily, the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women, from the judge to the least and lowest of its personnel, hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a true temple

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[76] Id. at 876.

[77] *Weigall v. Shuster*, 11 Phil. 340, 354 (1903) [Per J. Tracey, En Banc].

[78] 342 Phil. 219 (1997) [Per Curiam, En Banc].

of justice. Thus, every employee of the court should be an exemplar of integrity, uprightness, and honesty.[79] (Citations omitted)

In line with this, A.M. No. 01-8-10-SC[80] provides that justices and judges found guilty of serious charges are punishable by the following penalties:

SECTION 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or

3. A fine of more than P20,000.00 but not exceeding P40,000.00.[81]

There is no hard and fast rule as to what penalty may apply. Often, the imposable penalty is purely within this Court's discretion, in view Article VIII, Section 11[82] of the Constitution, with due consideration to the offense's gravity and the prior penalties imposed in similar cases.

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[79] Id. at 232-233.

[80] *Amendment of Rule 140 of the Rules of Court Re: The Discipline of Justices and Judges*, September 11, 2001.

[81] RULES OF COURT, Rule 140, Sec. 11 (A), as amended.

[82] CONST., Art. VIII, Sec. 11 provides:

SECTION 11. The Members of the Supreme Court and judges of lower courts shall hold office during good behavior until they reached the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

The first two penalties, dismissal and suspension, are forms of negative reinforcement. They are meant to make the respondent suffer. They are this Court's vindication for the tarnishing of its reputation. The loss of the judicial robe, whether permanently or temporarily, carries with it the humiliation and degradation to one's dignity within the legal profession. No judge or justice carries a dismissal or suspension from service with pride.

Dismissal from service also carries with it the accessory penalties of perpetual disqualification from public office and forfeiture of retirement benefits.[83] The punishment is so grave that it not only requires removal from public service but also prevents the respondent from returning, along with the future enjoyment of their labor.

This presupposes, of course, that the erring judge or justice is still a member of the Bench when the penalty is imposed. There is, thus, a third penalty, that of a fine, which may be imposed when the erring judge or justice is no longer in service.

It is the availability of the penalty of a fine that is often the justification for this Court to continue with cases despite the respondent no longer being connected with the Judiciary. In *Baquerfo v. Sanchez*:[84]

> Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The jurisdiction that was this Court's at the time of the filing of the administrative complaint

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[83] *See* REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Sec. 52 (a), which states:

SECTION 52. *Administrative Disabilities Inherent in Certain Penalties*.—

a. The penalty of dismissal shall carry with it cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations.

See also Re Inquiry on the Appointment of Judge Cube, 297 Phil. 1141 (1993) [Per Curiam, En Banc].

[84] 495 Phil. 10 (2005) [Per Curiam, En Banc].

was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable.[85]

Summarizing the doctrine, *Perez v. Abiera*[86] states:

In short, the cessation from office of a respondent Judge either because of resignation, retirement or some other similar cause does not per se warrant the dismissal of an administrative complaint which was filed against him while still in the service. Each case is to be resolved in the context of the circumstances present thereat.[87]

The imposition of a fine regardless of the respondent's separation from service leads us to inquire why a fine must still be imposed. It would be inaccurate to state that the fine is meant to be compensatory, as assaults on the Judiciary's dignity are unquantifiable. Rather, as with dismissal and suspension, the purpose of the fine is to make the respondent suffer, at least monetarily, for the harm done. The fine is a punishment, not a repayment. It is meant to replace the penalties, which can no longer be imposed.

The punishment for administrative infractions, therefore, is *personal* to the respondent. As all punishments are tempered with mercy, this Court metes them with the fervent hope that

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[85] Id. at 16-17 citing *Reyes v. Cristi*, 470 Phil. 617 (2004) [Per J. Callejo, Sr., Second Division]; *Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds*, 482 Phil. 318 (2004) [Per J. Tinga, En Banc]; *Caja v. Nanquil*, 481 Phil. 488 (2004) [Per J. Chico-Nazario, En Banc]; *Tuliao v. Ramos*, 348 Phil. 404, 416 (1998) [Per J. Bellosillo, First Division]; *Perez v. Abiera*, 159-A Phil. 575 (1975) [Per J. Muñoz Palma, En Banc]; *Secretary of Justice v. Marcos*, 167 Phil. 42 (1977) [Per J. Fernando, En Banc]; *Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998) [Per J. Kapunan, Third Division]; *Flores v. Sumaljag*, 353 Phil. 10, 21 (1998) [Per J. Mendoza, Second Division]; and *OCA v. Fernandez*, 353 Phil. 10 (2004) [Per J. Mendoza, Second Division].

[86] 159-A Phil. 575 (1975) [Per J. Muñoz Palma, En Banc].

[87] Id. at 582.

the erring judge or justice learns their lesson and repents on all of their mistakes.

Remorse is impossible when the erring judge or justice dies before this Court can hand down its judgment. It is, thus, *irrational* and *illogical* for this Court to continue with disciplinary proceedings despite the respondent's death. There is no one left to punish.

V

In the initial resolution of *Re: Judge Abul*, the majority insisted that punishment was still a viable option for this Court, since a fine could still be deducted from the respondent judge's accrued leave benefits. This begs the question, however, of whom exactly this Court is trying to punish.

Article 777 of the Civil Code provides that "[t]he rights to the succession are transmitted from the moment of the death of the decedent." Here, all of respondent Judge Castañeda's properties were no longer hers at the time of her death. They belonged to her estate, of which her heirs had an inchoate right.[88]

Charges against the estate include "claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expense for the last sickness of the decedent, and judgment for money against the decedent."[89] Penalties, such as administrative fines, are not included in this enumeration. They are not, strictly speaking, claims for money arising from contracts or judgments for money. To categorize them as such would make this Court a creditor of the decedent.

Upon her death, all of respondent's prospective assets, like her accrued leave benefits, have already passed on to her estate. To impose the fine on her would be to make a claim against the estate.

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[88] *See Alejandrino v. Court of Appeals*, 356 Phil. 851 (1998) [Per J. Romero, Third Division].

[89] RULES OF COURT, Rule 86, Sec. 5.

In any case, from a moral standpoint, it would be cruel for this Court to make respondent's heirs bear the brunt of her punishment. They are not under investigation. They are not the ones who committed respondent's infractions. They are, from the findings of the investigation, innocent of the charges. And yet, should this Court proceed with the case and impose a penalty upon a guilty verdict, it is respondent's heirs who would bear that punishment.

Admittedly, respondent's infraction in this case is severe. The Office of the Court Administrator conclusively found that complainant's nullity case was resolved with undue haste, having been resolved less than a year after the petition had been filed. None among complainant, the Office of the Solicitor General, or the Office of the Public Prosecutor was ever furnished with copies of the petition. The psychologist was never made to testify in court to confirm the findings of the psychological report.[90] Respondent would have been dismissed for her blatant and gross ignorance of the law.

In 2012, however, this Court has already dismissed respondent from service for her infractions. Her retirement benefits, excluding accrued leave credits, were forfeited. She has already borne the humiliation and degradation from that penalty. There are no more retirement, death, or survivorship benefits from which we could bleed out any prospective fine. This Court has already extracted its pound of flesh.

Here, respondent is no longer in a position to refute the findings of the Office of the Court Administrator. She could no longer know of the proceedings against her. She would not know of the conclusions of this Court and of the punishment that she would have so rightly deserved. She could no longer move for reconsideration, admit to the charges, plead her innocence, not even beg for clemency. There is no more reason for this Court to proceed with this case.

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[90] *Rollo*, p. 161.

Respondent is dead. She could no longer evade liability. She could no longer pollute the courts with her incompetence and corrupt ways. She could no longer betray the public trust.

Death, perhaps, was a more profound judgment than any this Court could impose.

Despite all the constitutional powers we are endowed with as the Supreme Court of this country, we should have the humility to accept that we do not have the ability to punish a dead person. It is irrational to do so. Perhaps, only the universe can.

WHEREFORE, the Complaint against respondent Judge Liberty O. Castañeda of Branch 67, Regional Trial Court, Paniqui, Tarlac, is **DISMISSED** in view of her death during the pendency of this case.

SO ORDERED.

Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Lopez, and *Gaerlan, JJ.*, concur.

Delos Santos, J., see separate concurring opinion.

Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, see dissenting opinions.

Peralta, C.J., joins the dissent of *J. Reyes.*

Zalameda, J., joins the dissent of *J. Caguioa.*

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

DELOS SANTOS, *J.*:

Judge Liberty O. Castañeda (respondent) is no stranger to misconduct. In 2012, she was dismissed from service for dishonesty, gross ignorance of the law and procedure, gross misconduct, and incompetency.[1] This extreme penalty was meted

[1] *Office of the Court Administrator v. Judge Liberty O. Castañeda*, 696 Phil. 202 (2012).

following the discovery of multiple infractions ranging from court mismanagement to irregularities and procedural lapses which attended her disposition of an inordinate number of cases for Nullity, Annulment of Marriage, and Legal Separation. Thus, in addition to her dismissal, she suffered the accessory penalties of forfeiture of retirement benefits and perpetual disqualification from reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

It appears however that respondent's past infractions continue to haunt her. Now before the Court is another administrative case, in relation to her purported "annulment-fixing." Briefly, Sharon Flores-Concepcion (complainant) avers that respondent nullified her marriage, a proceeding which she neither participated in nor at the very least, had any notice of. However, before this complaint could be resolved, death intervened. Thus, the issue posed before the Court is whether respondent's death warrants the dismissal of the administrative complaint lodged against her.

I concur with the *ponencia*.

Jurisdiction, once obtained, continues until the final disposal of a case.[2] To clarify, the dismissal of the administrative complaint in this case does not stem from the Court being ousted from jurisdiction following respondent's death. Rather, it is in the very exercise of its jurisdiction that the Court finds it proper to dismiss the administrative complaint in light of the demands of procedural due process and the impracticability of punishment. However, since the matter of procedural due process has been extensively discussed by the *ponencia*, I will no longer belabor such issue. What further compel me to rule in favor of the dismissal of the administrative complaint are the impracticability of the punishment and considerations of justice and fairness.

The paramount interest to be protected in an administrative case is the preservation of the Constitutional mandate that a

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[2] See *Gonzales v. Escalona*, 587 Phil. 448 (2008).

public office is a public trust.[3] Public officers must, at all times, be accountable to the people. As implementers of the law, members of the Judiciary are held to an even higher standard; which no less than the High Court is tasked to uphold. Hence, the conduct of members of the Judiciary are highly scrutinized whether they pertain to their professional or private capacities; the only requirement being, that the administrative complaint be filed against them during their incumbency.[4] After all, the Court cannot countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[5] It is precisely because of this accountability that in imposing disciplinary sanctions, punishment is merely a secondary objective; the primary being, the preservation of the public's faith and confidence in our judicial system.

It therefore begs the question, will public confidence in the Judiciary be restored or further safeguarded by imposing sanctions on the heirs of an erring judge?

To recall, respondent has already been dishonorably discharged from her judicial functions in 2012 and consequently, stripped of her retirement benefits, with the exception of accrued leave credits. This is not to state that accrued leave credits are beyond the reach of the Court. In the following cases, the Court imposed a fine for judicial misconduct which would have otherwise warranted dismissal from service, had they not been previously dismissed from service for a prior administrative infraction, thus:

In *Leonidas v. Supnet*,[6] the Court found Judge Supnet guilty of gross ignorance of law for holding complainant in indirect contempt

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[3] *In re: Rogelio M. Salazar, Jr.*, A.M. Nos. 15-05-136-RTC & P-16-3450, 04 December 2018.

[4] See *Office of the Court Administrator v. Grageda*, 706 Phil. 15 (2013).

[5] *Office of the Court Administrator v. Reyes*, 635 Phil. 490, 499 (2010).

[6] 446 Phil. 53 (2003).

for disobeying order which to begin with, was not directed at him. In view however of his prior dismissal from service for serious misconduct, he was instead fined ₱3,000.00 to be deducted from his accrued leave credits.

In *Cañada v. Suerte*,[7] Judge Suerte was ordered to pay a fine of ₱40,000.00 to be deducted from his accrued leave credits for dishonesty committed in his private capacity. Notably, this was the second administrative case for which he was fined, following his dismissal from service in 2004.

In *Untalan v. Sison*,[8] Judge Sison was found guilty of gross ignorance of law for irregularities which attended the grant of bail in favor of an accused. Since he had already been dismissed from service, he was fined ₱20,000.00 to be taken from his remaining accrued leave credits.

In *Bernas v. Reyes*,[9] Judge Reyes was found guilty of manifest bias, partiality and grave abuse of authority. However, during the pendency of this case, she was dismissed from service for another administrative infraction. Thus, she was fined ₱40,000.00 to be deducted from her accrued leave credits if sufficient, otherwise, to be paid directly to the Court.

In *Valdez v. Torres*,[10] Judge Torres was found liable for undue delay in resolving a civil case but considering that she had been previously dismissed from service, she was fined ₱20,000.00 to be deducted from her accrued leave benefits.

In *Baculi v. Belen*,[11] Judge Belen was found guilty of dishonesty for receiving allowances from the local government despite being under suspension. In the meantime, he was dismissed from service for grave abuse of authority and gross ignorance of the law. Thus, he was ordered to pay a fine of ₱40,000.00 to be deducted from his accrued leave credits.

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[7] 570 Phil. 25 (2008).

[8] 567 Phil. 420 (2008).

[9] 639 Phil. 202 (2010).

[10] 687 Phil. 80 (2012).

[11] A.M. No. RTJ-11-2286, 12 February 2020.

In the aforementioned cases, judges were penalized with a fine which was deducted from their accrued leave credits since their retirement benefits had been previously forfeited. It is worth noting, however, that these judges were alive at the time their respective administrative liabilities were determined by the Court with finality. Thus, it is my view that the imposition of fine for their infractions was only proper and more significantly, contributes towards public confidence in the Judiciary as the erring judges themselves are made to suffer the penalty of a fine. Any administrative penalty should attach to the erring public officer or employee alone. This is in stark contrast to herein respondent's case, where it is her heirs who would be shouldering the burden. This stems from the fact that respondent has forfeited her retirement benefits with the exception of her accrued leave credits. Following respondent's death in 2018 and while this case was being deliberated by the Court, respondent's remaining properties, which would include accrued leave credits, have already been transmitted to her heirs under the Civil Code.[12] Thus, as it stands, any fine to be imposed by the Court shall be borne by respondent's heirs who have nothing to do with her transgressions. It would be highly unjust to allow her family, who arguably already bear the brunt of her tarnished reputation, to be further burdened by a pecuniary sanction for misconduct which they neither participated nor benefitted in. Needless to state, respondent's faults should not be transmitted to her heirs. The Court cannot close its eyes to the effect of its judgments; particularly in disciplinary proceedings, where the imposition of penalties is largely within its discretion.[13] While the Court is guided by the gravity of the offense and prior penalties it has imposed for similar cases, it remains mindful of the peculiar circumstances in each case. It can hardly be said that penalizing respondent's family will serve to uphold the integrity and dignity of the Judiciary, which, after

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[12] CIVIL CODE, Art. 777.

[13] 1987 CONSTITUTION, Article VIII, Section 11.

all, is the primary purpose of imposing disciplinary sanctions among its ranks.

This is not the first time that a respondent in an administrative case dies during its pendency. In some cases, the death occurred either before the respondent could submit a comment on the complaint,[14] before an investigation could be conducted,[15] or before the investigating judge or the Office of the Court Administrator could make a finding on the culpability of the respondent.[16] Likewise, there have been instances where the respondent dies while the case is being deliberated by this Court[17] yet the administrative cases were nevertheless dismissed. As explained in *Loyao, Jr. v. Caube*:[18]

> To be sure, respondent Caube's death has permanently foreclosed the prosecution of any other actions, be it criminal or civil, against him for his malfeasance in office. We are, however, not precluded from imposing the appropriate administrative sanctions against him. Respondent's misconduct is so grave as to merit his dismissal from the service, were it not for his untimely demise during the pendency of these proceedings. However, since the penalty can no longer be carried out, this case is now declared closed and terminated. (Underscoring supplied)

Hence, it is apparent that regardless of the stage of the proceedings, death can be considered as a circumstance which would warrant the dismissal of the administrative case due to the impracticability of the punishment. Notably, the same ruling

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[14] *Report on the Judicial Audit Conducted in Regional Trial Court, Branch 1, Bangued, Abra*, 388 Phil. 60 (2000).

[15] *Camsa v. Rendon*, 427 Phil. 518 (2002).

[16] *Bote v. Eduardo*, 491 Phil. 198 (2005).

[17] *Dabu v. Kapunan*, 656 Phil. 230 (2011); *Report on the Judicial Audit Conducted in the Municipal Trial Court of Tambulig and the 11th Municipal Circuit Trial Court of Mahayag-Dumingag-Josefina, Both in Zamboanga del Sur*, 509 Phil. 401 (2005); *Loyao, Jr. v. Caube*, 450 Phil. 38 (2003); *Apiag v. Cantero*, 335 Phil. 511 (1997).

[18] Supra.

was made by the Court in *Dabu v. Kapunan*,[19] whose facts are similar to respondent's case insofar as it relates to irregularities in the conduct of annulment cases. Here, Prosecutor Dabu filed a complaint against Judge Kapunan after noting irregularities committed by the latter in connivance with his court staff. Prosecutor Dabu was assigned to the branches of Judge Kapunan yet she was never asked to intervene or investigate cases involving annulment of marriage. Upon verification of the records of these cases, she discovered that court records were being falsified to make it appear that a prosecutor intervened when in truth, the prosecutor named was either on leave or re-assigned. Falsification of an official document such as court records is a grave offense which likewise constitutes dishonesty, another grave offense. Taken singularly, the commission of such grave offense warrants the penalty of dismissal from service even upon the first offense. However, citing the case of *Loyao, Jr.*, the Court ordered the dismissal of the complaint against Judge Kapunan in view of his death during the pendency of the proceedings. This, notwithstanding the fact that Judge Kapunan was given the opportunity to be heard and the surrounding circumstances of the case which undeniably established his culpability.

In criminal cases, the death of the accused before the rendition of a final judgment extinguishes criminal liability,[20] precisely because the juridical condition of a penalty is that it is personal.[21] I find no cogent reason not to apply the same treatment to disciplinary cases. After all, any administrative complaint against a judge must always be examined with a discriminating eye, for its consequential effects are, by their nature, highly penal, such that the respondent judge stands to face the sanction of dismissal or disbarment.[22] Similarly, administrative proceedings are akin to criminal prosecutions in the sense that no compromise may be entered into between the parties as regards the penal

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[19] Supra.

[20] REVISED PENAL CODE, Art. 89 (1).

[21] Reyes, L.B. (2008) The Revised Penal Code (17th Ed., p. 838).

[22] *Re: Judge Adoracion Angeles*, 567 Phil. 189 (2008).

sanction.[23] Generally speaking, in both criminal and administrative cases, complainants are mere witnesses such that regardless of their subsequent desistance, the Court will not desist from imposing the appropriate penalties. Finally, it must be underscored that in either case, absent a final determination by the Court itself, there is no final determination of liability to speak of for which the appropriate penalty can be determined and thereafter, implemented.

There is no doubt that respondent's act of nullifying complainant's marriage without the conduct of proper judicial proceedings is reprehensible. Such malfeasance not only makes a mockery of marriage and its life-changing consequences but likewise grossly violates the basic norms of truth, justice, and due process.[24] Likewise, the damage suffered by complainant is unquantifiable. Be that as it may, death during the pendency of the case should nonetheless serve as a bar from any further finding of administrative liability. This is not to diminish the gravity of any misconduct or impropriety, but rather from the recognition that ultimately, disciplinary proceedings involve no private interest and afford no redress for private grievance.[25] They are undertaken and prosecuted solely for the public welfare and to save courts of justice from persons unfit to practice law or as in this case, those tasked to implement it. Necessarily, the administrative penalty attaches to the erring public officer or employee alone. Thus, the erring public officer or employee must personally suffer the sanction imposed by the Court to achieve the objective of disciplinary cases — to cleanse its ranks and preserve the public's faith and confidence in the judicial system. Indubitably, this purpose cannot be achieved when the death of the respondent intervenes and it is the respondent's heirs who will be made to suffer, *albeit* in a financial capacity.

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[23] *Autencio v. Mañara*, 489 Phil. 752 (2005).

[24] *Office of the Court Administrator v. Indar*, 685 Phil. 272, 287 (2012).

[25] *Office of the Court Administrator v. Ruiz*, 780 Phil. 133, 163 (2016).

Ruling in favor of the dismissal of an administrative case by reason of death is by no means an absolution from the infractions committed by a public officer or employee. Rather, I am prevailed upon by overriding considerations of the primary purpose of disciplinary proceedings and the impracticability of imposing punishment which results therefrom. For this reasons, I concur with the *ponencia* that the case against respondent should be dismissed in view of her death during the pendency of the case.

DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I dissent.

Pending administrative cases are not *automatically* mooted solely by the fact of a respondent-court employee's supervening death. The consequences of administrative misconduct have a *persisting and surviving effect on the integrity of public service*; hence, once jurisdiction is acquired and the respondent is duly given the opportunity to be heard, the Court should proceed to resolve the case. Accordingly, any administrative liability, if so found to be established based on the facts on record, should be pronounced and **remain on public record** in order to memorialize the public affront, so as to deter future deleterious conduct by would-be erring public officers.

The long-standing rule — which the *ponencia* now abandons — is that:

> **[T]he death of the respondent in an administrative case, as a rule, does not preclude a finding of administrative liability**. The recognized exceptions to this rule are: *first*, when the respondent has not been heard and continuation of the proceeding would deny him of his right to due process; *second*, where exceptional circumstances exist in the case leading to equitable and humanitarian considerations; and *third*, when the kind of penalty imposed or imposable would render the proceedings useless."[1] (Emphasis and underlining supplied)

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[1] *Mercado v. Salcedo*, 619 Phil. 3, 33 (2009).

The *ponencia* insists that herein respondent's supervening death should result in the dismissal of the instant administrative case against her, positing that administrative due process requires that the opportunity to be heard must be present in every single stage of the proceedings, including the filing of a motion for reconsideration. The *ponencia* states that "[a]dministrative proceedings require that the respondent be informed of the charges and be given an opportunity to refute them. Even after judgment is rendered, due process requires that the respondent not only be informed of the judgment but also be given the opportunity to seek reconsideration of that judgment. This, in essence, is the true definition of the opportunity to be heard."[2]

The position is tenuous.

"In administrative proceedings, [procedural] due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend oneself. In such proceedings, the filing of charges and *giving reasonable opportunity* for the person so charged to answer the accusations against him constitute the minimum requirements of due process."[3] Hence, "[t]he essence of [procedural] due process, therefore, as applied to administrative proceedings, is an opportunity to explain one's side, *or* an opportunity to seek a reconsideration of the action or ruling complained of. Thus, a violation of that right occurs when a court or tribunal rules against a party without giving the person the opportunity to be heard."[4] In this regard, case law further clarifies that any initial defects in procedural due process — *i.e.*, deprivation of opportunity to be heard — may be cured by the filing of a motion for reconsideration that tackles the merits of the case.[5]

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[2] See *ponencia*, p. 9.

[3] *Ombudsman v. Conti*, 806 Phil. 384, 390 (2017).

[4] Id. at 389, citing *Estrada v. Ombudsman*, 751 Phil. 821 (2015).

[5] "While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard, this ruling does not embody an absolute rule that applies in all circumstances. The mere filing

Otherwise stated, there is a violation of due process if a respondent was not given the opportunity to be heard.

In this case, there was no violation of procedural due process. Records clearly show that respondent failed to file any responsive pleading despite being given multiple opportunities to do so. Since respondent was given several chances to meet the accusations against her from the very beginning, there was no deprivation of due process. Contrary to the *ponencia*, respondent's inability to move for reconsideration due to her unfortunate supervening death does not erase the fact that due process had already been subserved. To say that due process is only subserved when a respondent is given the opportunity to be heard *at every stage of the proceedings*, as the *ponencia* holds, is — in my opinion — a dangerous precedent that may have far-reaching implications. Lack of due process means that the entire proceedings are void; thus, the *ponencia*'s loose statements may be indiscriminately invoked by litigants to nullify any type of proceeding based on one's failure to move for reconsideration despite already being given the chance to explain his side at the onset of the case.

Further, I disagree with the *ponencia*'s parallelism between the legal consequences of death in criminal cases and administrative cases. The *ponencia* points out that "in criminal cases, cases against the accused are immediately dismissed upon death since the accused can no longer participate in all aspects of proceedings."[6] Thus, since the supervening death of an accused in criminal cases results in the extinguishment of criminal liability and civil liability *ex delicto*, the same rule should be followed in administrative cases against public officers.

However, it should be stressed that the dismissal of a criminal case (even on appeal) due to the accused's supervening death

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of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained." (See *Fontanilla v. COA*, 787 Phil. 713, 725 [2016]; citations omitted)

[6] See *ponencia*, p. 9.

is not grounded on his inability to participate in all aspects of the proceedings. Rather, the dismissal is predicated on the constitutional presumption of innocence. As case law holds:

> [U]ntil promulgation of final conviction is made, the constitutional mandate of presumption of innocence prevails.[7]

There is, however, no constitutional presumption of innocence when it comes to administrative cases. The presumption only applies to criminal cases. The rationale therefor is that a person accused of a crime is always pitted against the awesome prosecutorial machinery of the State.[8] More importantly, unlike in administrative cases, the accused stands to face grave penalties affecting his own life and liberty when found guilty. Thus, when an average person stands accused for a public offense before a tribunal with the power to take his life or liberty,[9] he is afforded the right to be presumed innocent until his guilt is proven beyond reasonable doubt.[10]

In contrast, the purpose of administrative cases against public officials is to exact accountability for the wrongful acts that they have committed in the performance of their official functions. Public office is not property within the protection of the constitutional guarantees of due process of law[11] as public office is a privilege burdened with numerous duties and prohibitions.[12] Respondents in administrative cases, unlike the accused in criminal cases, will lose neither their liberty nor

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[7] *Trillanes IV v. Hon. Pimentel*, 578 Phil. 1002, 1018 (2008), citing *Mangubat v. Sandiganbayan*, 227 Phil. 642 (1986).

[8] See *Inacay v. People*, 801 Phil. 187, 189 (2016), citing *People v. Santocildes*, 378 Phil. 943, 949 (1999).

[9] See *People v. Serzo, Jr.*, 340 Phil. 660, 675 (1997); citations omitted.

[10] See Section 14 (2), Article III of the 1987 Constitution. See also Section 1(a), Rule 115 of the 2000 Revised Rules of Criminal Procedure; Section 2, Rule 133 of the Revised Rules on Evidence.

[11] *Office of the Court Administrator v. Indar*, 685 Phil. 272, 290 (2012).

[12] *Taguinod v. Tomas*, 677 Phil. 533, 539 (2011).

their property if an adverse decision be rendered against them. Hence, it is simply wrong to create a parallelism between the legal consequences of death in criminal cases to administrative cases.

As a final point, the *ponencia* discusses the apparent futility in imposing administrative penalties against public officers who have already passed away.[13] The *ponencia* reasons that since a deceased public officer can no longer be punished and pollute the ranks of the judiciary, pending administrative cases are already mooted and hence, should be dismissed.

However, I submit that a finding of administrative liability on the one hand, may be differentiated from the imposition of penalties on the other. While the latter is generally a consequence of the former, exceptional circumstances may justify a finding of liability without necessarily proceeding to impose the penalty therefor. As in this case, it is my view that the Court should have proceeded with the determination of respondent's administrative liability and enter the same in the public record. The constitutional mandate that public office is a public trust demands complete closure and accountability for the wrongdoings committed against public service. The failure to recognize this liability by the automatic dismissal of these cases is tantamount to the liability's condonation.

This notwithstanding, the administrative penalties — which are either fines or non-monetary penalties converted to fines — need not be imposed anymore. After all, retribution by punishment is not the sole purpose of administrative proceedings; *recognition of the taint to the integrity of the service is restorative justice on its own*. Thus, the Court, within the bounds of its constitutional authority to supervise court personnel, may decide not to execute the fine penalty against the erring officer. The reasons for this are two-fold: *(1)* it would be impracticable to institute a claim during the settlement proceedings which usually involve lengthy litigation and costs; and *(2)* the punitive aspect

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[13] See *ponencia*, pp. 17-20.

of the penalty should be personal to the offender and hence, should no longer bear unintended effects to the bereaved loved ones of the deceased person. Anent the latter, it is discerned that the Court may very well adopt a policy of blotting out the actual court employee's name or using a confidential pseudonym in the published decision if only to avoid further insult to the grieving family. Indeed, the Court can implement these measures to balance the necessity to exact public accountability whilst preserving the humanity of its decisions.

All told, I vote to adopt the findings and recommendation of the Office of the Court Administrator[14] (OCA) with respect to the administrative liability of herein respondent for gross ignorance of the law.[15] Gross ignorance of the law, which is classified as a serious charge, is punishable by, among others, a penalty of fine in the maximum amount of ₱40,000.00.[16] Notwithstanding respondent's unfortunate death, her administrative liability should remain on public record but the penalty of fine may no longer be imposed.

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[14] See *ponencia*, p. 3.

[15] As found in the OCA Memorandum dated July 7, 2015, respondent, as a member of the bench, willfully disregarded the laws intended to preserve marriage as an inviolable social institution as it was clear from the records that: *(a)* complainant and the Office of the Solicitor General were not furnished a copy of the petition; *(b)* only the psychologist's report was presented but the psychologist who prepared the same did not testify before the court; and *(c)* the case was decided with undue haste. Accordingly, the OCA recommended that:

> x x x respondent x x x be found GUILTY of gross ignorance of the law for which she would have been DISMISSED FROM SERVICE with forfeiture of her retirement benefits, except leave credits, if any, and disqualified from reinstatement or appointment to any public office, branch or instrumentality of the government, including government-owned or controlled corporations had she not been previously dismissed from the service in a Decision dated 9 October 2012 in A.M. No. RTJ-12-2316; x x x.

[16] Sections 8 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC.

DISSENTING OPINION

CAGUIOA, ***J.*:**

I dissent from the majority's dismissal of the instant case on the ground of mootness in view of respondent's death during the proceedings. Based on the particular circumstances of this case, it is my view that respondent can still be declared administratively liable. However, considering that respondent had already been dismissed from service with forfeiture of retirement benefits in a previous administrative case, a penalty can no longer be imposed against her.

I reiterate my position in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan del Norte*[1] *(Abul)* that there is no pressing reason for the Court to abandon the prevailing rule that the death of the respondent does not *ipso facto* lead to the dismissal of the administrative case.

As with *Abul*, the majority also anchors its present ruling on the respondent's right to due process and the nature of the penalty to be imposed. The majority view is that the opportunity to be heard, which is the essence of due process in administrative cases, is not lost even after judgment.[2] Death allegedly forecloses *any* opportunity to be heard, and to continue with the proceedings is a violation of the right to due process.[3]

Furthermore, the majority holds that the purpose of administrative penalties is to preserve and restore the public trust in our institutions. As such, it is in the public interest to remove from service all those who diminish said trust. The majority stresses that this is the extent of the punishment in administrative cases and it is only inflicted upon the erring

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[1] A.M. No. RTJ-17-2486, September 8, 2020.

[2] *Ponencia*, p. 9.

[3] Id. at 10.

public officer or employee. When that public officer or employee dies, therefore, there is no one else left to dismiss from service.[4]

Again, I beg to differ.

Firstly, due process considerations are among the already recognized exceptions to the rule that death does not lead to the dismissal of the administrative case. As the Court explained in *Limliman v. Ulat-Marrero*[5] *(Limliman)* the death of the respondent would necessitate the dismissal of the administrative case upon a consideration of any of the following factors: (1) the observance of respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) depending on the kind of penalty imposed.

Moreover, the concept of due process in administrative proceedings has always been recognized as different from the concept of due process in criminal proceedings. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied.[6]

The essence of procedural due process is embodied in the basic requirement of **notice and a real opportunity to be heard**. In administrative proceedings, procedural due process simply means the **opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of**. "To be heard" does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or

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[4] Id. at 16.

[5] A.M. No. RTJ-02-1739 (Formerly OCA I.P.I. No. 02-1423-RTJ), January 22, 2003, 395 SCRA 607.

[6] *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

pleadings, is accorded, there is no denial of procedural due process.[7]

Thus, notice to respondent is an absolute requirement. At the same time, if a respondent is given the opportunity to explain his or her side, then his or her right to due process is *deemed* satisfied. If, on the other hand, a respondent was not originally heard but was eventually heard in a motion for reconsideration, his or her right to due process is *deemed* satisfied.

Here, it is undisputed that respondent was given the twin requirements of notice and a real opportunity to be heard. The Office of the Court Administrator (OCA) ordered her to comment on the complaint-affidavit, but she ignored the order. The OCA sent another directive to respondent, but this too was ignored. From 2010 until the OCA investigation was concluded in 2014, nothing was heard of from respondent. Her conduct, in fact, constituted defiance of the lawful orders of the Court. It would be hard to argue, therefore, that she was ever denied due process.

Secondly, the supervening death of a respondent during the course of the proceedings does not, by itself, render the imposition of a penalty impossible or impracticable. True, there are cases which the Court dismissed on account of the death of the respondents therein. It is significant to note, however, that **the Court still made a finding of administrative liability in those cases but merely exercised its discretion in not imposing the penalty, mainly on humanitarian and equitable grounds**. This determination by the Court is precisely provided in the exceptions laid down in *Limliman.* As I have previously advanced in *Abul*, these exceptions are already sufficient to safeguard against any unfairness that may shroud the Court's judgment in ruling against a deceased respondent. The Court is also certainly not precluded from weighing in other factors or exceptions in the future.

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[7] *Disciplinary Board, Land Transportation Office v. Gutierrez*, G.R. No. 224395, July 3, 2017, 828 SCRA 663, 669.

In the same vein, the imposition of a penalty is not altogether impossible. In *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities, Tagum City, Davao del Norte*,[8] the Court had the occasion to rule that if the imposable penalty is to be considered to determine if the instant cases against the deceased respondents therein should still continue, a fine or even a forfeiture of their retirement benefits, if deemed proper, may still be imposed.[9] In *Gonzales v. Escalona*,[10] the Court likewise found it proper to impose a fine against the deceased respondent therein after determining that the Court has "observed in several cases that the penalty of fine could still be imposed notwithstanding the death of the respondent, enforceable against his or her estate."[11]

In this regard, I agree with the following pronouncement in the Dissenting Opinion of Justice Jose C. Reyes, Jr.:

> On this note, it must be emphasized that entitlement to benefits arising from employment in the government service presupposes the proper discharge of the public officers' duties, for the grant of such benefits [is] afforded only to employees who rightfully fulfilled their duties and obligations. In cases where the public officers were found liable therefor, the grant of benefits is unwarranted.
>
> As it was found in this case that respondent is liable of violating her duty, her entitlement to benefits is not established. Likewise, the entitlement of her heirs thereto is not justified. Corollary, the imposition of fine despite death of the respondent should not be considered as depriving the heirs of their right to the proceeds of respondent's benefits.[12] (Emphasis omitted)

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[8] A.M. OCA IPI No. 09-3138-P and A.M. No. MTJ-05-1618, October 22, 2013, 708 SCRA 24.

[9] Id. at 56.

[10] A.M. No. P-03-1715 (Formerly I.P.I. No. 00-908-P), September 19, 2008, 566 SCRA I.

[11] Id. at 16.

[12] Dissenting Opinion of Justice Jose C. Reyes, Jr., p. 12.

Thus, contrary to the sentiments in the *ponencia*, the fine to be imposed on a deceased respondent should not be viewed as a punishment to be borne by the heirs.[13] In any case, as discussed above, the Court is not precluded from considering humanitarian and equitable grounds should the same be found present. As I have opined in *Abul*, the circumstances therein warranted the dismissal of the charges against respondent on the basis of humanitarian considerations:

> Despite his death, the Court found Judge Abul administratively liable in the September 3, 2019 Decision. He was meted the penalty of forfeiture of all retirement and allied benefits, except accrued leaves. Therein, I joined the Dissenting Opinion of my esteemed colleague, Associate Justice Ramon Paul L. Hernando. Specifically, I agreed with Justice Hernando's appreciation of the humanitarian considerations that should have impelled the Court to mitigate the penalty imposed against Judge Abul. As Justice Hernando noted, Judge Abul was murdered a couple of days after he turned 68. Moreover, Judge Abul's wife, who also sustained gunshot wounds, had written a letter to the Court explaining that she is a housewife who has no work and no source of income and that ever since Judge Abul's preventive suspension from office, their family had faced financial crisis. She therefore entreated the Court to release the accrued leave benefits of Judge Abul as well as such other benefits or assistance which the Court could extend to them in order to help their family sustain their daily needs and to fund her son's education in medical school. I was of the view then that these considerations should have prompted the Court to dismiss the case. x x x[14]

Here, no such humanitarian or equitable grounds have been put forth for the Court's consideration.

At this juncture, it should be recalled that in 2012, respondent had already been dismissed from the service with forfeiture of

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[13] See *ponencia*, p. 21.

[14] Concurring and Dissenting Opinion of Justice Alfredo Benjamin S. Caguioa in *Re: Investigation Report on the Alleged Extortion Activities of Presiding Judge Godofredo B. Abul, Jr., Branch 4, Regional Trial Court, Butuan City, Agusan del Norte*, A.M. No. RTJ-17-2486, September 8, 2020, pp. 1-2.

retirement benefits, except accrued leave benefits. In view of this, I submit that while the Court should not be deterred from making an administrative finding against the liability of respondent, it can, however, no longer impose any fine that can be taken from her accrued leave credits. Section 11 A (1) of Rule 140, as amended by A.M. No. 01-8-10-SC[15] is clear in this regard, to wit:

> **SEC. 11. *Sanctions***. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, **forfeiture of all or part of the benefits** as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. ***Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits**;
>
> x x x x x x x x x (Emphasis supplied)

Consequently, while forfeiture of other benefits may be allowed, in whole or in part, the forfeiture of accrued leave credits is not. The language of the prohibition in Section 11 (A) (1), in using the phrase "in no case" signifies an absolute and unqualified proscription.

Be that as it may, the Court should still make a finding of administrative liability even if only to impress upon the members of the bench the importance of their duties and to restore the confidence of the public in the judiciary. In an administrative case against a lawyer where the Court sustained the imposition of the penalty of suspension despite the previous disbarment of said lawyer, the pronouncement of the Court is instructive:

> x x x The Court is mindful, however, that suspension can no longer be imposed on respondent considering that just recently, respondent had already been disbarred from the practice of law and his name had been stricken off the Roll of Attorneys in *Paras v. Paras*. In *Sanchez v. Torres*, the Court ruled that the penalty of suspension or

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[15] September 11, 2001.

disbarment can no longer be imposed on a lawyer who had been previously disbarred. Nevertheless, it resolved the issue on the lawyer's administrative liability for recording purposes in the lawyer's personal file in the OBC. Hence, the Court held that respondent therein should be suspended from the practice of law, although the said penalty can no longer be imposed in view of his previous disbarment. In the same manner, the Court imposes upon respondent herein the penalty of suspension from the practice of law for a period of six (6) months, although the said penalty can no longer be effectuated in view of his previous disbarment, but nonetheless should be adjudged for recording purposes. x x x

x x x x x x x x x

WHEREFORE, respondent Justo de Jesus Paras is hereby found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court. Accordingly, he is **SUSPENDED** from the practice of law for a period of six (6) months. However, considering that respondent has already been previously disbarred, this penalty can no longer be imposed.

x x x x x x x x x

Let a copy of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.[16]

The incontrovertible facts in this case show that: (1) respondent allowed an improper service of summons against complainant in the declaration of nullity case that her husband had initiated by immediately resorting to service by publication; and (2) complainant had demonstrated with clear and convincing evidence that neither she nor her husband resided or had been residing in Paniqui, Tarlac at that time.[17] Hence, respondent's decision to grant the petition despite these irregularities smacked

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[16] *Yap-Paras v. Paras*, A.C. No. 5333, March 13, 2017, 820 SCRA 116, 126-128.

[17] *Rollo*, p. 161.

of gross ignorance of the law. Notably, as previously mentioned, respondent was dismissed from service in 2012 for dishonesty, gross ignorance of the law and procedure, gross misconduct and incompetency. With respect to the finding of gross ignorance of the law, in particular, it was in relation to serious infractions "involving petitions for nullity and annulment of marriage and legal separation, the most disturbing and scandalous of which was the haste with which she disposed of such cases."

All told, it is my view that the Court should not lose sight of its long-held ratio that an automatic dismissal of an administrative case on account of the respondent's death would be fraught with injustices and pregnant with dreadful and dangerous implications.[18] Again, in any case, the prevailing rule on the non-dismissal of the administrative case despite the death of respondent is still subject to the following considerations: (1) the observance of respondent's right to due process; (2) the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and (3) depending on the kind of penalty imposed.

The offense in an administrative case is principally an offense to the public office being a sacred public trust. This is the reason why the Court has consistently held that in administrative cases, no investigation shall be interrupted or terminated by reason of desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same.[19] The need to maintain the faith and confidence of our people in the government and its agencies and instrumentalities demands that proceedings in administrative cases against public officers and employees should not be made to depend on the whims and caprices of complainants who are, in a real sense,

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[18] *Arabani, Jr. v. Arabani*, A.M. Nos. SCC-10-14-P (Formerly OCA IPI No. 09-31-SCC-P), SCC-10-15-P (Formerly A.M. No. 06-3-03-SCC) and SCC-11-17 (Formerly A.M. No. 10-34-SCC), November 12, 2019, p. 2.

[19] *Reyes-Domingo v. Morales*, A.M. No. P-99-1285, October 4, 2000, 342 SCRA 6, 11, citing RULES OF COURT, Rule 139-B, Sec. 5 and *Tejada v. Hernando*, A.C. No. 2427, May 8, 1992, 208 SCRA 517, 521-522.

only witnesses.[20] This same imperative rings true as well when the Court is confronted with a case in which the respondent has since died. Indeed, if only for reasons of public policy, the Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public.[21]

For all the foregoing reasons, I vote that respondent be declared administratively liable for gross ignorance of the law. Nevertheless, considering that respondent had already been dismissed from the service with forfeiture of retirement benefits, except accrued leave benefits, a penalty can no longer be imposed.

DISSENTING OPINION

REYES, J. JR., *J.*:

I dissent.

"Never is the truism that a public office is a public trust of more relevance than in the case of judges."[1]

An allegation of "annulment-fixing" was imputed against Judge Liberty O. Castañeda (respondent) by Sharon Flores-Concepcion (complainant), who was surprised to discover, without due notice of any proceeding relative thereto, that her marriage with her husband was declared null in Civil Case No. 450-09, entitled "*Vergel Castillo Concepcion v. Sharon Flores Concepcion*."

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[20] Id. at 12 and 13, citing *Sy v. Academia*, A.M. Nos. P-87-72 and P-90-481, July 3, 1991, 198 SCRA, 705, 715; *Estreller v. Manatad, Jr.*, A.M. No. P-94-1034, February 21, 1997, 268 SCRA 608, 616 and *Gacho v. Fuentes, Jr.*, A.M. No. P-98-1265, June 29, 1998, 291 SCRA 474, 476.

[21] *How v. Ruiz*, A.M. No. P-05-1932 (Formerly OCA IPI No. 01-1230-P), February 15, 2005, 451 SCRA 320, 325.

[1] *Macabasa v. Banaag*, 156 Phil. 474-478 (1974).

In her Complaint-Affidavit,[2] complainant alleged that in November 2010, she was confounded upon learning that her marriage with her husband, Vergel Castillo Concepcion (Vergel), was declared null and void following a proceeding for declaration of nullity of marriage between them before the Regional Trial Court of Paniqui, Tarlac, Branch 67 (RTC), presided by herein respondent. Complainant insisted that she had no knowledge of such proceeding nor the filing of said action in any court.[3] Said decision attained finality as evidenced by a Certification[4] dated September 30, 2010.

In delving into the incidents which led to the nullification of her marriage with her husband, complainant highlighted the following irregularities:

(a) The petition was filed in Paniqui, Tarlac, but neither she nor her husband resides therein;

(b) The complainant was neither furnished a copy of the petition for declaration of nullity of marriage nor notified of the proceedings relating to said petition;

(c) Summons was served upon the complainant by publication despite failure to show that attempts were made to serve the same by personal or substituted service;

(d) The Office of the Solicitor General (OSG) was likewise neither furnished a copy of the petition nor notified of the proceedings. There was likewise no proof that the provincial prosecutor was deputized to represent the State in the annulment proceeding;

(e) No report submitted as to the non-existence of collusion between the parties;

(f) There was no proof that hearings were indeed conducted as the only proof available to the court is the entry of appearances of Vergel's counsel every hearing date;

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[2] *Rollo*, pp. 2-16.

[3] Id. at 3.

[4] Id. at 121.

(g) The short amount of time that the case was decided upon; and

(h) As shown by the records of the case, the markings done during the pre-trial and offered by the counsel for plaintiff is different from what were actually marked in the records.[5]

Respondent was required by the Office of the Court Administrator (OCA) to file her comment in the 1st Indorsement[6] dated June 29, 2011. However, respondent failed to comply with said directive. Thus, a 1st Tracer,[7] reiterating its earlier directive, was sent by the OCA to respondent. Still, respondent ignored the order.

Meanwhile, in 2012, respondent was dismissed from service with forfeiture of her retirement benefits except accrued leave benefits and disqualified from holding any public office after she was found guilty of dishonesty, gross ignorance of the law and procedure, gross misconduct, and incompetency in *Office of the Court Administrator v. Judge Liberty O. Castañeda*.[8] Thus, in a Report[9] dated February 20, 2014, the OCA dismissed the instant complaint for having been rendered moot and academic.

However, this Court, in a Resolution[10] dated June 25, 2014, resolved to return the administrative matter to the OCA for re-evaluation of the case on the merits.

Following said order of this Court, the OCA issued its Memorandum[11] dated July 7, 2015, which found that respondent,

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[5] Id. at 3-14.

[6] Id. at 151.

[7] Id. at 152.

[8] 696 Phil. 202, 229 (2012).

[9] Id. at 153-155.

[10] Id. at 156.

[11] Id. at 158-166.

as a member of the bench, willfully disregarded the laws intended to preserve marriage as an inviolable social institution as it was clear from the records that: (a) complainant and the OSG were not furnished copies of the petition; (b) only the psychologist's report was presented but the psychologist who prepared the same did not testify before the court; and (c) the case was decided with undue haste. Also, the OCA noted respondent's indifference when she was required to comment on the complaint but failed to do so. With this, the OCA recommended respondent's dismissal from service. Noting the previous ruling of this Court in the 2012 *Judge Castañeda* case, the OCA nonetheless recommended said penalty as the complaint was filed long before the rendition of said decision.

Furthermore, the OCA observed that the infractions committed by respondent constitute violations of the provisions of the Code of Professional Responsibility (CPR). Thus, the imposition of the penalty of disbarment was deemed proper.

The OCA recommended the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1. the instant administrative complaint be **RE-DOCKETED** as a regular administrative matter against Judge Liberty O. Castañeda, former Presiding Judge, Branch 67, RTC, Paniqui, Tarlac;

2. respondent Judge Castañeda be found **GUILTY** of gross ignorance of the law for which she would have been **DISMISSED FROM THE SERVICE** with forfeiture of her retirement benefits, except leave credits, if any, and disqualified from reinstatement or appointment to any public office, branch or instrumentality of the government, including government-owned or controlled corporations had she not been previously dismissed from the service in a Decision dated 9 October 2012 in A.M. No. RTJ-12-2316; and

3. respondent Judge Castañeda be likewise **DISBARRED** for violations of Canons 1 and 11 and Rules 1.01 and 10.01 of the Code of Professional Responsibility and her name be **ORDERED STRICKEN** from the Roll of Attorneys.

During the pendency of the case, the demise of respondent was reported to the Court. Thus, in a Resolution dated September 24, 2019, the Court directed the OCA to verify such fact. In compliance thereto, the OCA submitted respondent's Certificate of Death, stating that respondent expired on April 10, 2018 by reason of acute respiratory failure.

In the main, the issue is whether or not respondent should be held administratively liable for gross ignorance of the law for rendering a fraudulent decision in Civil Case No. 450-09, entitled "*Vergel Castillo Concepcion v. Sharon Flores Concepcion*."

Well settled is the rule that jurisdiction over the subject matter of the case is not lost by mere fact that the respondent public official ceases to hold office during the pendency of the case. In other words, jurisdiction, once acquired, continues to exist until final resolution of the case.[12] However, this rule is not iron-clad as certain exceptions are recognized by the Court in *Gonzales*:

> The above rule is not without exceptions, as we explained in the case of *Limliman v. Judge Ulat-Marrero*, where we said that death of the respondent necessitates the dismissal of the administrative case upon a consideration of any of the following factors: *first*, the observance of respondent's right to due process; *second*, the presence of exceptional circumstances in the case on the grounds of equitable and humanitarian reasons; and *third*, it may also depend on the kind of penalty imposed.[13]

As none of the exceptions finds application in this case, the general rule applies.

It is clear from the records that respondent was afforded every opportunity to refute the allegations against her. To recall, the administrative complaint was filed in 2010 and respondent was

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[12] *Report on the Financial Audit Conducted in the Municipal Trial Court in Cities, Tagum City, Davao del Norte*, 720 Phil. 23 (2013), citing *Gonzales v. Escalona*, A.M. No. P-03-1715, September 19, 2008, 566 SCRA 1.

[13] Id.

asked to file a comment *twice* in 2011. Ignoring the directives of the Court, respondent did not file any comment. In 2014, the OCA concluded its investigation and submitted its recommendation. From 2010 until 2014, respondent still failed to respond. Indeed, respondent was aware of the conduct of proceedings against her but she remained silent. Then on April 10, 2018, four years after the OCA concluded its investigation, respondent passed away.

In administrative proceedings, the essence of due process is simply the opportunity to explain one's side or to be heard, either through oral arguments or pleadings.[14] Thus, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him or her constitute the ***minimum requirements*** of due process.[15]

In *Limliman v. Judge Ulat-Marrero*,[16] the Court recognized that the death of the respondent during the pendency of the administrative case warrants the dismissal of the case on the ground of violation of due process only if the respondent died while the investigation was not yet completed:[17]

> Concluding, the Court dismissed the complaint against Judge Rendon, holding that to "allow the investigation to proceed against [the judge] who could no longer be in any position to defend himself would be a denial of his right to be heard, our most basic understanding of due process." The outcome in *Rendon* might have, of course, been different had the investigation therein been completed prior to the demise of the respondent.[18]

Notably, the Court cited *Baikong Akang Camsa v. Judge Rendon*[19] to support its disposition that death of the respondent

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[14] *See Lumiqued v. Exevea*, 346 Phil. 807-830 (1997).

[15] *Vivo v. Philippine Amusement and Gaming Corp.*, 721 Phil. 34-44 (2013), citing *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007.

[16] 443 Phil. 732 (2003).

[17] Id. at 736.

[18] Id.

[19] A.M. No. MTJ-02-1395, February 19, 2002; id. at 734.

before the completion of any investigation merits the dismissal of the case. To support its declaration, the Court cited *Hermosa v. Paraiso*[20] and *Apiag v. Judge Cantero*,[21] wherein the Court deemed it proper to resolve the administrative case against the respondents notwithstanding their death as the respective investigation against them were concluded before their demise. Likewise, the Court cited *Mañozca v. Judge Domagas*,[22] which ruled on the administrative liability of the respondent as he was given the opportunity to rebut the claims against him.

Based on the facts of this case, respondent was afforded due process. It was because of her own volition that the Court received no comment on the complaint against her. From the time of the filing of the complaint until the conclusion of the investigation conducted by the OCA, respondent was in the position to defend herself and refute the charge against her, but remained silent. Despite the window of opportunities, respondent obviously opted to evade the case against her. Emphatically, the constitutional requirement of due process in administrative cases is thus satisfied.

Moreover, there was likewise no manifestation whatsoever that respondent was in poor health or under difficult circumstances, necessitating the operation of the second factor, that is, humanitarian and equitable consideration. Lastly, if the imposable penalty is to be considered to determine if the instant cases against her should still continue, a fine may still be imposed or even a forfeiture of their retirement benefits if deemed proper.[23]

At this juncture, **I respectfully submit that the doctrine enunciated in *Gonzales v. Escalona, i.e.,* death of respondent does not automatically preclude a finding of administrative**

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[20] 159 Phil. 417 (1975); id. at 734.

[21] 335 Phil. 511 (1997); id.

[22] 318 Phil. 744 (1995); id.

[23] *See* Re: *Report on the Judicial Audit in RTC-Branch 15, Ozamiz City (Judge Pedro L. Suan; Judge Resurrection T. Inting of Branch 16, Tangub City),* 481 Phil. 710, (2004).

liability save for certain exceptions, is more in line with our laws and our Constitution.

In *Gonzales*, the Court was undeterred in imposing administrative liability despite death of the respondent by reason of law and public interest. In ruling so, the Court made a delineation between **criminal cases and administrative cases**. That while the death of the accused in a criminal case extinguishes criminal liability, the same is not so in administrative cases. To echo the Court's rationale:

> [A] public office is a public trust that needs to be protected and safeguarded at all cost and even beyond the death of the public officer who has tarnished its integrity. Accordingly, we rule that the administrative proceedings is, by its very nature, not strictly personal so that the proceedings can proceed beyond the employee's death.[24]

On this note, the Court acknowledged that administrative cases are imbued with public interest.[25]

In fact, the Court was emphatic in *In re: Rogelio M. Salazar, Jr.*[26] when we elucidated that "[t]he paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust."

Being recipients of this trust, public officers must at all times be accountable to the people. This is rightfully so because the people, as true holders of sovereignty, merely delegated the same to the government. Ultimately, sovereignty lies with the people: "[s]overeignty itself remains with the people, by whom and for whom all government exists and acts." **Thus, in surrendering their sovereign powers to the government for the promotion of the common good, the members of the body politic strongly expect the government to perform its duty to protect them, promote their welfare and advance national**

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[24] *Gonzales v. Escalona*, 587 Phil. 448, 465 (2008).

[25] Id.

[26] A.M. Nos. 15-05-136-RTC & P-16-3450, December 4, 2018.

interest.[27] In the US case of *Yick Wo v. Hopkins*,[28] the United States Supreme Court explained:

> Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of the government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power.[29]

Thus, the correlative obligation on the part of public officials to faithfully comply with laws to serve the people with utmost fidelity is mandatory. For this purpose, no less than the fundamental law of the land necessitates the highest degree of public accountability:

> Section 1. Public office is a public trust. — Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.[30]

Unlike in criminal law in which the basis of categorizing an act as a "crime" or an "offense" is its being inherently immoral or its being regulated by State for the promotion of common good, in administrative law, an act which is violative of such sacrosanct duty of public officials offends the people's delegated sovereignty. It is a violation of their oath of duty.

Moreover, in criminal cases, the death of the accused before the rendition of final judgment extinguishes criminal liability precisely because the juridical condition of a penalty is that it is personal.[31] The penalties imposable upon persons convicted of crimes affect one's right to life and liberty, consisting of

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[27] *See Marcos v. Manglapus*, 258 Phil. 479 (1989).

[28] 118 U.S. 356 (1886).

[29] Id.

[30] Section 1, Article IX, 1987 CONSTITUTION.

[31] JUDGE LUIS B. REYES, THE REVISED PENAL CODE, Book One, 18th Ed. 2012, p. 861.

deprivation or restriction of their freedom or deprivation of rights or even death. Thus, the gravity and severance of such penalties, thus, exacts the highest degree of proof, that is, proof beyond reasonable doubt, for the conviction of the accused. Such high legal standard required in criminal cases must be understood in relation to the constitutional presumption of innocence afforded to the accused. In the landmark case of *Commonwealth v. Webster*,[32] the Massachusetts Supreme Court, speaking through Justice Lemuel Shaw explained in this wise:

> Then, what is reasonable doubt? It is a term often used, probably pretty well understood, but not easily defined. It is not mere possible doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge. The burden of proof is upon the prosecutor. All the presumptions of law independent of evidence are in favor of innocence and every person is presumed to be innocent until he is proved guilty. If upon such proof there is reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. For it is not sufficient to establish a probability, though a strong one arising from the doctrine of chances, that the fact charged is more likely to be true than the contrary; but the evidence must establish the truth of the fact to a reasonable and moral certainty — a certainty that convinces and directs the understanding, and satisfies the reason and judgment, of those who are bound to act conscientiously upon it. This we take to be proof beyond reasonable doubt; because if the law, which mostly depends upon considerations of a moral nature, should go further than this and require absolute certainty, it would exclude circumstantial evidence altogether.[33]

Alternatively put, the highest degree of proof is required because the constitutional presumption of innocence is tilted in favor of the accused, which must be overcome by the prosecution before the court renders a verdict of conviction.

In administrative cases, there exists no such presumption in favor of the respondent. That being so, only substantial proof

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[32] 5 Cush. (Mass) 295, 52 Am. Dec. 711 (1850).

[33] Id.

is required. In consonance with the constitutional adage that public office is a public trust, any defiance therefor, which could be proven by such relevant evidence as a reasonable mind may accept as adequate to support a conclusion, exacts a penalty.[34]

To underline, administrative cases are entirely different from criminal cases. To treat them in parallel insofar as it concerns the extinguishment of liability by reason of death has no legal basis.

In view of the propriety of discussing the merits of the administrative case, it is my submission that the respondent committed gross ignorance of the law.

Essentially, there are two conspicuous irregularities which surrounded Civil Case No. 450-09 — improper service of summons and improper venue.

Service of summons by publication in a newspaper of general circulation is allowed when the defendant or respondent is designated as an unknown owner or if his or her whereabouts are unknown and cannot be ascertained by diligent inquiry.[35] "It may only be effected after unsuccessful attempts to serve the summons personally, and after diligent inquiry as to the defendant's or respondent's whereabouts."[36] "The diligence requirement means that there must be prior resort to personal service under Section 7 and substituted service under Section 8, and proof that these modes were ineffective before summons by publication may be allowed."[37]

Here, there was neither any showing that attempts were actually made to serve the summons personally. Nor was there any proof

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[34] *National Labor Relations Board v. Thompson Products, Inc.*, 97 F. (2d), 13, 15 (C.C.A. 6th, 1938).

[35] RULES OF COURT, Section 14, Rule 14.

[36] *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 728 (2014).

[37] *Express Padala (Italia) SPA v. Ocampo*, G.R. No. 202505, September 6, 2017.

that the whereabouts of complainant was ascertained with diligence. The records also are barren of any proof that personal service or substituted service was ineffective, necessitating the resort to summons by publication. To this Court, it is clear that there was a deliberate effort to keep the complainant in the dark as to the petition filed affecting her personal status. As there was improper service of summons, the RTC failed to acquire jurisdiction over the person of complainant as defendant in the case.[38]

As to the second irregularity, the Court adopts the factual findings of the OCA in that it found that complainant demonstrated with clear and convincing evidence to prove that neither she nor her husband resides or has been residing in Paniqui, Tarlac.[39]

It must be noted that venue in cases for declaration of nullity and annulment of marriage is provided under A.M. No. 02-11-10-SC (Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages), to wit:

> SEC. 4. Venue. — The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines at the election of the petitioner.

In deliberately and willfully disregarding the rules and settled jurisprudence, respondent committed gross ignorance of the law.[40]

As a matter of fact, this finding against respondent is not novel. In the 2012 *Judge Castañeda* case, respondent was found administratively liable as she was found to be involved in "annulment-fixing" cases, among others. To specify, the Court

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[38] Id.

[39] *Rollo*, p. 161.

[40] *Office of the Court Administrator v. Judge Dumayas*, A.M. No. RTJ-15-2435, March 10, 2018.

found that respondent, in "the most disturbing and scandalous" manner, decided with haste 410 petitions for nullity, annulment of marriage, and legal separation in a year. Among these cases, the Court took note of one case wherein the respondent ordered the severance of marriage between two parties when there were obvious and blatant irregularities.

Finding respondent's display of utter lack of competence and probity, which can be translated as grave abuse of authority, the Court dismissed her from service with forfeiture of all retirement benefits except accrued leave credits and held disqualified from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.[41]

Clearly, respondent's deportment as a member of the bench is in defiance of the mandate of the Canon of Judicial Ethics, particularly Canons 22 and 31, to wit:

> 22. Infractions of law
>
> The judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.
>
> 31. A summary of judicial obligations
>
> A judge's conduct should be above reproach and in the discharge of his judicial duties he should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, and regardless of private influence should administer justice according to law and should deal with the patronage of the position as a public trust; and he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office.

Moreover, I likewise submit that respondent's firm stance to ignore our order when she was required to file a comment on this administrative complaint cannot be considered as mere indifference. To all intents, it is a clear disrespect to the

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[41] Supra note 6, at 225.

constitutional power of this Court to exercise disciplinary authority over judges.[42]

Based on the foregoing, it is my submission that respondent committed gross ignorance of the law, which is classified as a serious charge, is punishable by: (a) dismissal from service with forfeiture of all or part of the benefits as the Court may determine; (b) disqualification from reinstatement or appointment to any public office; (c) suspension from office for more than three but not exceeding six months, without salary and other benefits; or (d) imposition of the penalty of a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[43]

While the respondent has earlier been dismissed from the service in the 2012 *Judge Castañeda* case, she can still be fined for gross ignorance of the law and violation of the Canons of Judicial Ethics committed while in office because of her commission of the aforementioned infractions. According to the rules, the imposition of the maximum fine of ₱40,000.00 is proper.[44]

In several cases wherein the respondent judges were meted out with the penalty of dismissal with forfeiture of retirement benefits except accrued benefits, the Court nevertheless imposed the penalty of fine, but ordered that it be deducted from the accrued leave benefits.

In the 2013 case of *Leonidas v. Judge Supnet*,[45] the Court categorically ordered the respondent to pay fine to be deducted from accrued leave benefits despite his previous dismissal from service and the forfeiture of his retirement benefits except accrued

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[42] Article VIII. Section 11. x x x The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[43] RULES OF COURT, Sections 8 and 11, Rule 140 as amended by A.M. No. 01-8-10-SC.

[44] *Cañada v. Judge Suerte*, 511 Phil. 28, 38-39 (2015).

[45] 446 Phil. 53 (2003).

credits after finding him guilty of gross ignorance of the law. In the 2010 case of *Bernas v. Judge Reyes*,[46] the Court found the respondent guilty of manifest bias, partiality, and grave abuse of authority which merited her dismissal from service. However, during the pendency of the administrative case, she was meted the penalty of dismissal and forfeiture of benefits except her accrued leaves in another case. Nevertheless, the Court imposed the penalty of fine to be deducted from the respondent's accrued leave benefits. In the 2012 case of *Valdez v. Judge Torres*,[47] the Court held the respondent liable for undue delay in resolving a civil case and correspondingly ordered the payment of fine to be deducted from accrued leave credits, instead of suspension from service, because of the respondent's previous dismissal from service and forfeiture of her retirement benefits except her accrued leave credits. In the 2015 case of *Cañada v. Judge Suerte*,[48] notwithstanding the respondent's earlier dismissal from service and forfeiture of retirement benefits, the Court nonetheless ordered the payment of fine to be deducted from accrued leave benefits.

In these cases, the Court did not hesitate to impose a sanction upon an erring judge and exercise the constitutionally granted authority to discipline the members of the bench.

Such imposition of penalty may pose this thought: that the death of the respondent necessarily implies that she would no longer bear the consequences of her actions due to her passing. It is her heirs who would actually be affected should a penalty of fine be imposed against her.

On this note, it must be emphasized that **entitlement to benefits arising from employment in the government service presupposes the proper discharge of the public officers' duties, for the grant of such benefits are afforded only to employees who rightfully fulfilled their duties and obligations**.

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[46] 639 Phil. 202 (2010).

[47] 687 Phil. 80 (2012).

[48] 511 Phil. 28 (2015).

In cases where the public officers were found liable therefor, the grant of benefits is unwarranted.

As it was found in this case that respondent is liable of violating her duty, her entitlement to benefits is not established. Likewise, the entitlement of her heirs thereto is not justified. Corollary, the imposition of fine despite the death of the respondent should not be considered as depriving the heirs of their right to the proceeds of respondent's benefits.

As to the recommendation of respondent's disbarment, it is my submission that the same is improper.

While A.M. No. 02-9-02-SC *(Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar)* relevantly states that some administrative cases against judges may be considered as disciplinary actions against them as members of the bar, it is still indispensable that the respondent be required to file a comment on the latter in observance of the constitutional right to due process, to wit:

> Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

In this case, the administrative case against respondent was considered by the OCA as a disbarment case. However, respondent was not required to comment on the latter case; thus, due process was not afforded to her. In view of her death, the dismissal of the disbarment case is warranted.

Final note. While uneventful and unfortunate, death does not eradicate the consequences of our actions. Certainly, the effects of which leave traces of our mortality. Let it be emphasized that respondent's worldly imprint consisted of: In 2012, she was adjudged administratively liable anent irregularities following the OCA's conduct of judicial audit. Most of these cases involved severance of marriages. In fact, from such audit, the Court ordered the OCA to conduct further investigation on each particular case decided by the respondent during the period of her preventive suspension (from January 12, 2010 until her dismissal from service on October 9, 2012) in a Resolution dated January 27, 2015. Thus, an administrative case was re-docketed as **A.M. No. RTJ-15-2404.** On June 6, 2017, the Court resolved to refer the report of the Audit-Legal Team of the OCA to the Office of the Bar Confidant for the conduct of appropriate disbarment proceedings against the respondent.

Despite the Court's pronouncement of liability in 2012, respondent still committed several infractions, still relating to severance of a marriage, as discussed in this case. Notably too, the complainant was deprived of due process, astonished by the fact that her marriage was simply declared null without having to fight for it.

What was also reprehensible was respondent's reception of this present complaint. Adamant as she was, respondent even ignored the directives of the Court as she obstinately refused to refute the allegations against her.

For emphasis, the subject of the OCA's judicial audit, as well as this present case, involves severance of marriages which are protected by the Civil Code. It would not go amiss to state in this disquisition that marriage is a sacrament in which the Divine grace is imprinted upon. Such primacy given to marriages

is likewise explicit in our Constitution which stated that "[m]arriage, as an inviolable social institution, is the foundation of the family and **shall be protected by the State**." Recognized as the foundation of the family, to which the Constitution devoted the entire Article XV, the importance of marriages cannot simply be disregarded. Against the dictates of our framework, respondent repeatedly and consciously caused the disintegration of marital relations in our country. In the face of such, there was no self-reproach or even slightest remorse on the part of the respondent.

With all these infractions, how can this case be simply dismissed? To automatically dismiss an administrative case filed against the respondent would only conceal under a cloak, but definitely would not address, the effects of his/her actions to the detriment of judiciary's image as well as of the public. It would also undermine the constitutional truism that public office is a public trust. Also, respondent's absolution from liability would unnecessarily benefit her heirs, in the form of retirement benefits notwithstanding her gross misconduct.

Verily, respondent's misconduct should compel the Court to hold respondent administratively liable, not only to uphold a constitutional policy of accountability, but to impart among the members of the bench that this Court does not and will not sanction any form of impropriety. Such declaration of liability and the imposition of the appropriate penalty would not only serve as an acknowledgement of the misery of respondent's victims whose marriages were *instantly* dissolved, but would also reinforce and strengthen the public's faith in the judiciary.

FOR ALL THE REASONS STATED, I vote that respondent Judge Liberty O. Castañeda be declared administratively liable for gross ignorance of the law with the imposition of fine in the amount of Forty Thousand Pesos (₱40,000.00) to be deducted from her accrued leave benefits, if sufficient. The disbarment complaint, however, must be dismissed.

EN BANC

[G.R. No. 204060. September 15, 2020]

MORENO DUMAPIS, FRANCISCO LIAGAO AND ELMO TUNDAGUI, *Petitioners, v.* **LEPANTO CONSOLIDATED MINING COMPANY**, *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; SEPARATION PAY AND BACKWAGES; SHOULD BE COMPUTED FROM THE TIME THE EMPLOYEES WERE ILLEGALLY DISMISSED UNTIL THE FINALITY OF THE DECISION ORDERING THE PAYMENT OF THEIR SEPARATION PAY, IN LIEU OF REINSTATEMENT. — In ***CICM Mission Seminaries, et al. v. Perez*** citing ***Bani Rural Bank, Inc. v. De Guzman,*** the Court through the Second Division laid down the rule that the award of separation pay and backwages for illegally dismissed employees should be computed from the time they got illegally dismissed until the finality of the decision ordering payment of their separation pay, in lieu of reinstatement x x x. In accordance with ***CICM Mission Seminaries,*** petitioners' backwages and separation pay here should, therefore, be computed from September 22, 2000 when they got illegally dismissed until November 25, 2008, when this Court's Decision dated August 13, 2008 became final and executory.

2. ID.; ID.; ID.; ID.; ID.; SHALL INCLUDE ALL SALARY INCREASES AND BENEFITS GRANTED UNDER THE LAW AND OTHER GOVERNMENT ISSUANCES, COLLECTIVE BARGAINING AGREEMENTS, EMPLOYMENT CONTRACTS, ESTABLISHED COMPANY POLICIES AND PRACTICES, AND ANALOGOUS SOURCES WHICH THE EMPLOYEES WOULD HAVE BEEN ENTITLED TO HAD THEY NOT BEEN ILLEGALLY DISMISSED, BUT SALARY INCREASES AND OTHER BENEFITS WHICH ARE CONTINGENT OR DEPENDENT ON VARIABLES SUCH AS AN EMPLOYEE'S MERIT INCREASE BASED ON

PERFORMANCE OR LONGEVITY OR THE COMPANY'S FINANCIAL STATUS SHALL NOT BE INCLUDED IN THE AWARD.— [T]he **overarching purpose** of the relief granted by law to illegally dismissed employees is to make the latter **whole again.** Surely, the Court is united in ensuring that illegally dismissed employees are **whole again** by awarding them the benefits of a collective bargaining agreement to which they **would have been entitled *if not for the illegal termination of their employment.*** The ruling that the employees' illegal dismissal literally allowed time to stand still for them because of their loss of employment and the resulting uncertainties from such an unfortunate event, **does not sanction additionally punishing** them for an act they have not been responsible for. They in fact **must be accorded justice and relief.** It is **simply unjust** and **contrary to** the overarching purpose of making illegally dismissed employees **whole again** to deduct from their accrued backwages the increases in the compensation that they would have received ***if not for their illegal dismissal.*** Verily, the Court now ordains the uniform rule that the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award. This ruling is consistent with the Constitutional command that the State shall afford full protection to labor x x x and the edict under Article 3, Chapter I of the New Labor Code x x x. Most important, it conforms with the purpose to restore an illegally dismissed employees to the same status as if their employment was not illegally severed by allowing them to continuously enjoy the salary, benefits, and allowances they were assured to receive during the term of their employment.

CAGUIOA, *J., concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT;

ILLEGAL DISMISSAL; BACKWAGES AND SEPARATION PAY; SHOULD INCLUDE THE SALARY INCREASES WHICH THE EMPLOYEE WOULD HAVE RECEIVED HAD HE NOT BEEN ILLEGALLY DISMISSED BUT THE INCREASES SHOULD BE LIMITED ONLY TO MANDATORY AND UNCONDITIONAL INCREASES SUCH AS THOSE MANDATED UNDER A COLLECTIVE BARGAINING AGREEMENT. — The amount of backwages and separation pay awarded in cases of illegal dismissal should include the salary increases which the employee would have received had he not been illegally dismissed. However, the increases should be limited only to mandatory and unconditional increases such as those mandated under a collective bargaining agreement (CBA), established company policy and practice, and government mandated wage increases. Increases based on merit or contingency should not be included. Article 294 of the Labor Code provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his **full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent** computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Backwages are awarded as remuneration for the employee's lost income from the erring employer due to illegal dismissal. Applying the established doctrine enunciated in Article 4 of the Labor Code, that labor laws shall be constructed in favor of labor, I believe that the phrase "full backwages" in Article 294 should be interpreted to include guaranteed salary increases.

2. **ID.; ID.; ID.; ID.; BACKWAGES; THE COMPUTATION OF THE BACKWAGES BASED ON THE INCREASED SALARY SHOULD BE RECKONED ONLY FROM THE TIME THE INCREASE WAS IMPLEMENTED AND UNTIL THE FINALITY OF THE COURT'S DECISION FINDING ILLEGAL DISMISSAL. —** [T]he computation of the backwages based on the increased salary should be reckoned only from the time the increase was implemented, *i.e.*, from the time the employee would have been entitled thereto. Thus, the employee must not only prove his entitlement to the salary increases but also the applicable periods therefor. I agree however, that the computation should be reckoned only until the finality of the Court's Decision in G.R. No. 163210, in which

the Court affirmed the CA Decision finding that herein petitioners were illegally dismissed.

3. ID.; ID.; ID.; ID.; SEPARATION PAY; IN THE GRANT OF SEPARATION PAY DUE TO A FINDING OF ILLEGAL DISMISSAL WHERE REINSTATEMENT IS NO LONGER FEASIBLE, THE EMPLOYER-EMPLOYEE RELATIONSHIP IS SEVERED ONLY UPON THE FINALITY OF THE COURT'S DECISION HOLDING THAT THE EMPLOYEE WAS ILLEGALLY DISMISSED, AND THE BASIS FOR THE SEPARATION PAY SHOULD BE THE EMPLOYEE'S SALARY AT THE END OF THE IMPUTED SERVICE. — [S]eparation pay awarded in lieu of reinstatement should include salary increases. Separation pay is generally granted when the cause for termination is not due to the employee's fault or wrongdoing, such as when the employment relationship is terminated due to authorized causes including installation of labor-saving devices, redundancy, retrenchment, and disease under Articles 298 and 299 of the Labor Code. There is no provision in the Labor Code which specifically grants separation pay to an illegally dismissed employee; Article 294 only mentions reinstatement and backwages. However, jurisprudence has settled that when reinstatement is no longer practicable or feasible, separation pay may be exceptionally awarded as an alternative. Separation pay is different from backwages although the two can be awarded together. x x x The computation of separation pay in case of illegal dismissal is patterned after the computation in Article 298 for separation pay due to redundancy which is computed at one-month salary for every year of service. In payment of separation pay due to redundancy, the basis for the amount is the salary of the employee, including regular allowances, that he had been receiving at the time of dismissal. Salary increases are not considered because the employer-employee relationship is severed upon the implementation of a valid redundancy. However, in the grant of separation pay due to a finding of illegal dismissal where reinstatement is no longer feasible, the employer-employee relationship is severed only upon the finality of the Court's decision holding that the employee was illegally dismissed. Thus, the basis for the separation pay should be the employee's salary at the end of the imputed service.

APPEARANCES OF COUNSEL

Cascolan Andres Law Office for petitioners.
Rex S. Recidoro and *Vladimir B. Bumatay* for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

In NLRC Case No. RAB-CAR-11-0607-00 entitled *Thomas Garcia, Moreno Dumapis, Mariolito Cativo, John Kitoyan, Samson Damian, Benedict Arocod, Brent Suyam, Daniel Fegsar, Joel Gumatin, Elmo Tundagui, Francisco Liagao and Maximo Madao v. Lepanto Consolidated Mining Company,* Labor Arbiter Monroe C. Tabingan rendered his Decision[1] dated August 21, 2001 dismissing the complaint for illegal dismissal of therein complainants. Its pertinent portion reads:

> With all the foregoing, the claim of complainants that they were accused of highgrading based on hearsay is of no moment. Damoslog's declarations, corroborated by Daguio's are first hand [sic] account of the incident.
>
> The fact that they were not immediately apprehended when they were seen doing highgrading activity does not change the fact that there were people doing the activity at that time. Management only had to take time to ascertain the identification of the culprits to make sure that they were pointing at the right people. Hence, the investigation after the incident and before the formal charge was made, Mr. Pablo Daguio positively identified the complainants as those who were directly under his supervision at that particular shift and who were likewise named by Damoslog as the same people who carried out the highgrading activity.
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> x x x x x x x x x
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> Complainants as lead miners, muckers and LHD operators are given the proper equipment and tolls including machineries [sic]

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[1] *Rollo*, pp. 42-49.

for use in the mining activity. Hence, they do not need to handle with their bare hands the ores they are mining. Admittedly, their only assigned task is to drill, bardown, rockbolt, blast and haul. Hence, the mere act of complainants in handling highgrading ores — i.e., washing, segregating, and the like, are acts contrary to their normal activity and against the Code of Conduct of respondent which was violated by complainants.

x x x x x x x x x

WHEREFORE, judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit.

SO ORDERED.[2]

On complainant's appeal, the National Labor Relations Commission (NLRC) reversed[3] insofar as three (3) of the complainants, now petitioners, Moreno Dumapis, Francisco Liagao and Elmo Tundagui were concerned:

WHEREFORE, premises considered, the Decision dated August 21, 2001 is hereby MODIFIED declaring the dismissal of complainants Moreno Dumapis, Elmo Tundagui and Francis [sic] Liagao illegal and ordering respondent to pay them backwages in the total amount of four hundred eighty thousand one hundred eighty two pesos and 63/100 (₱480,182.63) and separation pay in the total amount of four hundred seventeen thousand two hundred thirty pesos and 32/100 (₱417,230.32) as computed in the body of the Decision.

The dismissal of the nine (9) complainants, namely:

1. Joel Gumatin
2. Maxima Madao
3. Benedict Arocod
4. Brent Suyam
5. Daniel Fegsar
6. Thomas Garcia
7. Mariolito Cativo

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[2] *Id.* at 48-49.

[3] Penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Ireneo B. Bernardo and Commissioner Tito F. Genilo, NLRC Decision dated August 30, 2002, *id.* at 50-63.

8. John Kitoyan
9. Samson Damian

are hereby AFFIRMED.

SO ORDERED.[4]

Lepanto Consolidated Mining Company elevated the case to the Court of Appeals *via* CA-G.R. SP No. 75860 entitled, *Lepanto Consolidated Mining Company v. The National Labor Relations Commission (Third Division), Moreno Dumapis, Elmo Tundagui and Francisco Liagao*.

Under Decision[5] dated November 7, 2003, the Court of Appeals affirmed, *viz.*:

Apropos, the NLRC aptly made the following conclusion on the culpability of the twelve employees meted preventive suspensions:

> "Thus, considering that only the above nine (9) complainants were identified as having committed highgrading then their dismissal from the service is affirmed. x x x"

Bereft of any factual and legal bases as shown in the affidavits of Damoslog, and Daguio, private respondents' participation in highgrading activity was not proven by substantial evidence.

Security of tenure dictates that no worker shall be dismissed except for just cause provided by law and after due process. Although, there was no justifiable ground for private respondents' dismissal, they were afforded due process.

An illegally dismissed employee is entitled to either (1) reinstatement, if viable, or separation pay, if reinstatement is no longer viable and (2) backwages,

Due to the baseless accusation of the petitioner, private respondents cannot be expected to accept with open arms their previous positions. The strained relationship of the parties justified the award of separation

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[4] *Id.* at 61-62.

[5] Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Retired Supreme Court Justice Andres B. Reyes, Jr. and Associate Justice Regalado E. Maambong, *id.* at 64-74.

pay to private respondents computed to one month pay per year of service.

Full backwages are computed from the time employee's compensation was withheld up to the time of his actual reinstatement. However, since reinstatement is no longer possible due to the strained relationship of the parties, backwages must be computed from the time of private respondents' illegal dismissal up to the decision of the Court, without qualification and deduction.

WHEREFORE premises considered, petition is hereby **DISMISSED**. Corollarily, the prayer for a writ of temporary restraining order is likewise **DENIED**.

SO ORDERED.[6]

On Lepanto's further petition for review on *certiorari via* G.R. No. 163210, this Court affirmed[7] in the main, and in addition, required Lepanto to pay double costs. The decision became final and executory on November 25, 2008.[8]

Following the finality of the decision, the labor arbiter issued the corresponding writ of execution in the total amount of ₱897,412.95 covering petitioners' backwages and separation pay.

Petitioners then sought a recomputation of this award which the labor arbiter granted through his Order dated May 27, 2009,[9] increasing the award to ₱2,602,856.21.

Lepanto moved to quash the writ of execution,[10] insisting that the computation should be reckoned from the date of dismissal up until the NLRC rendered its Decision dated August

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[6] *Id.* at 72-74.

[7] Penned by Associate Justice Ma. Alicia Austria-Martinez and concurred in by Associate Justices Consuelo Ynares-Santiago, Minita V. Chico-Nazario, Antonio Eduardo B. Nachura and Ruben T. Reyes, *id.* at 76-90.

[8] *Id.* at 92.

[9] *Id.* at 98-100.

[10] *Id.* at 104-105.

30, 2002. Lepanto further claimed that the parties had already agreed to satisfy the original monetary award of ₱897,412.95, for which, an initial amount of ₱100,000.00 was already deposited into the account of petitioners' counsel.

Meantime, **petitioners moved for another recomputation of the monetary award to include the salary increases allegedly granted them per the Collective Bargaining Agreement (CBA) between Lepanto and the employees.** Too, petitioners denied that they accepted the original monetary award although they acknowledged Lepanto's deposit of ₱100,000.00 into their counsel's account.

Under Order dated September 2, 2009, the labor arbiter recalled his Order dated May 27, 2009 and **further recomputed the award of backwages and separation pay to include the incremental salary increase pursuant to the CBA but only until November 7, 2003, the date when the Court of Appeals issued its Decision in CA-G.R. SP No. 75860**. The amount of ₱100,00.00 was likewise ordered deducted from the monetary award. The total recomputed backwages and separation pay was reduced to ₱1,300,336.69.[11]

In their Partial Motion for Reconsideration/Memorandum of Appeal,[12] **petitioners asserted that the cut-off date for the computation of the award was November 23, 2008**[13] **when this Court's Decision in G.R. No. 163210 became final and executory. Petitioners cited *Surima v. NLRC***[14] **and *Carlos v. CA*.**[15] **They also argued that the monetary award should include salary increases granted under the CBA as the same should have accrued to them had they not been illegally**

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[11] *Id.* at 109.

[12] *Id.* at 110-125.

[13] Should be November 25, 2008 per Entry of Judgment dated January 8, 2009.

[14] 353 Phil. 461 (1998).

[15] 558 Phil. 2009 (2007).

terminated. Lastly, petitioners reported that out of Lepantos's ₱100,000.00 deposit, only ₱75,000.00 went to them as the ₱25,000.00 went to another complainant who was also their counsel's client.

Lepanto likewise appealed to the NLRC against the labor arbiter's computation. Lepanto averred, in the main:

1. The Order granting the recomputation until November 7, 2003 sought to change a final and executory decision of the Supreme Court, which already affirmed the Court of Appeals' Decision in CA-G.R. SP No. 75860 upholding the original award of the NLRC in its Decision dated August 30, 2002. The "Court" being referred to by the Court of Appeals is no one else but the NLRC from whose ruling the cut-off date of the award shall be reckoned;

2. Wage increases should not be included in the computation. The base figure for the award should be the wage rate at the time the employees got illegally dismissed.

The NLRC's Ruling

Under Decision[16] dated October 30, 2009, the NLRC directed the labor arbiter to compute petitioners' backwages and separation pay from the date they were illegally dismissed up to the finality of this Court's Decision dated August 13, 2008, **including therein the mandated CBA salary increases** less the ₱75,000.00 already paid to petitioners.

Lepanto's subsequent motion for reconsideration was denied per NLRC Resolution dated December 29, 2009.[17]

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[16] Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr., *id.* at 154-168.

[17] *Id.* at 187-188.

Aggrieved, Lepanto once again went to the Court of Appeals, this time, *via* Rule 65.

The Court of Appeals' Ruling

By its assailed Decision[18] dated September 28, 2011, the Court of Appeals nullified the NLRC Decision dated October 30, 2009 and ordered the reinstatement of the NLRC's earlier Decision dated August 30, 2002 and Writ of Execution dated March 16, 2009. The Court of Appeals ruled that the NLRC's computation became final and executory after the lapse of ten (10) days from the parties' receipt thereof. The finality of this computation was not affected by the subsequent proceedings before the Court of Appeals and this Court. The delayed enforcement of the NLRC Decision dated August 30, 2002 was not only attributable to Lepanto but also to the employees who themselves appealed the case every step of the way up to the Supreme Court.

Petitioners' motion for reconsideration was denied through Resolution dated October 8, 2012.[19]

The Present Petition

Petitioners now seek affirmative relief, praying that **the computation of their backwages and separation pay be reckoned from the date they got illegally terminated until the finality of this Court's Decision in G.R. No. 163210; include the wage increases granted under the CBA** which took effect after they got illegally terminated; and impose twelve percent (12%) interest per annum on the total amount due until full payment.[20]

In its Comment,[21] Lepanto argues that the computation should be reckoned from the date of termination of employment until

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[18] Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Michael P. Elbinias, *id.* at 279-302.

[19] *Id.* at 341.

[20] *Id.* at 8-41.

[21] *Id.* at 348-360.

August 20, 2002 when the NLRC rendered its decision finding petitioners to have been illegally dismissed. Notably, the parties already agreed to settle the NLRC's original monetary judgment. In fact, petitioners had acknowledged receipt of ₱75,000.00 as advance payment of said monetary judgment. Lepanto also opposes the inclusion of the CBA wage increases in the computation as these increases took effect prior to petitioners' termination: and this relief was only sought for the first time during the execution stage.

Issue

What is the correct formula for computing the award of separation pay and backwages to petitioners?

Ruling

In ***CICM Mission Seminaries, et al. v. Perez***[22] citing ***Bani Rural Bank, Inc. v. De Guzman***,[23] the Court through the Second Division laid down the rule that the award of separation pay and backwages for illegally dismissed employees should be computed from the time they got illegally dismissed until the finality of the decision ordering payment of their separation pay, in lieu of reinstatement, thus:

> The reason for this was explained in Bani Rural Bank, Inc. v. De Guzman. **When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay because the employee is no longer entitled to any compensation from the**

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[22] 803 Phil. 596, 606-607 (2017).

[23] 721 Phil. 84, 103 (2013).

employer by reason of the severance of his employment. One cannot, therefore, attribute patent error on the part of the CA when it merely affirmed the NLRC's conclusion, which was clearly based on jurisprudence.

Plainly, it does not matter if the delay caused by an appeal was brought about by the employer or by the employee. The rule is, if the LA's decision, which granted separation pay in lieu of reinstatement, is appealed by any party, the employer-employee relationship subsists and until such time when decision becomes final and executory, the employee is entitled to all the monetary awards awarded by the LA.

In this case, respondent remained an employee of the petitioners pending her partial appeal. Her employment was only severed when this Court, in G.R. No. 200490, affirmed with finality the rulings of the CA and the labor tribunals declaring her right to separation pay instead of actual reinstatement. **Accordingly, she is entitled to have her backwages and separation pay computed until October 4, 2012, the date when the judgment of this Court became final and executory**, as certified by the Clerk of Court, per the Entry of Judgment in G.R. No. 200490.

The Court would not have expected the CA and the NLRC to rule contrary to the above pronouncements. If it were otherwise, all employees who are similarly situated will be forced to relinquish early on their fight for reinstatement, a remedy, which the law prefers over severance of employment relation. Furthermore, to favor the petitioners' position is nothing short of a derogation of the State's policy to protect the rights of workers and their welfare under Article II, Section 8 of the 1987 Constitution. (Emphasis supplied)

In accordance with ***CICM Mission Seminaries***, petitioners' backwages and separation pay here should, therefore, be computed from September 22, 2000 when they got illegally dismissed until November 25, 2008, when this Court's Decision dated August 13, 2008 became final and executory.

On what exactly these backwages ought to include, the Court's relevant rulings may be categorized into two (2):

The **first category** delves on the inclusion or non-inclusion in the award of salary increases and benefits which are contingent

on the fulfillment of certain conditions such as merit increase based on performance, company's fiscal position, or management's benevolent initiative. ***Paguio v. PLDT***[24] and ***Equitable Banking Corporation v. Sadac***,[25] fall within this category.

In both cases, the Court denied the inclusion of contingent salary increases in the computation of backwages. In ***Paguio***, the inclusion of 16% salary increase which the employee claimed to have been consistently receiving on account of his above average or outstanding performance was disallowed for being speculative. Too, ***Equitable, citing Paguio***, rejected the inclusion of the claimed annual general increases, the same being mere expectancies, thus:

> A demarcation line between salary increases and backwages was drawn by the Court in *Paguio v. Philippine Long Distance Telephone Co., Inc.*, where therein petitioner Paguio, on account of his illegal transfer sought backwages, including an amount equal to 16 percent (16%) of his monthly salary representing his salary increases during the period of his demotion, contending that he had been consistently granted salary increases because of his above average or outstanding performance. x x x
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> Applying *Paguio* to the case at bar, we are not prepared to accept that this degree of assuredness applies to respondent Sadac's salary increases. **There was no lawful decree or order supporting his claim, such that his salary increases can be made a component in the computation of backwages. What is evident is that salary increases are a mere expectancy.** They are, by its nature volatile and are dependent on numerous variables, including the company's fiscal situation and even the employee's future performance on the job, or the employee's continued stay in a position subject to management prerogative to transfer him to another position where his services are needed. **In short, there is no vested right to salary increases. That respondent Sadac may have received salary increases in the past only proves fact of receipt but does not**

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[24] 441 Phil. 679 (2002).

[25] 523 Phil. 781 (2006).

establish a degree of assuredness that is inherent in backwages. From the foregoing, the plain conclusion is that respondent Sadac's computation of his full backwages which includes his prospective salary increases cannot be permitted.[26] (Emphasis supplied)

On the other hand, the **second category** delves on guaranteed salary increases and benefits. Their grant is either mandated by law, standard company policy, or Collective Bargaining Agreement (CBA). To this category belong ***BPI Employees Union-Metro Manila and Zenaida Uy v. Bank of the Philippine Islands***,[27] ***Lim v. HMR Philippines, Inc.***,[28] ***United Coconut Chemicals, Inc. v. Valmores***,[29] ***Tangga-an v. Philippine Transmarine Carriers, Inc.***[30] and ***Ocean East Agency, Corporation v. Lopez***.[31] In these cases though, the Court had opposing dispositions.

In ***BPI Employees Union-Metro Manila and Zenaida Uy v. Bank of the Philippine Islands***,[32] the Court's First Division excluded the salary increases granted under the Collective Bargaining Agreement (CBA) which took effect after the employees got illegally dismissed and before the finality of the Court's finding of illegal dismissal. In these cases, the Court applied ***Equitable and Paguio***.

But just a few months later, through the Court's Second Division came out with a contrary ruling through ***Sarona v. NLRC***.[33] This time, the Court ordered the inclusion of salary increases and all other benefits and bonuses given to the employees who were not dismissed and which would have also

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[26] *Id.* at 818-819.

[27] 673 Phil. 599 (2011).

[28] 740 Phil. 353 (2014).

[29] 813 Phil. 685 (2017).

[30] 706 Phil. 339 (2013).

[31] 771 Phil. 179 (2015).

[32] Supra note 27.

[33] 679 Phil. 394, 422-423 (2012).

normally accrued to Sarona had he not been illegally dismissed. ***Sarona***, however, did not contain any qualification whether the grant of these salary increases, benefits, and bonuses was guaranteed or contingent, thus:

> x x x But if, as in this case, reinstatement is no longer possible, this Court has consistently ruled that backwages shall be computed from the time of illegal dismissal until the date the decision becomes final.
>
> In case separation pay is awarded and reinstatement is no longer feasible, backwages shall be computed from the time of illegal dismissal up to the finality of the decision should separation pay not be paid in the meantime. It is the employee's actual receipt of the full amount of his separation pay that will effectively terminate the employment of an illegally dismissed employee. Otherwise, the employer-employee relationship subsists and **the illegally dismissed employee is entitled to backwages, taking into account the increases and other benefits, including the 13th month pay, that were received by his co-employees who are not dismissed. It is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working**. (Emphasis supplied)

It turned out, however, that ***Sarona*** too was short lived. As in the case of ***BPI Employees Union — Metro Manila*** which ***Sarona*** overturned, the latter itself was also overturned just a few months after it got promulgated. The ***Court En Banc***, no less, abandoned ***Sarona*** *via* ***Gonzales v. Solid Cement Corporation***,[34] reverting to ***Equitable and BPI***.

As it was, ***Gonzales*** removed from the award salary increases and benefits that were not granted yet at the time of the employee's dismissal. Notably, ***Gonzales***, again, like ***Sarona*** was silent on whether the grant of these salary increases or benefits was guaranteed or contingent, thus:

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[34] 697 Phil. 619 (2012).

In the case of BPI Employees Union-Metro Manila and Zenaida Uy v. Bank of the Philippine Islands and Bank of the Philippine Islands v. BPI Employees Union-Metro Manila and Zenaida Uy, **the Court ruled that in computing backwages, salary increases from the time of dismissal until actual reinstatement, and benefits not yet granted at the time of dismissal are excluded**. Hence, we cannot fault the CA for finding that the NLRC committed grave abuse of discretion in awarding the salary differential amounting to ₱617,517.48 and the 13th month pay differentials amounting to ₱51,459.48 that accrued subsequent to Gonzales' dismissal.[35] (Emphasis supplied)

Then five (5) months later, *Tangga-an v. Philippine Transmarine Carriers, Inc.*[36] came about. There, the Court's Second Division, revived the rule that the award ought to include benefits which under the employment contract, were guaranteed and not contingent, *viz.*:

At this juncture, the courts, especially the CA, should be reminded to read and apply this Court's labor pronouncements with utmost care and caution, taking to mind that in the very heart of the judicial system, labor cases occupy a special place. More than the State guarantees of protection of labor and security of tenure, labor disputes involve the fundamental survival of the employees and their families, who depend upon the former for all the basic necessities in life.

Thus, petitioner must be awarded his salaries corresponding to the unexpired portion of his six-months employment contract, or equivalent to four months. **This includes all his corresponding monthly vacation leave pay and tonnage bonuses which are expressly provided and guaranteed in his employment contract as part of his *monthly* salary and benefit package. These benefits were guaranteed to be paid on a monthly basis, and were not made contingent.** In fact, their monetary equivalent was fixed under the contract: US$2,500.00 for vacation leave pay and US$700.00 for tonnage bonus each month. Thus, petitioner is entitled to back salaries of US$32,800 (or US$5,000 + US$2,500 + US$700 = US$8,200 x 4 months). "Article 279 of the Labor Code mandates that an employee's full backwages shall be inclusive of allowances

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[35] *Id.* at 638.

[36] Supra note 30, at 351-352.

and other benefits or their monetary equivalent." **As we have time and again held, "[i]t is the obligation of the employer to pay an illegally dismissed employee or worker the whole amount of the salaries or wages, plus all other benefits and bonuses and general increases, to which he would have been normally entitled had he not been dismissed and had not stopped working."** This well-defined principle has likewise been lost on the CA in the consideration of the case. (Emphasis supplied)

Still, in ***Lim v. HMR Philippines, Inc.***,[37] the Court's Third Division recognized that the company policy of granting a guaranteed 10% annual salary increase was already in place even before the employee got illegally dismissed. In fact, prior to his illegal dismissal, Lim had already been regularly receiving these guaranteed 10% annual salary increases. The Court, nonetheless, decreed that the award of backwages to the employee should not include those guaranteed 10% annual salary increases which took effect only after he was already illegally dismissed. In the main, the Court followed ***Equitable***.

In ***Ocean East Agency, Corporation v. Lopez***,[38] the Court's Third Division reverted to ***Tangga-an v. Philippine Transmarine Carriers, Inc.***, upholding the award of backwages to an illegally dismissed employee, inclusive of benefits, bonuses, and general increases which he would have normally received if he were not illegally terminated, *viz.*:

Settled is the rule that an employee who was illegally dismissed from work is entitled to reinstatement without loss of seniority rights, and other privileges, as well as to full backwages, inclusive of allowances, and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Since reinstatement is no longer feasible as Lopez' former position no longer exists, his backwages shall be computed from the time of illegal dismissal up to the finality of the decision. **Backwages include the whole amount of salaries plus all other benefits and bonuses and general increases**

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[37] Supra note 28.

[38] Supra note 31, at 197.

to which he would have been normally entitled had he not been illegally dismissed, such as the legally mandated Emergency Cost of Living Allowance (ECOLA) and thirteenth (13th) month pay, and the meal and transportation allowances prayed for by Lopez. (Emphasis supplied)

But then again, in ***United Coconut Chemicals, Inc. v. Valmores***,[39] the same Third Division decreed that the award of backwages to an illegally dismissed employee should only correspond to the basic salary, inclusive of allowances and benefits actually received at the time of illegal dismissal, *viz.*:

The base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. The amount does not include the increases or benefits granted during the period of his dismissal because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement. Hence, the respondent should only receive backwages that included the amounts being received by him at the time of his illegal dismissal but not the benefits granted to his co-employees after his dismissal.

x x x x x x x x x

CBA allowances and benefits that the respondent was regularly receiving before his illegal dismissal on February 22, 1996 should be added to the base figure of ₱11,194.00. **This is because Article 279 of the Labor Code decrees that the backwages shall be "inclusive of allowances, and to his other benefits or their monetary equivalent." Considering that the law does not distinguish between the benefits granted by the employer and those granted under the CBA, he should not be denied the latter benefits.** (Emphasis supplied)

In the same case, the Court explained that this salary rate ought to exclude CBA allowances and benefits that were received by the workforce only after employee Valmores was already illegally dismissed. For these allowances and benefits, according to the Court, were not automatically given to a worker as the grant thereof was subject to certain conditions.

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[39] Supra note 29, at 698-699.

In the later case of ***Fernandez v. Meralco***,[40] the Court's Second Division one more time ruled differently. There, the Court ordained that the award "shall include the whole amount of salaries, plus all other benefits and bonuses, and general increases pertaining to CBA salary increase, to which Fernandez would have been normally entitled had he not been illegally dismissed."

But the swing has not stopped moving back and forth. Through the Court's Second Division, in ***Coca Cola Bottlers Philippines v. Magno Jr.***,[41] applied anew the doctrine in ***United Coconut Chemicals***, thus:

> Components of Magno's and Ocampo's
> Accrued Backwages
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> The third paragraph of Article 229 of the Labor Code provides: "In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein."
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> Article 294 of the Labor Code further provides: "x x x An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."
>
> Our jurisprudence has been consistent as to what should constitute accrued backwages. In Paramount Vinyl Products Corp. v. NLRC, we ruled that "the base figure to be used in the computation of backwages due to the employee should include not just the basic salary, but also the regular allowances that he had been receiving, such as the emergency living allowances and the 13th month pay mandated under the law." In United Coconut Chemicals, Inc. v.

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[40] G.R. No. 226002, June 25, 2018.

[41] G.R. No. 212520, July 3, 2019.

Valmores, we ruled that "[t]he base figure to be used in reckoning full backwages is the salary rate of the employee at the time of his dismissal. **The amount does not include the increases or benefits granted during the period of his dismissal because time stood still for him at the precise moment of his termination, and move forward only upon his reinstatement." Entitlement to such benefits must be proved by submission of proof of having received the same at the time of the illegal dismissal. Increases are thus excluded from backwages.**

Subject to submission of proof of receipt of benefits at the time of their dismissal, Magno's and Ocampo's accrued backwages should include their basic salary as well as the allowances and benefits that they have been receiving at the time of their dismissal. In accordance with the claims previously put forward by Magno and Ocampo, accrued backwages may include, but are not limited to, allowances and benefits such as transportation benefits, cellphone allowance, 13th month pay, sick leave, and vacation leave in the amounts at the time of their dismissal. **Magno and Ocampo should also prove that they have been receiving the amounts that correspond to merit or salary increases, incentive pay, and medicine at the time of their dismissal so that they may validly qualify for receipt of such as part of their accrued backwages**. (Emphasis supplied)

Given the Court's repetitive self-contradictions in the award of backwages or separation pay owing to illegally dismissed employees and the consequent instability they have caused to our labor law jurisprudence, **the time has come to settle these contradictions, once and for all**.

We keenly note that there is **no provision** in the ***Labor Code*** which mandates the exclusion of salary increases and benefits accruing to the dismissed employee. Article 279 (now Art. 292) in fact grants illegally dismissed employees the right to full **backwages**, inclusive of **allowances**, and other **benefits or their monetary equivalent computed from the time their compensation was withheld up to the time of their actual reinstatement**, thus:

Art. 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is

unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

When the law does not distinguish, we should not distinguish.

As in ***Tangga-an v. Philippine Transmarine Carriers, Inc., Ocean East Agency, Corporation v. Lopez*** *and* ***Fernandez v. Meralco***, salary increases and benefits here are either fixed or granted under the collective bargaining agreement. These increases are guaranteed to be given to the employees concerned had they not been illegally dismissed.

They should be distinguished from those whose grant depends on contingency or variables, such as an employee's merit increase based on performance or longevity or the company's financial status.

As aptly pointed out in the **Concurring Opinion of Justice Caguioa**, merit increases which are dependent on one's performance or management prerogative are excluded for they necessarily require the actual performance to gauge whether the employee accomplished the standard required prior to grant of such increases. Thus, the Court in ***Paguio*** denied the claim of 16% salary increase which the employee claimed to have been consistently receiving on account of his above average or outstanding performance to be speculative. The same conclusion was reached in ***Equitable***. When the basis of salary increase is past excellent performance, the same cannot be an assured benefit since the grant of merit increase is dependent on the level and quality of performance which may differ in the next evaluation period.

Still in ***Paguio***, the Court's Second Division explained the *ratio* for the award of backwages:

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal

from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. **The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment**.[42] (Emphasis supplied)

But in ***Equitable***, the Court's First Division categorically declared that salary increases were not allowances or benefits within the definition of Article 279 of the Labor Code, as amended by Republic Act No. 6715 (RA 6715), thus:

Attention must be called to Article 279 of the *Labor Code of the Philippines*, as amended by Section 34 of Rep. Act No. 6715. The law provides as follows:

ART. 279. *Security of Tenure*. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges *and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement*.

Article 279 mandates that an employee's full backwages shall be inclusive of *allowances* and *other benefits* or their monetary equivalent. **Contrary to the ruling of the Court of Appeals, we do not see that a salary increase can be interpreted as either an *allowance* or a *benefit*. Salary increases are not akin to allowances or benefits, and cannot be confused with either.** The term "allowances" is sometimes used synonymously with "emoluments," as indirect or contingent remuneration, which may or may not be earned, but which is sometimes in the nature of compensation, and sometimes in the nature of reimbursement. Allowances and benefits are granted to the employee apart or separate from, and in addition to the wage or salary. **In contrast, salary increases are amounts which are added to the employee's salary as an increment thereto for varied reasons**

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[42] Supra note 24, at 690-691.

deemed appropriate by the employer. Salary increases are not separate grants by themselves but once granted, they are deemed part of the employee's salary. To extend the coverage of an allowance or a benefit to include salary increases would be to strain both the imagination of the Court and the language of law. As aptly observed by the NLRC, "to otherwise give the meaning other than what the law speaks for by itself, will open the floodgates to various interpretations." **Indeed, if the intent were to include salary increases as basis in the computation of backwages, the same should have been explicitly stated in the same manner that the law used clear and unambiguous terms in expressly providing for the inclusion of *allowances* and *other benefits*.**[43]

The constricted interpretation of the Court in ***Equitable*** that a salary increase cannot be interpreted as either an allowance or a benefit because it is a mere increment to salary is devoid of any legal basis. Amounts given over and above the base pay are either allowances or benefits, which necessarily include salary increases the grant of which may be fixed or conditional. We are not saying though that all salary increases should be included in the award of backwages; but only those guaranteed or assured which the employees would have been entitled to had they not been illegally dismissed.

We recall that the **overarching purpose** of the relief granted by law to illegally dismissed employees is to make the latter **whole again**. Surely, the Court is united in ensuring that illegally dismissed employees are **whole again** by awarding them the benefits of a collective bargaining agreement to which they **would have been entitled *if not for the illegal termination of their employment***. The ruling that the employees' illegal dismissal literally allowed time to stand still for them because of their loss of employment and the resulting uncertainties from such an unfortunate event, **does not sanction additionally punishing** them for an act they have not been responsible for. They in fact **must be accorded justice and relief**.

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[43] Supra note 25, at 810-811.

It is **simply unjust** and **contrary to** the overarching purpose of making illegally dismissed employees **whole again** to deduct from their accrued backwages the increases in the compensation that they would have received ***if not for their illegal dismissal***.

Verily, the Court now ordains the uniform rule that the award of backwages and/or separation pay due to illegally dismissed employees shall include all salary increases and benefits granted under the law and other government issuances, Collective Bargaining Agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed. On the other hand, salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award.

This ruling is consistent with the Constitutional command that the State shall afford full protection to labor, *viz.*:

> Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. (Article XII)

and the edict under Article 3, Chapter I of the New Labor Code, thus:

> Art. 3. Declaration of Basic Policy. — The State shall afford protection to labor, promote full employment, ensure equal work opportunities regardless of sex, race or creed and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work.

Most important, it conforms with the purpose to restore an illegally dismissed employees to the same status as if their employment was not illegally severed by allowing them to continuously enjoy the salary, benefits, and allowances they were assured to receive during the term of their employment.

As a point of clarification, we are **not disturbing the final and executory decisions** here as we are dealing **only** with their **execution**. We are concerned merely with the **mathematical computation** of **what petitioners are entitled to** as a **result of the final and executory decisions** in question.

In accordance with ***Nacar v. Gallery Frames***,[44] the legal rate of interest of twelve percent (12%) *per annum* shall be computed on the total monetary award from November 25, 2008 to June 30, 2013 and six percent (6%) per annum from July 1, 2013 until their full satisfaction.

Finally, on Lepanto's claim that the parties had already agreed on the sum of ₱897,412.95 as the total obligation of Lepanto, the NLRC actually rejected this so-called settlement because the same was not even submitted to the NLRC for approval.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated September 28, 2011 and Resolution dated October 8, 2012 of the Court of Appeals in CA-G.R. SP No. 113423 are **REVERSED** and **SET ASIDE**.

Respondent Lepanto Consolidated Mining Company is **ORDERED** to **PAY** petitioners Moreno Dumapis, Francisco Liagao and Elmo Tundagui backwages and separation pay based on petitioners' salary rates at the time of their termination, **inclusive of guaranteed salary increases and other benefits and bonuses which** petitioners were entitled to receive under the law and other government issuances, collective bargaining agreements, employment contracts, established company policies and practices, and analogous sources had they not been illegally dismissed.

The award shall be computed from September 22, 2000, when they were illegally dismissed up to November 25, 2008, when this Court's Decision dated August 13, 2008 in G.R. No. 163210 became final and executory. The amount of ₱75,000.00 which petitioners had already received shall be deducted from the total amount due them.

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[44] 716 Phil. 267 (2013).

It is understood that the award shall exclude salary increases and other benefits or bonuses which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status.

Further, respondent Lepanto Consolidated Mining Company is **ORDERED** to **PAY** petitioners Moreno Dumapis, Francisco Liagao and Elmo Tundagui legal interest of twelve percent (12%) *per annum* from November 25, 2008 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 on the total monetary award until fully paid.

The labor arbiter is directed to issue and cause the implementation of the writ of execution in accordance with this decision, with utmost dispatch.

SO ORDERED.

Peralta, C.J. (Chairperson), Perlas-Bernabe, Leonen, Gesmundo, Reyes, Jr., Hernando, Carandang, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Caguioa, J., see concurring opinion.

Baltazar-Padilla, J., on leave.

CONCURRING OPINION

CAGUIOA, ***J.*:**

I concur with the *ponencia* to grant the Petition. The amount of backwages and separation pay awarded in cases of illegal dismissal should include the salary increases which the employee would have received had he not been illegally dismissed. However, the increases should be limited only to mandatory and unconditional increases such as those mandated under a collective bargaining agreement (CBA), established company policy and practice, and government mandated wage increases. Increases based on merit or contingency should not be included.

Article 294 of the Labor Code[1] provides that an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his **full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent** computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

Backwages are awarded as remuneration for the employee's lost income from the erring employer due to illegal dismissal. Applying the established doctrine enunciated in Article 4 of the Labor Code, that labor laws shall be constructed in favor of labor, I believe that the phrase "full backwages" in Article 294 should be interpreted to include guaranteed salary increases.

The inclusion of increases in backwages has jurisprudential basis. In *Fernandez, Jr. v. Manila Electric Company (MERALCO)*,[2] the Supreme Court upheld the decision of the Court of Appeals (CA) that Lino A. Fernandez, Jr. (Fernandez) was illegally dismissed. In the execution proceedings before the Labor Arbiter (LA), one of the issues was whether Fernandez was entitled to additional backwages consisting of CBA salary increases implemented after his dismissal. The LA ruled in favor of Fernandez and granted him the CBA salary increases. Both parties filed petitions questioning the writ of execution which were dismissed on procedural grounds. The case eventually reached the Supreme Court.

The Court held that the National Labor Relations Commission Rules of Procedure must be liberally applied to prevent injustice and grave irreparable injury to an illegally dismissed employee and remanded the case to the LA. Without prejudice to the findings of the labor tribunals, the Court discussed the relevant laws and jurisprudence applicable to the case for the guidance of the labor tribunals, the Court noted:

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[1] Department of Labor and Employment, Department Advisory No. 01, Series of 2015, entitled "RENUMBERING OF LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[2] G.R. No. 226002, June 25, 2018, 868 SCRA 156.

Backwages shall include the whole amount of salaries, plus all other benefits and bonuses, and **general increases**, to which Fernandez would have been normally entitled had he not been illegally dismissed.[3] (Emphasis supplied)

In *Paguio v. Philippine Long Distance Telephone Co., Inc.*,[4] *(Paguio)* the Court explained the *ratio* for the award of backwages:

In several cases, the Court had the opportunity to elucidate on the reason for the grant of backwages. Backwages are granted on grounds of equity to workers for earnings lost due to their illegal dismissal from work. They are a reparation for the illegal dismissal of an employee based on earnings which the employee would have obtained, either by virtue of a lawful decree or order, as in the case of a wage increase under a wage order, or by rightful expectation, as in the case of one's salary or wage. **The outstanding feature of backwages is thus the degree of assuredness to an employee that he would have had them as earnings had he not been illegally terminated from his employment.**[5] (Emphasis supplied)

However, in *Paguio*, the employee's claim for inclusion of salary increases was denied. The Court ruled that he was not able to prove entitlement to them as he anchored his claim on previous grants of increases based on consistent evaluations of good performance. **In contrast to the present case, the employees' entitlement to salary increases has clear and concrete basis under the CBA and is not merely an expectation based on merit or contingency**.

I hasten to add that the computation of the backwages based on the increased salary should be reckoned only from the time the increase was implemented, *i.e.*, from the time the employee would have been entitled thereto. Thus, the employee must not only prove his entitlement to the salary increases but also the applicable periods therefor. I agree however, that the computation

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[3] Id. at 171.

[4] G.R. No. 154072, December 3, 2002, 393 SCRA 379.

[5] Id. at 386-387.

should be reckoned only until the finality of the Court's Decision in G.R. No. 163210,[6] in which the Court affirmed the CA Decision finding that herein petitioners were illegally dismissed.

I also agree that the separation pay awarded in lieu of reinstatement should include salary increases. Separation pay is generally granted when the cause for termination is not due to the employee's fault or wrongdoing, such as when the employment relationship is terminated due to authorized causes including installation of labor-saving devices, redundancy, retrenchment, and disease under Articles 298[7] and 299[8] of the Labor Code.

There is no provision in the Labor Code which specifically grants separation pay to an illegally dismissed employee; Article 294

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[6] *Lepanto Consolidated Mining Company v. Dumapis*, August 13, 2008, 562 SCRA 103.

[7] ART. 298. [283] **Closure of Establishment and Reduction of Personnel.** — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[8] ART. 299. [284] **Disease as Ground for Termination**. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (½) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

only mentions reinstatement and backwages. However, jurisprudence has settled that when reinstatement is no longer practicable or feasible, separation pay may be exceptionally awarded as an alternative. Separation pay is different from backwages although the two can be awarded together.

In *Wenphil Corporation v. Abing*[9] the Court distinguished between backwages and separation pay:

> We emphasize that the basis for the payment of backwages is different from that of the award of separation pay. ***Separation pay*** is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. ***Backwages*** represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing separation pay is usually the length of the employee's past service, while that for backwages is the actual period when the employee was unlawfully prevented from working.[10] (Emphasis in the original)

The computation of separation pay in case of illegal dismissal is patterned after the computation in Article 298 for separation pay due to redundancy which is computed at one-month salary for every year of service.

In payment of separation pay due to redundancy, the basis for the amount is the salary of the employee, including regular allowances, that he had been receiving at the time of dismissal. Salary increases are not considered because the employer-employee relationship is severed upon the implementation of a valid redundancy.

However, in the grant of separation pay due to a finding of illegal dismissal where reinstatement is no longer feasible, the employer-employee relationship is severed only upon the finality of the Court's decision holding that the employee was illegally dismissed.[11] Thus, the basis for the separation pay should be

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[9] G.R. No. 207983, April 7, 2014, 721 SCRA 126.

[10] Id. at 141.

[11] When there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of

the employee's salary at the end of the imputed service. In *Masagana Concrete Products v. NLRC*,[12] the Court held:

> x x x Separation pay, equivalent to one month's salary for every year of service, is awarded as an alternative to reinstatement when the latter is no longer an option. Separation pay is computed from the commencement of employment up to the time of termination, **including the imputed service for which the employee is entitled to backwages, with the salary rate prevailing at the end of the period of putative service being the basis for computation**.[13] (Emphasis supplied)

Hence, herein petitioners-employees are entitled to their backwages and separation pay including the mandatory salary increases guaranteed and established under the CBA. I join in the *ponencia* that the Court abandon the rulings which exclude increases from the computation of backwages and separation and adopt a more pro-labor stance, provided that the employees are able to sufficiently prove their entitlement to the increases under a CBA, established company policy, or government wage order.

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a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other. Hence, backwages no longer accumulate upon the finality of the decision ordering the payment of separation pay since the employee is no longer entitled to any compensation from the employer by reason of the severance of his employment. *Bani Rural Bank, Inc. v. De Guzman*, G.R. No. 170904, November 13, 2013, 709 SCRA 330, 351-352.

[12] G.R. No. 106916, September 3, 1999, 313 SCRA 576.

[13] Id. at 596.

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[G.R. No. 239168. September 15, 2020]

ALFREDO J. NON, GLORIA VICTORIA C. YAP-TARUC, JOSEFINA PATRICIA A. MAGPALE-ASIRIT AND GERONIMO D. STA. ANA, *Petitioners*, *v.* **OFFICE OF THE OMBUDSMAN and ALYANSA PARA SA BAGONG PILIPINAS, INC.**, *Respondents*.

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; CRIMINAL COMPLAINTS AGAINST PUBLIC OFFICIALS AND GOVERNMENT EMPLOYEES; PRINCIPLE OF NON-INTERFERENCE IN THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE. — Both the Constitution and the Ombudsman Act of 1989 give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Thus, the consistent policy of the Court has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause. As this Court is not a trier of facts, we give due deference to the sound judgment of the Ombudsman.

Such policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well. Otherwise, a deluge of petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts.

2. ID.; ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE COURT MAY REVIEW THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE IN A PETITION FOR *CERTIORARI* ON THE GROUND OF GRAVE ABUSE OF DISCRETION. — Nevertheless, the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion. While as a rule, the determination of probable cause for the filing of information lies with the

public prosecutors, it is equally settled that the aggrieved person charged for an offense, has the present recourse, a petition for *certiorari* under Rule 65 of the Rules of Court, to challenge the finding of probable cause on the ground of grave abuse of discretion. Whenever there are allegations of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE FAILURE TO TAKE ESSENTIAL FACTS INTO CONSIDERATION CONSTITUTES GRAVE ABUSE OF DISCRETION. — "There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by law." When the Ombudsman does not take essential facts into consideration in the determination of probable cause, we have ruled that such constitutes grave abuse of discretion.

4. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE GENERAL RULE OF NON-INTERFERENCE; CASE AT BAR. — Cases have enumerated the exceptions to the general rule of non-interference. These are:

1. **When necessary to afford adequate protection to the constitutional rights of the accused;**
2. **When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;**
3. When there is a prejudicial question which is *sub judice*;
4. When the acts of the officer are without or in excess of authority;
5. Where the prosecution is under an invalid law, ordinance or regulation;
6. When double jeopardy is clearly apparent;
7. Where the court has no jurisdiction over the offense;

8. Where it is a case of persecution rather than prosecution;

9. Where the charges are manifestly false and motivated by the lust for vengeance;

10. **When there is clearly no *prima facie* case against the accused and motion to quash on that ground has been denied.**

A review of the attendant circumstances shows that the present case falls under the exception.

5. ID.; ID.; ID.; ID.; PROBABLE CAUSE; TO DETERMINE THAT THE SUSPECT IS PROBABLY GUILTY OF THE OFFENSE CHARGED, THE ELEMENTS THEREOF SHOULD BE PRESENT. — The Ombudsman found probable cause to indict herein petitioners for violation of Section 3(e) of R.A. No. 3019. We know that probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof.

It should also be stressed, however, that to determine if the suspect is probably guilty of the offense, the elements of the crime charged should, in all reasonable likelihood, be present. This is based in the principle that every crime is defined by its elements, without which, there should be, at most, no criminal offense.

6. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019); MODES BY WHICH SECTION 3(e) THEREOF MAY BE COMMITTED; PARTIALITY, BAD FAITH, AND GROSS NEGLIGENCE, DEFINED. — There are three modes by which Section 3(e) of R.A. No. 3019 may be committed by a public officer: through manifest partiality, evident bad faith, or through gross inexcusable negligence.

"Partiality" connotes bias which excites a disposition to see and report matters as they are wished for rather than as they are. "Bad faith" meanwhile does not simply connote bad judgment or negligence. It imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive, or intent, or ill will, and partakes of the nature of a fraud. Finally, "gross negligence"

refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is that omission of care which even inattentive and thoughtless men never fail to take on their own property.

7. ID.; ID.; ID.; ID.; THE ISSUANCE OF RESOLUTION NO. 1-2016 IN THE CASE AT BAR, THOUGH WRONGFUL, SHOULD NOT BE AUTOMATICALLY DEEMED AS CRIMINAL IN THE ABSENCE OF PROOF OF MANIFEST PARTIALITY AND EVIDENT BAD FAITH. — It is clear therefore that the Ombudman's finding of probable cause rests on the supposition that petitioners violated R.A. No. 3019 with the issuance of ERC Resolution No. 1-2016, which suspended the implementation of the CSP requirement. . . . Stated differently, the premise is that since MERALCO benefited from Resolution No. 1-2016, then the subject resolution was, from the start, meant only to give an undue advantage to MERALCO, that is tantamount to a crime.

. . .

The presence of . . . other stakeholders with their respective concerns, weaken the reasoning that petitioners acted with manifest partiality or evident bad faith that is tantamount to a finding of probable cause. Indeed, Resolution No. 1-2016 was available to all industry players and electric cooperatives alike, not just to MERALCO.

. . .

We note that in G.R. No. 227670, the Court, through the *ponencia* of Justice Carpio, declared that the issuance of Resolution No. 1-2016 was attended with grave abuse of discretion. It should be stressed, however, that said case centered on the constitutionality of Resolution No. 1-2016. Even though wrongful, the error of the concerned Commissioners in issuing Resolution No. 1-2016 should not be automatically deemed as criminal.

8. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; REMEDIAL LAW; CRIMINAL PROCEDURE; CRIMINAL COMPLAINTS AGAINST PUBLIC OFFICIALS AND GOVERNMENT EMPLOYEES; DETERMINATION OF PROBABLE CAUSE; A CASE

ALREADY FILED IN COURT MAY BE ORDERED DISMISSED BY THE SUPREME COURT FOR WANT OF PROBABLE CAUSE. — Having determined, however, that the Ombudsman committed grave abuse of discretion in issuing the 29 September 2017 Resolution and 20 April 2018 Order which led to the filing of the Information with the trial court, we cannot subscribe to the proposition of our respected colleagues that we should refrain from resolving the instant petition on the ground that the trial court already acquired exclusive jurisdiction over the criminal case.

We have not hesitated in ordering the dismissal of a case already filed in court for want of probable cause. . . .

. . .

Indeed, in the few occasions when there is evident misapprehension of facts, we set aside the policy of non-interference and step in armed with our power of review. When at the outset the evidence cannot sustain a *prima facie* case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.

While it is the function of the Ombudsman to determine whether petitioners should be subjected to the expense, rigors and embarrassment of trial, the Ombudsman cannot do so arbitrarily. The seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares him of the expense, rigors and embarrassment of trial, but also prevents needless waste of the court's time and saves the precious resources of the government.

PERLAS-BERNABE*, J., concurring opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; GRAVE ABUSE OF DISCRETION IN THE DETERMINATION OF PROBABLE CAUSE FOR THE FILING OF CRIMINAL CHARGES. — In the context of filing criminal charges, grave abuse of discretion exists in cases where the determination of probable cause is exercised in an arbitrary and despotic manner. There is probable cause "when

the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof." "In order to engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense."

2. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019); VIOLATION UNDER SECTION 3(e); MANIFEST PARTIALITY; EVIDENT BAD FAITH; INEXCUSABLE NEGLIGENCE. —** One of the essential elements to hold a person criminally liable under Section 3 (e) of Republic Act No. (RA) 3019 is the presence of manifest partiality, evident bad faith, or inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. Meanwhile, "gross negligence" is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.

3. **ID.; ID.; ID.; ID.; GOOD FAITH NEGATES THE EXISTENCE OF PROBABLE CAUSE ANENT THE ELEMENT OF MANIFEST PARTIALITY OR EVIDENT BAD FAITH; CASE AT BAR. —** [W]hat the records show is that the ERC temporarily deferred the implementation of the CSP in order to ensure that there were suitable guidelines for its execution in light of the concerns raised by the power industry's various stakeholders. In fact, the ERC was actually forthright in mentioning these concerns in the whereas clauses of Resolution No. 1, s. 2016: . . .

. . .

To my mind, absent any other circumstance showing that some illicit interest was involved in the issuance of Resolution No. 1, s. 2016, the foregoing concerns of the various stakeholders of the power industry evince the good faith of petitioners and in turn, negate the existence of probable cause anent the element of manifest partiality or evident bad faith on their part.

4. ID.; ID.; ID.; GROSS INEXCUSABLE NEGLIGENCE; MISTAKE UPON A DOUBTFUL OR DIFFICULT QUESTION OF LAW MAY PROPERLY BE THE BASIS OF GOOD FAITH; CASE AT BAR. — Neither can it be said that the said resolution was issued with gross inexcusable negligence since, as may be seen from the varied opinions in G.R. No. 227670, captioned as *Alyansa Para Sa Bagong Pilipinas, Inc. (ABP) v. ERC*, the matter regarding the propriety of extending the CSP requirement did not involve simple questions of law; hence, their eventual mistake in extending the CSP may be said to have been done in good faith. Jurisprudence states that a "[m]istake upon a doubtful or difficult question of law may properly be the basis of good faith," as in petitioners' mistaken extension of the CSP requirement, *especially when considered with the fact that they were only prompted to suspend the implementation of the CSP in light of the pressing and legitimate queries coming from the various stakeholders in the power industry*.

5. ID.; ID.; ID.; THE EVENTUAL ILLEGALITY OF AN ACT DOES NOT AUTOMATICALLY EQUATE TO A FINDING OF PROBABLE CAUSE; CASE AT BAR. — At this juncture, I find it apt to clarify that the eventual illegality of Resolution No. 1, s. 2016, as pronounced in the *ponencia* of retired Senior Associate Justice Antonio T. Carpio in G.R. No. 227670, does not — as it should not — automatically equate to a finding that there exists probable cause to hold those responsible for the void issuance criminally liable under Section 3 (e) of RA 3019.

Clearly, a case to determine whether or not a particular government issuance is void for having been issued with grave abuse of discretion is different from a case to determine whether or not probable cause exists to prosecute a government official for violation of RA 3019. Not only are their purposes different,

the legal parameters which the Court utilizes in these types of cases substantially vary. As earlier intimated, the determination of probable cause rises and falls on the ostensible presence of the imputed crime's elements. Thus, since the Ombudsman's finding of probable cause fails to adequately demonstrate the element of manifest partiality, evident bad faith, or gross inexcusable negligence — which is integral to the charge of Section 3(e), RA 3019 — the said finding was tainted with grave abuse of discretion. . . .

LEONEN, *J., separate opinion*:

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORY POWERS; POLICY OF NON-INTERFERENCE WITH ITS PROSECUTORIAL DISCRETION; RATIONALE BEHIND THE POLICY. — The Constitution grants the Office of the Ombudsman a wide latitude to act on criminal complaints against government officers and employees. Republic Act No. 6770, or the Ombudsman Act of 1989, was enacted as a statutory reinforcement of its mandate as the protectors of the people. The Office of the Ombudsman is an independent constitutional body "beholden to no one," and "acts as the champion of the people and the preserver of the integrity of the public service." Giving "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[,]" this Court has adopted, as a general rule, a policy of non-interference with its prosecutorial discretion.

Another reason for this Court's policy of non-interference is that the determination of probable cause is highly factual in nature. It requires the examination of the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."

2. ID.; ID.; ID.; ID.; DEFERENCE TO THE FACTUAL FINDINGS OF PROSECUTORIAL BODIES SERVE A PRACTICAL PURPOSE. — Deference to the factual findings of prosecutorial bodies also serves a practical purpose:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.

3. ID.; ID.; ID.; ID.; THE POLICY OF NON-INTERFERENCE ADMITS OF AN EXCEPTION, THAT IS, WHEN THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE WAS ARRIVED AT WITH GRAVE ABUSE OF DISCRETION. — This policy of non-interference, however, is a general rule. This Court will *generally* defer to the Office of the Ombudsman's finding of probable cause, *except when the findings were arrived at with grave abuse of discretion*. Conversely, mere errors of judgment are not sufficient. A petitioner must show that the Office of the Ombudsman acted in an "arbitrary and despotic manner because of passion or personal hostility."

4. ID.; ID.; ID.; REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; ANY ERROR IN THE FINDING OF PROBABLE CAUSE REQUIRES THE REVIEW OF EVIDENCE, WHICH IS USUALLY DONE DURING TRIAL. — Here, the Office of the Ombudsman's assailed Resolution does not indicate any capricious or arbitrary exercise of power, and nor does it show a virtual refusal to perform a duty. On the contrary, its findings appear to have been arrived at objectively, with due regard to the evidence on hand: . . .

These findings are evidentiary. Any error requires the review of evidence, something that is usually done during trial. In *Drilon v. Court of Appeals*:

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a

well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; JURISDICTION; HIERARCHY OF COURTS; THE JURISDICTION OF THE SUPREME COURT TO DETERMINE GRAVE ABUSE OF DISCRETION ON FINDINGS OF PROBABLE CAUSE IS CONCURRENT WITH OTHER COURTS. — This Court does not have the exclusive jurisdiction to determine grave abuse of discretion on findings of probable cause. This jurisdiction, by reason of judicial efficiency and the doctrine of hierarchy of courts, is concurrent with other courts. *People v. Cuaresma* explains:

> This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, *mandamus, quo warranto, habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that

petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard – resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" – was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court's corresponding jurisdiction, would have had to be filed with it.

6. ID.; ID.; ID.; DISTINCTION BETWEEN SPECIAL CIVIL ACTIONS FILED UNDER RULE 65 OF THE RULES OF COURT AND THOSE WHICH INVOKE THE COURT'S POWER OF JUDICIAL REVIEW UNDER THE CONSTITUTION. — We must be careful to distinguish between special civil actions filed under Rule 65 of the Rules of Court and those special civil actions which invoke this Court's power of judicial review under Article VIII, Section 1 of the Constitution. These are two different remedies.

A petition under Rule 65 is limited only to the review of judicial and quasi-judicial acts. Meanwhile, the action under Article VIII, Section 1 – the one that Justice Caguioa cites– involves constitutional questions and generally refers to another constitutional organ's actions. It requires *prima facie* showing that a government branch or instrumentality has gravely abused its discretion. This Court, by its constitutional power to relax its own rules of procedure and by reason of efficiency, allowed Rule 65 to be used in petitions that invoke this expanded jurisdiction.

> This Court is not a trier of facts. Its finding of grave abuse of discretion made in its original jurisdiction should only be in cases where the materials facts are not contested. This is antithetical to the inherently factual nature of determining probable cause. . . .

7. ID.; ID.; ID.; HIERARCHY OF COURTS; ACTIONS UNDER RULE 65 QUESTIONING THE FINDINGS OF PROBABLE CAUSE MAY STILL BE PROPERLY FILED BEFORE THE TRIAL COURTS. — Where the trial court has found probable cause to issue a warrant of arrest and has arraigned the accused, any question as to the propriety of the trial court's acts should be addressed to its sound discretion. Owing to the trial court's concurrent jurisdiction, actions under Rule 65 may still be properly filed before the trial courts, which may have better competence than this Court to address the factual issues. These questions can likewise be properly raised as defenses before the trial court that arraigned the accused. "[T]he trial court must consider that trial is always available after arraignment and is a forum for the accused as much as it is for the prosecution to carefully examine the merits of the case."

8. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; THE FINDINGS OF PROBABLE CAUSE DOES NOT REQUIRE ABSOLUTE CERTAINTY. — In any case, the finding of probable cause does not require a finding of guilt beyond reasonable doubt. It merely requires:

> . . . the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.

9. ID.; ID.; ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; A REVIEW OF A FINDING OF PROBABLE CAUSE REQUIRES A SHOWING OF GRAVE ABUSE OF

DISCRETION AND THAT "THERE IS NO APPEAL OR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW." — Considering that probable cause merely requires a probability of guilt, and not the absolute certainty of it, a review of its determination requires no less than a showing of grave abuse of discretion. This is usually done through a petition for certiorari under Rule 65 of the Rules of Court. Parties are always too quick to assume that their petitions will be entertained once they state the litany of acts alleged to be grave abuse of discretion. These parties forget that before delving into the substantial requirements of the petition, they must first prove that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law[.]"

Once probable cause has been judicially determined, any petition that questions the executive determination of probable cause ceases to be the plain, speedy, and adequate remedy available to the parties.

10. ID.; ID.; ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; STAGES IN THE DETERMINATION OF PROBABLE CAUSE; EXECUTIVE DETERMINATION AND JUDICIAL DETERMINATION. — It is settled that there are two stages in the determination of probable cause: first, an executive determination, done by the prosecutor in a preliminary investigation; and second, a judicial determination.

The statutory basis for the executive determination of probable cause is found in the Rules of Court, Republic Act No. 6770, and various issuances by the Department of Justice. Meanwhile, the judicial determination of probable cause is guided by the Bill of Rights of the Constitution: . . . .

11. ID.; ID.; ID.; ID.; ID.; ID.; DISTINCTION BETWEEN THE PROSECUTOR'S AND THE TRIAL COURT'S FINDING OF PROBABLE CAUSE. — Although they may rely on the same evidence and case records, the prosecutor's finding of probable cause is not the same as the trial court's finding of probable cause. *People v. Castillo* explains:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during

> preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.

12. ID.; ID.; ID.; ID.; ID.; ID.; ONCE AN INFORMATION HAS BEEN FILED IN COURT, ANY QUESTION ON THE FINDING OF PROBABLE CAUSE MUST BE ADDRESSED TO THE COURT'S SOUND DISCRETION. — If the prosecutor finds probable cause, an information is filed in court. Once the information has been filed, the court acquires full jurisdiction over the case. Any question on the finding of probable cause, therefore, must be addressed to its sound discretion. . . .

> . . . Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused

or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.

13. ID.; ID.; REMEDIES AVAILABLE TO ACCUSED AFTER AN INFORMATION IS FILED, BUT PRIOR TO ARRAIGNMENT. — Even after the information is filed, a slew of other remedies is still available to the accused prior to arraignment. The accused may file a petition for review with the Secretary of Justice assailing the prosecutor's resolution finding probable cause. If the Secretary of Justice reverses the prosecutor's findings, they can move to dismiss the information. The trial court then has the discretion whether to dismiss the information or to proceed with the case. Its refusal to dismiss the case may also be subject to a petition for certiorari under Rule 65. Meanwhile, filing the petition for review before the Secretary of Justice also effectively suspends the arraignment. If the trial court refuses to suspend the arraignment despite the pendency of the petition for review, the accused may also file a certiorari action under Rule 65.

The accused may also move to quash the information based on the grounds stated under Rule 117, Section 3 of the Rules of Court. The denial of a motion to quash, however, is merely interlocutory and cannot be subject to a certiorari petition under Rule 65. The arguments in the motion to quash, however, can still be raised as defenses during trial. Should there be intervening actions by higher courts, as in this case, the accused may also file, apart from the motion to quash, a motion to dismiss based on the tenor of the intervening decision. Also, after evidence has been offered by the prosecution, it can likewise file a demurrer to evidence.

When properly filed, these remedies may in effect dismiss the information, the same relief that is often brought before this Court in certiorari actions questioning the determination of probable cause. Thus, to satisfy the requirement that there should be no other plain, speedy, and adequate remedy, the petitioners should show that the reliefs they seek from this Court are the same ones previously denied by the lower courts.

CAGUIOA, *J., concurring opinion:*

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DUTY TO CONDUCT PRELIMINARY INVESTIGATION; NOT EVERY MISTAKE, ERROR, OR OVERSIGHT SHOULD BE MET WITH CRIMINAL PROSECUTION. — At the very heart of a preliminary investigation is the **duty** to secure the innocent against hasty, malicious and oppressive prosecution, and to protect them from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. Indeed, the Ombudsman has this duty, as well as the duty to protect the State from useless and expensive trial. As the Court held in *Baylon v. Office of the Ombudsman* (*Baylon*):

> Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. . . . **It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.**
>
> . . .
>
> Courts and the prosecutorial arms of the State ought to bear in mind that our penal laws on corrupt public officials are meant to enhance, instead of stifle, public service. If every mistake, error, or oversight is met with criminal prosecution, then no one would ever dare take on the responsibility of serving in the government. **We cannot continue to weaponize each little misstep lest we lose even the good people in government.**

2. ID.; ID.; OMBUDSMAN'S DISCRETION TO DETERMINE PROBABLE CAUSE; RULE ON NON-INTERFERENCE; AN EXCEPTION IS WHEN THERE IS GRAVE ABUSE OF DISCRETION. — While it is true that finding probable cause is a prosecutorial prerogative, the Court cannot, under the guise of non-interference, abdicate its solemn duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government," including the Ombudsman. Stated differently, one of the known exceptions to the rule on non-interference with respect to the

Ombudsman's determination of probable cause is when there is grave abuse in the exercise of its discretion.

More important than the conventional adherence to rules of procedure is the right of persons to be free from unwarranted and vexatious prosecution. Thus, the general rule that the Court does not interfere with the discretion of the Ombudsman to determine the existence of probable cause has several settled exceptions in jurisprudence, including grave abuse of discretion.

3. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019); VIOLATION OF SECTION 3(e); ELEMENTS THEREOF. — The elements of a violation of Section 3(e) of R.A. No. 3019 are:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

4. ID.; ID.; ID.; ID.; VIOLATION OF SECTION 3(e) OF RA NO. 3019 MAY BE COMMITTED IN THREE WAYS. — In *Sison v. People*, it was held that "[t]he third element of Section 3(e) of [R.A. No.] 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence."

5. ID.; ID.; ID.; ID.; ID.; MANIFEST PARTIALITY; CASE AT BAR. — Manifest partiality, however, is defined in jurisprudence as "clear, notorious, or plain inclination or predilection to favor one side or person rather than another." Viewed from this definition, it is quite clear that there could not be any reasonable belief that Resolution No. 1 was issued with manifest partiality. To repeat, there was absolutely no proof submitted to establish this point. **In contrast, the ERC Commissioners submitted a considerable amount of evidence establishing the contrary.**

. . .

Another fact that negates the existence of any manifest partiality by the ERC Commissioners in favor of MERALCO

is the **ERC's denial of MERALCO's request for exemption from the CSP requirement**. Even the Ombudsman itself, in the Resolution in question, acknowledged that ERC had denied MERALCO's request on December 10, 2015.

. . .

To reiterate, "manifest partiality" requires that there be a **clear, notorious, or plain inclination or predilection to favor one side or person rather than another**. It is abundantly clear from the foregoing discussion that the evidence or proof that had been submitted by the ERC Commissioners, not to mention the recitals of Resolution No. 1 itself, showed that there was no manifest partiality to favor one side, *i.e.* MERALCO.

6. ID.; ID.; ID.; ID.; ID.; GROSS INEXCUSABLE NEGLIGENCE; CASE AT BAR. — Based on jurisprudence, "gross inexcusable negligence" refers to negligence characterized by **the want of even the slightest care**, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

However, apart from the use in passing of the term "gross inexcusable negligence," **there is absolutely no factual allegation or any logical explanation in the Resolution** supporting the conclusion that the ERC Commissioners can be held guilty of gross inexcusable negligence.

7. ID.; ID.; ID.; ID.; ID.; EVIDENT BAD FAITH. — Evident bad faith "connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will." It "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purpose[s]." Simply put, it partakes of the nature of fraud.

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of law. *To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.***

As explained by the Court in *Sistoza v. Desierto* (*Sistoza*), "mere bad faith or partiality and negligence *per se* are not

enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*."

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, **it must be shown** that the accused was "spurred by any corrupt motive." Mistakes, therefore, no matter how patently clear, committed by a public officer are not actionable "**absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith**."

8. ID.; ID.; ID.; ID.; ID.; ID.; MISTAKES COMMITTED UPON A DOUBTFUL OR DIFFICULT QUESTION OF LAW MAY BE THE BASIS OF GOOD FAITH; CASE AT BAR. — There is good faith in this case because not only is there a presumption that official duty has been regularly performed, but also because mistakes committed upon a doubtful or difficult question of law may be the basis of good faith. Considering that even members of the Court differed in their opinions as regards the extent of ERC's — and its Commissioners' — powers, the question is thus undoubtedly a difficult question of law, which is certainly basis of the Commissioners' good faith.

9. ID.; ID.; ID.; ID.; TWO WAYS OF VIOLATING SECTION 3(e) OF RA NO. 3019. — With regard to the fourth element, the Court held in *Santiago v. Garchitorena* that there are "two ways of violating Section 3(e) of R.A. No. 3019. These are: (a) by causing any undue injury to any party, including the Government; and (b) by giving any private party any unwarranted benefit, advantage or preference."

10. ID.; ID.; ID.; ID.; ID.; "UNWARRANTED BENEFITS" MUST BE UNDERSTOOD IN THE CONTEXT OF CORRUPTION; CASE AT BAR. — [T]he element of "unwarranted benefits" must be understood in the context of corruption. As I stated at length in my Concurring Opinion in *Villarosa v. People*:

. . .

. . . [I]n saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules, and regulations. **Such benefits must have been given by the public officer**

> **to the private party with *corrupt intent, a dishonest design, or some unethical interest.*** This is in alignment with the spirit of RA 3019, which centers on the concept of graft. . . .
>
> In this case, as discussed, **there is absolutely no proof that the incidental benefits received by the companies — *if there is any at all* - was linked to, or rooted in, any corrupt intent**.

11. ID.; ID.; ID.; ID.; ID.; "UNDUE INJURY" MUST BE QUANTIFIED WITH CERTAINTY; CASE AT BAR. — According to jurisprudence, "undue injury" as an element of Section 3(e) of R.A. No. 3019 is akin to the concept of actual damages in civil law, and must thus be quantified with certainty. In *Llorente v. Sandiganbayan*, the Court explained:

> This point is well-taken. Unlike in actions for torts, **undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime.** In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified** and proven to the point of moral certainty.
>
> In jurisprudence, "undue injury" is consistently interpreted as "actual damage." *Undue* has been defined as "more than necessary, not proper, [or] illegal;" and *injury* as "any wrong or damage done to another, either in his person, rights, reputation or property[; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.
>
> . . .
>
> Here, the records are bereft of any showing that any party — whether the government or any private party — suffered any actual damage or injury. **To stress anew, there could be no injury to any party as the PSAs submitted during the period of extension had not been approved.**

12. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; REMEDIAL LAW; CIVIL PROCEDURE; CERTIORARI; PETITION FOR CERTIORARI IS THE PROPER REMEDY WHEN THE OMBUDSMAN'S CONCLUSION WAS ARRIVED AT WITH GRAVE ABUSE OF DISCRETION AS WHEN IT IS NOT SUPPORTED BY EVIDENCE. — To my mind, in determining the existence of grave abuse of discretion, the Court is charged to take a look at whether there is evidence to support such finding of the Ombudsman. If the issue pertains to the weighing of evidence — that is, when evidence is presented and there is doubt as to whether the Ombudsman assessed them correctly as proving the existence of the elements of the offense — then a petition for *certiorari* is not the proper remedy. However, when the records show the absolute lack of evidence to support the Ombudsman's conclusion, then such conclusion was arrived at with grave abuse of discretion and may be subject of a petition for *certiorari*.

13. ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION IS COMMITTED WHEN THE ESSENTIAL FACTS ARE NOT TAKEN INTO CONSIDERATION. — The case of *Villarosa v. Ombudsman* aptly defines and describes grave abuse of discretion and how it may be shown, *viz*.:

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law. . . .

In relation to this, *Sistoza* states that "[w]hen the Ombudsman does not take essential facts into consideration in the determination of probable cause, it has been ruled that he gravely abuses his discretion."

Here, because the Ombudsman found probable cause to charge Non, *et al*. with violating Section 3(e) of R.A. No. 3019 despite the lack of evidence supporting the existence of the elements of the offense, it is clear that the Ombudsman committed grave abuse of discretion.

LAZARO-JAVIER, *J., concurring opinion*:

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; DETERMINATION OF PROBABLE CAUSE; THE TEST FOR THE REVIEW OF A PROSECUTOR'S DETERMINATION OF PROBABLE CAUSE IS REASONABLENESS. –– Respondent Office of the Ombudsman (OMB) found probable cause to charge petitioners with violation of Section 3(e) of Republic Act No. 3019 (RA 3019). . . .

. . .

There is no debate that the determination of probable cause for the filing of a criminal information lies with our public prosecutors. *But* it is equally true that persons indicted for an offense have the present recourse to challenge the finding of probable cause against them.

The test is not the correctness of the prosecutor's determination but whether the determination was an exercise of grave abuse of discretion. The test for the *review* of a prosecutor's determination of probable cause is reasonableness, just as the test for the *determination* of probable cause *itself* is whether a reasonable person could conclude that a crime has been committed and the individual or individuals being held therefor is or are probably the perpetrators of the crime.

2. ID.; ID.; ID.; ID.; STANDARD OF CORRECTNESS AND STANDARD OF REASONABLENESS, DISTINGUISHED. — A *standard of correctness* requires correct answers — issues lend themselves to one specific, particular result. On the other hand, a *standard of reasonableness* gives rise to a number of possible, reasonable conclusions, and as a result, this standard affords a *margin of appreciation* to the decision-maker within the *range* of *acceptable* and *rational* solutions. A court conducting a *review for reasonableness* inquires into the qualities that make a decision reasonable, referring both to the *process of articulating the reasons* and the *outcomes or decisions themselves*.

3. ID.; ID.; ID.; ID.; ID.; WHERE THERE IS MORE THAN ONE POSSIBLE INTERPRETATION OF THE EVENTS OR CIRCUMSTANCES, A PUBLIC PROSECUTOR MUST BE GUIDED BY THE ELEMENTS OF THE OFFENSE

CHARGED. — *Reasonableness* is to be assessed *not only* in terms of whether there exist justification, transparency, and intelligibility within the decision-making process, *but also* whether the *decision falls within a range of possible, acceptable outcomes* which are *defensible in respect of the facts and law*. Where there is *more than one possible interpretation of the events or circumstances*, a public prosecutor *must be guided* by the *elements of the offense charged*, the *reasonableness of competing interpretations*, and *whether an interpretation will result in an anomaly or a contradiction*.

. . .

The determination of probable cause *does not fall* within a range of possible, acceptable outcomes *defensible in respect of the facts and law*. As stated, where there is *more than one possible interpretation of the events or circumstances*, a public prosecutor *must be guided* by the *elements of the offense charged*. The OMB's determination of probable cause *was not guided* by the elements of Section 3 (e) of R.A. 3019. The finding of probable cause was at best speculative; as it was not based on facts and law.

4. ID.; ID.; ID.; ID.; ID.; THE DETERMINATION OF PROBABLE CAUSE SHOULD NOT BE BASED ON PREJUDICE AND SPECULATION. — [W]hat the OMB has against petitioners in terms of probable cause is *only a jump in logic* that neither the law nor the facts can support. Its determination of probable cause against petitioners is based on prejudice and speculation – a conjecture that comes from the premise that just because MERALCO benefitted from Resolution No. 1, the latter was from the start meant only to give an undue and criminal benefit or advantage to MERALCO. This is an *incomplete*, nay *unreasonable* analysis of Resolution No. 1. To be able to reasonably conclude that petitioners violated Section 3 (e) of RA 3019 requires delving on several times more than seven circumstances that the OMB has utilized in its determination of probable cause.

5. ID.; ID.; ID.; ID.; ID.; AN INTERPRETATION IN DETERMINING PROBABLE CAUSE IS UNREASONABLE IF IT WOULD RESULT IN AN UNFAIR OUTCOME. — If probable cause were to be based on a premise such as the one used by the OMB, decision-makers (especially judges) would be in danger of being indicted for violation of Section 3(e) of

RA 3019, because in general, the nature of their job is to rule for one party against another. The interpretation made by the OMB in determining probable cause *has and will result in such an unfair outcome* and *is therefore unreasonable*. Verily, therefore, the action of the OMB to initiate a criminal action against petitioners does not fall within the range of possible, acceptable outcomes defensible in respect of the facts and law.

ZALAMEDA*, J., dissenting opinion*:

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; INVESTIGATORY AND PROSECUTORIAL POWERS; RULE ON NON-INTERFERENCE. — As a general rule, this Court does not interfere with the Ombudsman's exercise of its constitutional mandate. Both the Constitution and RA 6770 give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees thereby giving rise to the **rule on non-interference,** which is based on the respect for the investigatory and prosecutorial powers of the Ombudsman.

More importantly, the determination of probable cause for the purpose of filing an information in court is essentially an executive function. The State's self-preserving power to prosecute violators of its penal laws is a necessary component of the Executive's power and responsibility to faithfully execute the laws of the land.

2. ID.; ID.; ID.; ID.; AN EXCEPTION TO THE RULE ON NON-INTERFERENCE IS WHEN THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION. — To justify judicial intrusion into what is fundamentally an executive domain, petitioners have the burden of proving that the Ombudsman committed grave abuse of discretion. Petitioners are duty-bound to demonstrate how the Ombudsman acted in an **arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law,** before judicial relief from a discretionary prosecutorial action may be obtained.

3. ID.; ID.; ID.; PROBABLE CAUSE; THE FINDING OF PROBABLE CAUSE DOES NOT SIGNIFY ABSOLUTE CERTAINTY, BUT ONLY REASONABLE BELIEF. — [P]robable cause does not signify absolute certainty but only reasonable belief, to wit:

> Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, **it does not import absolute certainty.** Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. **Probable cause implies probability of guilt and requires more than bare suspicion, but less than evidence which would justify conviction.**

Moreover, the finding of probable cause merely signifies that the suspect is to stand trial for the charges. **It is not a pronouncement of guilt.** Thus, a finding of probable cause need only rest on evidence showing that **more likely than not** a crime has been committed and was committed by the suspects.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019); THE ELEMENT OF UNWARRANTED BENEFITS UNDER SECTION 3(e); CASE AT BAR. — For purposes of probable cause to file an information for the offense charged, I find that the Court's definition of "unwarranted benefits" is broad enough to **more likely** cover petitioners' actuations.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. The fact that the implementation of the CSP requirement was suspended twice, allowing for MERALCO and other companies to secure power supply agreements without the benefit of a CSP, supports a **preliminary finding** of the presence of the element of unwarranted benefit.

5. ID.; ID.; REMEDIAL LAW; CRIMINAL PROCEDURE; EVIDENCE; TRIAL; THE DEFINITIVE FINDING ON THE ELEMENTS OF THE OFFENSE IS A MATTER OF EVIDENCE TO BE PASSED UPON AFTER A FULL-BLOWN TRIAL ON THE MERITS. — [T]he definitive finding of the presence or absence of the elements of the offense is a matter of evidence. Such finding is evidentiary in nature and consists of matters of defense, the truth of which can be passed upon after a full-blown trial on the merits. The validity and merit of a party's allegation or defense, as well as the admissibility of testimonies and evidence, are also better ventilated at the trial proper than at the preliminary investigation level. Accordingly, the issue of whether MERALCO and the other companies received unwarranted benefits, or whether petitioners acted in bad faith, with manifest partiality, or through gross inexcusable negligence would be conclusively determined, not in the preliminary investigation, but during trial.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION. — A preliminary investigation is essentially inquisitorial. It is often the only means of discovering the persons who may be seasonably charged with a crime, allowing the prosecutor to prepare his complaint or information. It does not place the persons against whom it is taken in jeopardy. It is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

7. ID.; CIVIL PROCEDURE; *CERTIORARI*; RULE ON NON-INTERFERENCE; THE FINDING OF PROBABLE CAUSE ON THE GROUND OF GRAVE ABUSE OF DISCRETION IS A QUESTION OF FACT THAT CANNOT BE RAISED IN A PETITITON FOR *CERTIORARI*. — [A]ssailing the Ombudsman's finding of probable cause on the ground of grave abuse of discretion raises questions of fact, which does not fall within the ambit of this Court's jurisdiction especially in an application for the extraordinary writ of *certiorari* where neither questions of fact nor even of law are entertained.

8. ID.; CRIMINAL PROCEDURE; WHEN AN INFORMATION HAD ALREADY BEEN FILED BEFORE THE TRIAL

COURT, ITS DISPOSITION RESTS ON THE TRIAL COURT'S SOUND DISCRETION. — Absent a clear showing that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of its Resolution dated 29 September 2017 and Order dated 20 April 2018, the Court cannot depart from the policy of non-interference. Lest it be forgotten, the Information against petitioners had already been filed before the Regional Trial Court (RTC) of Pasig City during the pendency of this case. Its disposition now rests on the trial court's sound discretion. Although the prosecuting officer retains direction and control over the prosecution of the criminal case, he or she cannot impose any opinion on the trial court. The determination, conduct, and evaluation of the case lies within the exclusive jurisdiction of the trial court. For these reasons, this Court should have refrained from resolving the issues raised by petitioners. By refusing to bend the policy of non-interference, we are respecting the exclusive jurisdiction of the court trying the case and avoiding any pronouncement which would preempt its independent assessment. Undoubtedly, a determination by this Court of the existence or non-existence of probable cause would affect the resolution by the trial court of the matter still pending before it.

. . .

. . . Any action from this Court should have been limited to directing the Ombudsman to withdraw the Information by filing the appropriate motion with the trial court **instead of this Court dismissing the Information against petitioners for lack of probable cause.** . . .

9. ID.; ID.; PROBABLE CAUSE; EXECUTIVE DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED FROM JUDICIAL DETERMINATION OF PROBABLE CAUSE. — To recall, the Office of the Ombudsman's determination of the existence of probable cause during a preliminary investigation is an executive function, which is different from the judicial determination of probable cause. The executive determination of probable cause, is undertaken by either the public prosecutor or the Ombudsman for the purpose of determining whether an information charging an accused should be filed. On the other hand, judicial determination of

probable cause is the process for the judge to determine whether a warrant of arrest should be issued. Once the public prosecutor or the Ombudsman determines probable cause and files the case before the trial court or the Sandiganbayan, the judge will make a judicial determination of probable cause to determine if a warrant of arrest should be issued against the accused.

The difference between the two (2) modes of determining probable cause was discussed in *People v. Castillo*, . . .

Hence, aside from the prosecutor's determination of probable cause, a judge will also make his or her own independent finding of whether probable cause exists to order the arrest of the accused and proceed with trial. This is evident from Section 5(a) of Rule 112 of the Rules of Criminal Procedure, which gives the trial court three (3) options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause[.]

10. ID.; ID.; ID.; PROBABLE CAUSE CEASES ONCE THE COURT ACQUIRES JURISDICTION OVER THE CASE. — Probable cause ceases once the court acquires jurisdiction over the case. The court's broad control over the direction of the case was explained in *De Lima v. Reyes*, to wit:

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> **The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above**

stated, the filing of said information sets in motion the criminal action against the accused in Court.

. . .

Petitioners are only assailing the executive finding of probable cause against them by the Ombudsman; their main prayer in their petition does not even involve the dismissal of the criminal case already filed in court. And, for this Court to order its dismissal preempts any exercise of jurisdiction by the trial court over the criminal case. To be sure, the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed.

11. ID.; CIVIL PROCEDURE; *CERTIORARI*; THE COURT'S JUDICIAL POWER OF REVIEW IS NOT LIMITLESS. — [T]he *certiorari* action in the case at bar is limited to reviewing the Ombudsman's acts and cannot transcend to another court's exercise of its own powers. Otherwise stated, if the trial court (or the Sandiganbayan) has jurisdiction over the person and subject matter of the controversy, **a petition for *certiorari*, which does not impute grave abuse of discretion on any of the trial court's (or Sandiganbayan's) issuances, will not lie to stop it from exercising judicial power.**

. . .

Ultimately, it must be stressed that this Court's judicial power under Section 1, Article VIII of the Constitution is **sufficiently broad and wide but it is not limitless.** There are still certain standards, most of which have been set by this Court itself, that must be fulfilled in the exercise of this Court's awesome power of review. For *certiorari* actions, our beacon is Section 65 of the Rules of Court.

APPEARANCES OF COUNSEL

Rolando B. Faller for petitioners.
The Solicitor General for public respondent.
Orlalyn Suarez-Fetesio for private respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Before the Court is a Petition for *Certiorari*[1] assailing the 29 September 2017 Resolution[2] and the 20 April 2018 Order[3] of the Office of the Ombudsman (Ombudsman), respectively finding probable cause to hold petitioners Alfredo J. Non (Non), Gloria Victoria C. Yap-Taruc (Yap-Taruc), Josefina Patricia A. Magpale-Asirit (Magpale-Asirit), and Geronimo D. Sta. Ana (Sta. Ana; collectively, petitioners) — Commissioners of the Energy Regulatory Commission (ERC) — for prosecution under Section 3(e)[4] of Republic Act (R.A.) No. 3019,[5] and denying reconsideration.

Antecedents

In 2001, the state enacted the Electric Power Industry Reform Act[6] (EPIRA) to ensure quality, reliable, secure, and affordable electric power supply in a regime of free and fair competition,

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[1] Under Rule 65 of the RULES OF COURT; *rollo*, pp. 3-35.

[2] Signed by Graft Investigation and Prosecution Officer II, Cezar M. Tirol II, id. at 37-51.

[3] Id. at 52-58.

[4] **Sec. 3.** ***Corrupt practices of public officers.*** — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x **(e)** Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[5] THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.

[6] Republic Act No. 9136, entitled, AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES.

and full public accountability. Thus, the ERC[7] came into being, vested with powers to enforce the said law and to issue rules and regulations for that purpose.[8] One of its principal mandates, as a regulatory body, is to ensure consumer protection and to enhance competitive operations within the electric power industry. It is specifically tasked to institutionalize a working methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a power distribution utility.[9]

On 4 November 2015, after a series of public consultations with power industry stakeholders,[10] the ERC issued Resolution No. 13, Series of 2015 (Resolution No. 13-2015).[11] The issuance proceeds from the directive[12] of the Department of Energy (DOE) to require all distribution utilities (DUs) to undergo a competitive selection process (CSP) in procuring power supply agreements (PSAs), as well as from a Joint Resolution[13] of the DOE and the ERC whereby the latter has committed to issue regulations requiring DUs to undertake CSP in securing supply agreements affecting the captive markets. The CSP requirement is seen to ensure transparency in the supply procurement of DUs and to

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[7] The Commission replaced the Energy Regulatory Board.

[8] Id., Section 2.

[9] Section 7 of R.A. No. 9136.

[10] Per the Resolution No. 13, s. 2015, the ERC had posted a notice on its website directing interested parties to comment on the first and second draft of the rules governing power supply agreements. After making all inputs of record, the ERC then conducted a series of public consultations in February 2014 as well as focus group discussions in April of the same year.

[11] Signed by herein petitioners in their official capacity, as well as by the ERC Chairman, Jose Vicente B. Salazar.

[12] In Circular No. DC2015-06-0008. Sec. 3 thereof provides:

Sec. 3. Standard features in the conduct of CSP. — After the effectivity of this Circular, all DUs shall procure PSAs only through CSP conducted through a Third Party duly recognized by the ERC and the DOE. In the case of the ECs, the Third Party shall also be duly recognized by the National Electrification Administration.

[13] Dated October 20, 2015.

provide opportunities to elicit the best price offers from suppliers.[14]

Power distribution utilities are entities responsible for billing the end-users of electric power supply. They transact with generation companies through power supply agreements that are, in turn, filed with and reviewed by the ERC to determine whether the retail rates are at their lowest and most efficient. Thus, Resolution No. 13 requires that as a precondition to an award of a supply agreement to a generation company, there has to be either a successful, transparent, and competitive selection process, or a direct negotiation where at least two CSPs have failed. A CSP is said to be successful when the DU has received two qualified bids from entities with which it is not prohibited from entering into a contract of power supply.[15]

At the time, the ERC has not yet issued the prescribed CSP guidelines, but distribution utilities have been allowed to adopt any accepted form of selection process subject only to the minimum terms of reference laid out in Resolution No. 13-2015.[16] Exempted from the CSP requirement are PSAs already filed with and pending review by the ERC at the time the Resolution took effect on 6 November 2015.[17]

A barrage of inquiries from different stakeholders were lodged before the ERC in the *interim*. Individually, they put forth their concerns on the legal implications of Resolution No. 13-2015

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[14] Final Whereas Clause of Resolution No. 13-2015.

[15] Resolution No. 13-2015, Sec. 1 and Sec. 3.

[16] Id. at Sec. 2. The terms of reference include: (a) Required/Contracted Capacity and/or Energy Volumes; (b) Generation Sources; (c) Method of Procurement for Fuel, if applicable; (d) Cooperation/Contract Period; (e) Tariff Structure Unbundled to Capacity Fees, Variable and Fixed Operating and Maintenance Fee, Fuel Fee and Others, including the derivation of each component. Base Fee Adjustment Formula, if any; (f) Form of Payment; (g) Penalties, if applicable; (h) If applicable, details regarding any transmission projects necessary to complement the proposed generation capacity; and (i) Other Key Parameters.

[17] Id. at Sec. 4.

on PSAs already existing, up for renewal, and already executed. They also asked for clarification and guidance on what the acceptable forms of CSP could be applied, as well as possible exemptions from said requirement.[18]

Manila Electric Company (MERALCO) was among these stakeholders. In its letter dated 26 November 2015, it sought the ERC's approval of its request for exemption from the CSP requirement. The ERC, in a letter signed by Jose Vicente B. Salazar (Salazar), denied said request.

ERC Resolution No. 1, Series of 2016

On 15 March 2016, the ERC issued Resolution No. 1, Series of 2016 (Resolution No. 1-2016) which, although declaring to merely clarify[19] the effective date of Resolution No. 13-2015, actually extended the same from 6 November 2015 to 30 April 2016. The leeway was meant to be a transition period for the facilitation of the full implementation of Resolution No. 13-2015, such that all PSAs executed on or after the later date would be bound without exception to abide by the CSP requirement.

MERALCO allegedly entered into seven PSAs on 26 April 2016, and filed all of them with the ERC on the day before the new deadline.

Cases arising from ERC Resolution No. 1-2016

Believing that the ERC issued Resolution No. 1-2016 merely to unduly favor MERALCO, respondent Alyansa Para sa Bagong Pilipinas, Inc. (ABP) filed several cases against petitioners.

Petition for certiorari with the Court

In November 2016, ABP filed a petition for *certiorari* and prohibition before this Court against ERC, docketed as **G.R.**

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[18] *Rollo*, pp. 162-191. Some of these letter-inquiries challenged the legality of Resolution No. 13-2015.

[19] Entitled, A RESOLUTION CLARIFYING THE EFFECTIVITY OF ERC RESOLUTION NO. 13, SERIES OF 2015.

No. 227670. On 3 May 2019, the Court granted the petition and declared void *ab initio* the first paragraph of Section 4 of ERC Resolution No. 13-2015 (CSP Guidelines), and ERC Resolution No. 1-2016 (ERC Clarificatory Resolution).[20]

Complaint for violation of R.A. No. 3019 with the Ombudsman

On 24 November 2016, ABP also filed a verified Complaint[21] before the Ombudsman charging the ERC commissioners, petitioners herein, together with Chairman Salazar, with violation of Section 3(e) of R.A. No. 3019. It specifically alleged that the collective act of the ERC members in extending the implementation date of Resolution No. 13-2015 *via* Resolution No. 1-2016 was a mere ploy to accommodate MERALCO's sister companies and affiliates and allow them to bag lucrative PSAs without complying with the mandated CSP requirement. It noted that the seven PSAs filed by MERALCO in the *interim* were in fact deregulated and would prejudice the consuming public in the succeeding 20 years of overpriced power charges.

The complaint was docketed as OMB-C-C-16-0497 for the criminal aspect and OMB-C-A-16-0438 for the administrative aspect.

OMB-C-C-16-0497

On 29 September 2017, the Ombudsman found probable cause to indict petitioners and their co-respondent *a quo*, Salazar,[22] for violation of Section 3 (e) of R.A. No. 3019 and directed the filing of the corresponding information in court.[23] Petitioners

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[20] *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019.

[21] *Rollo*, pp. 59-79.

[22] Salazar filed a separate petition for *certiorari* before the Court, docketed as G.R. No. 240288.

[23] *Rollo*, pp. 49-50. The dispositive portion of the Resolution reads:

WHEREFORE, this Office finds probable cause to prosecute Jose Vicente Buenviaje Salazar, Gloria Victoria Cabaies Yap-Taruc, Alfredo Jacinto Non,

filed a Joint Motion for Reconsideration[24] and a Supplemental Motion for Reconsideration[25] which the Ombudsman denied in the assailed 20 April 2018 Order.[26]

From these Ombudsman issuances, petitioners Non, Yap-Taruc, Magpale-Asirit and Sta. Ana filed the present Petition for *Certiorari*, docketed as **G.R. No. 239168.**

Their co-respondent, Salazar, on the other hand, filed a separate petition docketed as **G.R. No. 240288** against ABP and the Ombudsman raising the defense that he never approved Resolution No. 1-2016 in the first place. Said petition is still pending with the Court.

Meanwhile, on 7 June 2018, the criminal information against petitioners and Salazar was filed with the Regional Trial Court (RTC) of Pasig City.[27]

OMB-C-A-16-0438

In a Decision dated 29 September 2017, the Ombudsman found petitioners[28] guilty of Conduct Prejudicial to the Best Interest of the Service, aggravated by Simple Misconduct and Simple Neglect of Duty, for which they were meted the penalty of suspension for one year without pay.

Petitioners appealed to the CA with a prayer for temporary restraining order (TRO) which the CA granted on 9 February

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Josefina Patricia Almendras Magpale-Asirit, and Geronimo Delgado Sta. Ana for violation of Section 3 (e) of Republic Act No. 3019, as amended. Let the corresponding Information be filed against them with the proper court.

SO ORDERED.

[24] *Rollo*, pp. 117-161.

[25] Id. at 192-196.

[26] Id. at 52-56. The dispositive portion reads:

WHEREFORE, the Motions for Reconsideration are DENIED.

SO ORDERED.

[27] Branch 155, *rollo*, pp. 844-846.

[28] Together with Salazar.

2018. This prompted ABP to file a petition for *certiorari* with this Court, docketed as **G.R. No. 237586** assailing the 9 February 2018 Resolution of the CA which granted a 60-day TRO on the Decision of the Ombudsman in OMB-C-A-16-0438.[29]

Deconsolidation of the cases

G.R. Nos. 239168 and 240288 were consolidated on 30 July 2018. These two cases, together with G.R. No. 237586 were further consolidated with G.R. No. 227670 on 17 October 2018.

On 15 January 2019, the Court deconsolidated the cases and returned to same original members in charge.

In the meantime, petitioners in G.R. No. 239168 filed an Urgent Motion for Issuance of TRO or Writ of Preliminary Injunction due to the filing of Information against them with the RTC of Pasig City. They alleged that they filed a motion to quash with the RTC arguing that R.A. No. 10660,[30] which directs that criminal cases within the RTC's jurisdiction involving public officials shall be tried in a judicial region other than where the official holds office, applies to them as they hold office in Pasig City. They reiterated this argument in their Supplemental Petition dated 20 September 2019.

On 28 January 2020, the Court re-docketed the Supplemental Petition dated 20 September 2019 as a separate petition, **G.R. No. 251177**.

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[29] *Alyansa Para sa Bagong Pilipinas, Inc., rep. by Noel G. Villones and Evelyn V. Jallorina v. Court of Appeals, Jose Vicente B. Salazar, Gloria Victoria C. Yap-Taruc, Alfredo J. Non*, G.R. No. 237586, *rollo*, pp. 3-4.

[30] AN ACT STRENGTHENING FURTHER THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE SANDIGANIBAYAN, FURTHER AMENDING PRESIDENTIAL DECREE NO. 1606, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR.

Present Petition
G.R. No. 239168

From the 29 September 2017 Resolution[31] and the 20 April 2018 Order[32] of the Ombudsman in OMB-C-C-16-0497, petitioners filed the present Petition for *Certiorari*, docketed as **G.R. No. 239168,** attributing grave abuse of discretion amounting to excess in jurisdiction on the part of the Ombudsman ***(a)*** in finding probable cause for their indictment when said finding is not supported by substantial evidence; ***(b)*** in arrogating unto herself the authority of declaring Resolution No. 1-2016 invalid, which could be done only by the Court; and ***(c)*** in proceeding to resolve the complaint despite the fact that the constitutionality of Resolution No. 1-2016 is still pending resolution before this Court.[33]

Told to comment, the Ombudsman remains unswayed in its finding and prays for the dismissal of this Petition.[34]

The Court's Ruling

We grant the petition.

The principle of non-interference does not apply in this case

While the Court generally upholds the policy of non-interference when it comes to the Ombudsman's determination of the existence of probable cause and in deciding whether the

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[31] Signed by Graft Investigation and Prosecution Officer II, Cezar M. Tirol II.

[32] *Rollo*, pp. 52-57.

[33] Id. at 10-11.

[34] The Comment was filed also in connection with G.R. No. 240288 (*rollo*, pp. 642-657). Note that the OSG filed a Manifestation and Motion on September 3, 2018 in which it made a preliminary assessment that the petition in G.R. No. 227670 is a prejudicial question in the resolution of the instant petition (*rollo*, pp. 265-292). It has not yet filed its Comment on the present petition. ABP also submitted its Comment on 17 December 2018, but only on Meralco's earlier Manifestation in G.R. No. 227670 (*rollo*, pp. 851-853).

Information should be filed, the Court will also not hesitate from wielding its power of review and correct actions that result to needless prosecution.

Both the Constitution and the Ombudsman Act of 1989 give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Thus, the consistent policy of the Court has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause. As this Court is not a trier of facts, we give due deference to the sound judgment of the Ombudsman.[35]

Such policy is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Ombudsman, but upon practicality as well.[36] Otherwise, a deluge of petitions seeking dismissal of investigatory proceedings conducted by the Ombudsman will grievously hamper the functions of the courts.[37]

Nevertheless, the Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.[38] While as a rule, the determination of probable cause for the filing of information lies with the public prosecutors, it is equally settled that the aggrieved person charged for an offense, has the present recourse, a petition for *certiorari* under Rule 65 of the Rules of Court, to challenge the finding of probable cause on the ground of grave abuse of discretion.[39] Whenever there are allegations of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to

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[35] *Villarosa v. Ombudsman,* G.R. No. 221418, January 23, 2019.

[36] *Joson v. Office of the Ombudsman,* 816 Phil. 288, 320 (2017).

[37] *Villarosa v. Ombudsman,* supra.

[38] *Estrada v. Office of the Ombudsman,* G.R. Nos. 212761-62, July 31, 2018.

[39] *Crucillo v. Office of the Ombudsman,* 552 Phil. 699, 713 (2007).

lack or excess of jurisdiction on the part of any branch or instrumentality of the government.[40]

"There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by law."[41] When the Ombudsman does not take essential facts into consideration in the determination of probable cause, we have ruled that such constitutes grave abuse of discretion.

This Court will not shirk from its duty to intervene upon proof of commission of grave abuse of discretion by the Ombudsman as we are not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may exceptionally be invoked pursuant to Section 1, Article VIII of the Constitution.[42]

Cases have enumerated the exceptions to the general rule of non-interference. These are:

1. **When necessary to afford adequate protection to the constitutional rights of the accused;**
2. **When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;**
3. When there is a prejudicial question which is *sub judice*;
4. When the acts of the officer are without or in excess of authority;
5. Where the prosecution is under an invalid law, ordinance or regulation;
6. When double jeopardy is clearly apparent;

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[40] *Casing v. Ombudsman*, 687 Phil. 468, 476 (2012).

[41] *Sistoza v. Desierto*, 437 Phil. 117, 129 (2002).

[42] *Crucillo v. Ombudsman*, supra note 39, at 712-713.

7. Where the court has no jurisdiction over the offense;

8. Where it is a case of persecution rather than prosecution;

9. Where the charges are manifestly false and motivated by the lust for vengeance;

10. **When there is clearly no *prima facie* case against the accused and motion to quash on that ground has been denied.**[43] (Emphases supplied)

A review of the attendant circumstances shows that the present case falls under the exception.

Lack of probable cause

The Ombudsman found probable cause to indict herein petitioners for violation of Section 3 (e) of R.A. No. 3019. We know that probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof.[44]

It should also be stressed, however, that to determine if the suspect is probably guilty of the offense, the elements of the crime charged should, in all reasonable likelihood, be present. This is based in the principle that every crime is defined by its elements, without which, there should be, at most, no criminal offense.[45]

There are three modes by which Section 3(e) of R.A. No. 3019 may be committed by a public officer: through manifest partiality, evident bad faith, or through gross inexcusable negligence.[46]

"Partiality" connotes bias which excites a disposition to see and report matters as they are wished for rather than as they are. "Bad faith" meanwhile does not simply connote bad judgment

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[43] *Mendoza-Arce v. Office of the Ombudsman*, 430 Phil. 101, 113 (2002).

[44] *Alberto v. Court of Appeals*, 711 Phil. 530, 553 (2013).

[45] Id. at 553-554.

[46] *Rivera v. People*, G.R. No. 228154, October 16, 2019.

or negligence. It imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive, or intent, or ill will, and partakes of the nature of a fraud. Finally, "gross negligence" refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It is that omission of care which even inattentive and thoughtless men never fail to take on their own property.[47]

Here, the Ombudsman supported its finding of probable cause with this disquisition:

> x x x [R]espondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they suspended the implementation of the required CSP, to accommodate the PSAs/PSCs of [distribution utilities] and [generation companies], particularly of MERALCO, thereby exempting them from the CSP mandated requirement.
>
> The manifest partiality, evident bad faith or gross inexcusable negligence of respondents can be gleaned from the following documented chronological events:
>
> 1. On 20 October 2015, the ERC issued [Resolution No. 13-2015] with the provision that all PSAs and PSCs not filed with the ERC as of 06 November 2015 should already be covered by CSP as their Mandatory Selection Process;
>
> 2. Thus, by 07 November 2015, the requirement that PSAs not filed with ERC as of said date should already be covered by CSP, already took effect [sic];
>
> 3. In a Letter dated 26 November 2015, MERALCO sought the permission of ERC to exempt their PSCs from the CSP requirement;
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> 4. On 10 December 2015, the ERC, through Salazar's letter, denied MERALCO's request;
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> 5. On 15 March 2016, ERC, through respondents, issued ERC [Resolution No. 1-2016], modifying the effectivity date of the

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[47] *Id*.

Resolution from 07 November 2015 to 30 April 2016, thus, giving a window period for PSAs without CSPs to be filed from 15 March 2016 to 30 April 2016; [and]

6. On 29 April 2016, a day before the extended deadline of 30 April 2016, MERALCO filed seven PSAs that did not undergo the CSP requirement.

x x x x x x x x x

Their non-implementation of the requirement of CSP cannot hide under the cloak of presumption of regularity in the performance of their official duties. There is sufficient evidence that respondents gave unwarranted benefits to MERALCO and other companies by exempting them from the coverage of the CSP requirement which was already in effect after 06 November 2015. The 45-day period gave MERALCO and other companies the opportunity to dispense with CSP. Their gross inexcusable negligence led to the circumvention of the government policy requiring CSP, and denied the consumers the opportunities to elicit the best price offers and other PSA terms and conditions from suppliers.[48]

It is clear therefore that the Ombudsman's finding of probable cause rests on the supposition that petitioners violated R.A. No. 3019 with the issuance of ERC Resolution No. 1-2016, which suspended the implementation of the CSP requirement. For the Ombudsman, the mere act of suspending the implementation of the CSP, shows that petitioners acted with manifest partiality, evident bad faith or gross and inexcusable negligence to accommodate the PSAs/Power Supply Contracts (PSCs) of DUs and generation companies, specifically, MERALCO. Stated differently, the premise is that since MERALCO benefited from Resolution No. 1-2016, then the subject resolution was, from the start, meant only to give an undue advantage to MERALCO, that is tantamount to a crime.

A perusal of Resolution No. 1-2016, however, would readily show that the ERC temporarily deferred the implementation of the CSP in order to ensure that there were suitable guidelines

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[48] *Rollo*, pp. 44-45, 49.

for its execution in light of the concerns raised by the power industry's various stakeholders. To quote:

> WHEREAS, since the publication of the CSP [Guidelines] on 06 November 2015, the [ERC] has received several letters from stakeholders which raised issues on the constitutionality of the effectivity of the CSP [Guidelines], sought clarification on the implementation of the CSP and its applicability to the renewal and extension of PSAs, requested a determination of the accepted forms of CSP, and submitted grounds for exemption from its applicability, among others.
>
> WHEREAS, after judicious study and due consideration of the different perspectives raised in the aforementioned letters, with the end in view of ensuring the successful implementation of the CSP for the benefit of consumers, DUs, and GenCos, the [ERC] has resolved to allow a period of transition for the full implementation of the CSP [Guidelines] and, as such, restates the effectivity date of the CSP [Guidelines] to a later date.

Among these stakeholders are: (1) *SMC Global Power* which requested, through a Letter dated 25 November 2015, that they be allowed to file their PSCs because the requirements imposed pursuant to the CSP implementations were non-existent when their PSCs were evaluated and signed;[49] (2) *Philippine Rural Electric Cooperative Association, Inc.*, which requested for exemption from coverage of Department Circular No. DC2015-06-0008, *via* a Letter dated 1 December 2015;[50] (3) *Agusan del Norte Electric Cooperative, Inc.*, which requested, per Letter dated 10 December 2015, confirmation that any extension of PSAs or Energy Supply Agreements previously approved is outside the scope of ERC Resolution No. 13-2015;[51] (4) *Astronergy Development*, which requested, through a Letter dated 15 December 2015, a meeting to discuss their situation

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[49] Id. at 162-163.

[50] Id. at 164.

[51] Id. at 167-168.

following the issuance of Resolution No. 13-2015;[52] (5) *Camarines Sur IV Electric Cooperative, Inc.* and *Unified Leyte Geothermal Energy, Inc.*, which requested for an extension to file their joint application for the approval of a PSA in their Letter dated 21 December 2015;[53] and (6) *Aklan Electric Cooperative, Inc.* which sent a letter dated 9 March 2016 inquiring about the CSP requirement.[54]

The presence of these other stakeholders with their respective concerns, weaken the reasoning that petitioners acted with manifest partiality or evident bad faith that is tantamount to a finding of probable cause. Indeed, Resolution No. 1-2016 was available to all industry players and electric cooperatives alike, not just to MERALCO.

A reading of Resolution No. 1-2016 would also show that not only did it extend the transition period, it also addressed pressing concerns affecting the impact of the CSP upon the power industry and resolved other matters that involved the other stakeholders, abovementioned. The issuance of the subject resolution was in the exercise of ERC's sound judgment as a regulator and pursuant to its mandate under the EPIRA to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. Thus, it cannot be classified as arbitrary, whimsical or capricious. The transition period, together with the clarifications provided in Resolution No. 1-2016, constitute a reasonable response to the various concerns posed by DUs, GenCos and electric cooperatives.

We note that in G.R. No. 227670, the Court, through the *ponencia* of Justice Carpio, declared that the issuance of Resolution No. 1-2016 was attended with grave abuse of discretion. It should be stressed, however, that said case centered on the constitutionality of Resolution No. 1-2016. Even though wrongful, the error of the concerned Commissioners in issuing

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[52] Id. at 176-177.

[53] Id. at 171-174.

[54] Id. at 175.

Resolution No. 1-2016 should not be automatically deemed as criminal.

Power of the Court to order dismissal of the case

We acknowledge the opinions of our esteemed colleagues, Justice Leonen and Justice Zalameda. As they correctly pointed out, the Information in this case was already filed with the RTC of Pasig City. Thus, the RTC already acquired jurisdiction over the case.

A review of the events leading to the present petition would show that, petitioners filed on 29 May 2018 a petition before the Court praying that a TRO and/or Writ of Preliminary Injunction be issued in order to restrain the Ombudsman from filing the Information. The application however was not granted, thus, the Ombudsman proceeded in filing the Information against petitioners on 7 June 2018. The case was raffled to Branch 155 of RTC, Pasig and petitioners were arraigned on 21 November 2018.

Having determined, however, that the Ombudsman committed grave abuse of discretion in issuing the 29 September 2017 Resolution and 20 April 2018 Order which led to the filing of the Information with the trial court, we cannot subscribe to the proposition of our respected colleagues that we should refrain from resolving the instant petition on the ground that the trial court already acquired exclusive jurisdiction over the criminal case.

We have not hesitated in ordering the dismissal of a case already filed in court for want of probable cause.

In *Cabahug v. People*,[55] we declared:

> Judicial power of review includes the determination of whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

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[55] 426 Phil. 490, 509-510 (2002).

x x x x x x x x x

Certainly, this will not be the first time that we order the dismissal of a case filed before the Sandiganbayan for want of probable cause. In the case of *Fernando v. Sandiganbayan*, we justified our action as follows:

We emphasize at this point that the Court has a policy of non-interference in the Ombudsman's exercise of his constitutionally mandated powers. The overwhelming number of petitions brought to us questioning the filing by the Ombudsman of charges against them are invariably denied due course. ***Occasionally, however, there are rare cases when, for various reasons there has been a misapprehension of facts, we step in with our review power. This is one such case.*** (Emphases supplied and citations omitted)

This was reiterated in *Sistoza v. Desierto*[56] where the Court categorically held that we can direct the Sandiganbayan to dismiss the criminal case filed against petitioner after finding that the Ombudsman wrongfully found probable cause against him. For want of a well-founded and reasonable ground to believe that petitioner violated Section 3(e) of R.A. No. 3019 or for want of probable cause, the Court ordered the Sandiganbayan to dismiss the criminal case against petitioner.

Indeed, in the few occasions when there is evident misapprehension of facts, we set aside the policy of non-interference and step in armed with our power of review. When at the outset the evidence cannot sustain a *prima facie* case or that the existence of probable cause to form a sufficient belief as to the guilt of the accused cannot be ascertained, the prosecution must desist from inflicting on any person the trauma of going through a trial.[57]

While it is the function of the Ombudsman to determine whether petitioners should be subjected to the expense, rigors and embarrassment of trial, the Ombudsman cannot do so

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[56] Supra note 41.

[57] *See Cabahug v. People*, supra note 55, at 509.

arbitrarily. The seemingly exclusive and unilateral authority of the Ombudsman must be tempered by the Court when powers of prosecution are in danger of being used for persecution. Dismissing the case against the accused for palpable want of probable cause not only spares him of the expense, rigors and embarrassment of trial, but also prevents needless waste of the court's time and saves the precious resources of the government.[58]

WHEREFORE, the petition is **GRANTED**. The 29 September 2017 Resolution and 20 April 2018 Order of the Office of the Ombudsman are hereby **REVERSED and SET ASIDE**. The Information against petitioners is hereby **DISMISSED** for lack of probable cause.

SO ORDERED.

Peralta, C.J., Gesmundo, Carandang, Lopez, and *Delos Santos, JJ.*, concur.

Perlas-Bernabe, Caguioa, and *Lazaro-Javier, JJ.*, see concurring opinions.

Leonen, J., see separate opinion.

Zalameda, J., see dissenting opinion.

Hernando, J., joins the concurring opinion of *J. Bernabe.*

Gaerlan, J., joins the dissent of *J. Zalameda.*

Inting, J., no part.

Baltazar-Padilla, J., on sick leave.

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[58] *Jimenez v. Tolentino, Jr.*, 490 Phil. 367, 375-376 (2005).

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

In the context of filing criminal charges, grave abuse of discretion exists in cases where the determination of probable cause is exercised in an arbitrary and despotic manner. There is probable cause "when the facts are sufficient to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof."[1] "In order to engender a well-founded belief that a crime has been committed, and to determine if the suspect is probably guilty of the same, the elements of the crime charged should, in all reasonable likelihood, be present. This is based on the principle that every crime is defined by its elements, without which there should be, at the most, no criminal offense."[2]

One of the essential elements[3] to hold a person criminally liable under Section 3(e) of Republic Act No. (RA) 3019 is the presence of manifest partiality, evident bad faith, or inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[4] On the other hand, "evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.

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[1] *Alberto v. Court of Appeals*, 711 Phil. 530, 553 (2013).

[2] Id.

[3] The elements of violation of Section 3 (e) of RA 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his function. (*Fuentes v. People*, 808 Phil. 586, 593 [2017]).

[4] Id. at 594.

It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.[5] Meanwhile, "gross negligence" is negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.[6]

In this case, the Office of the Ombudsman's finding of probable case rests on the **sweeping supposition** that petitioners committed the crime of violation of RA 3019 by suspending, through the issuance of Energy Regulatory Commission (ERC) Resolution No. 1, Series of 2016 (Resolution No. 1, s. 2016), the implementation of the Competitive Selection Process requirement (CSP). **By the solitary fact of suspending the implementation of the CSP, without anything more**, the Ombudsman already jumped to the conclusion that petitioners acted with manifest partiality, evident bad faith, or gross inexcusable negligence to accommodate the Power Supply Agreements (PSAs)/Power Supply Contracts (PSCs) of distribution utilities and generation companies, particularly, MERALCO, *viz.*:

> [R]espondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they suspended the implementation of the required CSP, to accommodate the PSAs/PSCs of [distribution utilities] and [generation companies], particularly Meralco, thereby exempting them from the CSP mandated requirement.
>
> The manifest partiality, evident bad faith or gross inexcusable negligence of respondents can be gleaned from the following documented chronological events:
>
> 1. On 20 October 2015, the ERC issued Resolution No. 13, Series of 2015 [(Resolution No. 13, s. 2015)] with the provision that all PSAs and PSCs not filed with the ERC as of 06 November 2015

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[5] Id.

[6] Id. at 594-594, citing *Coloma v. Sandiganbayan*, 744 Phil. 214, 229 (2014).

should already be covered by CSP as their Mandatory Selection Process;

2. Thus, by 07 November 2015, the requirement that PSAs not filed with ERC as of said date should already be covered by CSP, already took effect effect (sic);

3. In a Letter dated 26 November 2015, Meralco sought the permission of ERC to exempt their PSCs from the CSP requirement;

4. On 10 December 2015, the ERC, through Salazar's letter, denied Meralco's request;

5. On 15 March 2016, ERC, through respondents, issued Resolution No. 1, Series of 2016, modifying the effectivity date of the Resolution from 07 November 2015 to 30 April 2016, thus, giving a window period for PSAs without CSPs to be filed from 15 March 2016 to 30 April 2016;

6. On 29 April 2016, a day before the extended deadline of 30 April 2016, Meralco filed seven PSAs that did not undergo the CSP requirement.

x x x Their non-implementation of the requirement of CSP cannot hide under the cloak of presumption of regularity in the performance of their official duties. There is sufficient evidence that respondents gave unwarranted benefits to Meralco and other companies by exempting them from the coverage of the CSP requirement which was already in effect after 06 November 2015. The 45-day period gave Meralco and other companies the opportunity to dispense with CSP. Their gross inexcusable negligence led to the circumvention of the government policy requiring CSP, and denied the consumers the opportunities to elicit the best price offers and other PSA terms and conditions from suppliers.[7]

Notably, the Ombudsman mentions that there is "sufficient evidence" that petitioners gave unwarranted benefits to MERALCO and other companies. However, after carefully scrutinizing its resolution, as well as poring over the records, there is not a single shred of evidence on record which would buttress this claim.

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[7] See *ponencia*, pp. 9-10.

Instead, what the records show is that the ERC temporarily deferred the implementation of the CSP in order to ensure that there were suitable guidelines for its execution in light of the concerns raised by the power industry's various stakeholders. In fact, the ERC was actually forthright in mentioning these concerns in the whereas clauses of Resolution No. 1, s. 2016:

> WHEREAS, since the publication of the CSP [Guidelines] on 06 November 2015, the [ERC] has received several letters from stakeholders which raised issues on the constitutionality of the effectivity of the CSP [Guidelines], sought clarification on the implementation of the CSP and its applicability to the renewal and extension of PSAs, requested a determination of the accepted forms of CSP, and submitted grounds for exemption from its applicability, among others.
>
> WHEREAS, after judicious study and due consideration of the different perspectives raised in the aforementioned letters, with the end in view of ensuring the successful implementation of the CSP for the benefit of consumers, DUs, and GenCos, the [ERC] has resolved to allow a period of transition for the full implementation of the CSP [Guidelines] and, as such, restates the effectivity date of the CSP [Guidelines] to a later date[.][8]

As culled from the records, these letters include the following:

(a) Request of SMC Global Power that they be allowed to file their PSCs because the requirements imposed pursuant to the CSP implementation were non-existent when their PSCs were evaluated and signed, *viz.*:

> Upon filing with the ERC, however, our counter-part counsel for the DUs and ECs (Dechavez & Evangelista Law Offices) informed us that even at the pre-filing stage, the ERC rejects applications which do not include the following: DUs/ECs Invitation to Participate and Submit Proposal, DUs/ECs' Terms of Reference, Proposals Received by the DU/EC, tender offers, DUs/ECs Special Bids and Awards Committees (SBAC) Evaluation Report, DU Board Resolution confirming the approval of the SBAC Evaluation report and Notice of Award issued by the DU/EC.

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[8] See Resolution No. 1, s. 2016.

It is significant to note that all of these requirements, even the creation of the SBAC, were non-existent when our PSCs were evaluated and signed. x x x

To this end, we respectfully request the consideration of the Honorable Commission to allow us to file, and for the Commission to accept, the applications for approval of the subject PSCs. In our case, mere filing is critical for us to achieve financial close for purposes of funding our power plant project.

The filing of the application will enable us to continue financing the Limay Phase 1 Project, Malita Project and proceed with Limay Phase 2 Project to augment the capacity in the Luzon and Mindanao Grids and prevent the projected shortage in 2017.[9]

(b) Request of Philippine Rural Electric Cooperative Association, Inc. for exemption from coverage of Department Circular No. DC2015-06-0008;[10]

(c) Request for confirmation of Agusan del Norte Electric Cooperative, Inc. that any extension of PSAs or Energy Supply Agreements previously approved is outside the scope of ERC Resolution No. 13, s. 2015, *viz.*:

The ESA, as amended and supplemented, will expire on 25 June 2016. Given the power shortage in Mindanao, the insufficiency of the NPC/PSALM supply, taken together with the continuing demand growth of our end-users, we wish to exercise the option provided under the Amendment to the ESA to extend the Term of Our Amended and Supplemented ESA with TMI x x x.

Relating this provision to Reso 13, we are of the impression that Reso 13 may not be strictly applied to ESA extensions, especially considering that the Honorable Commission has already meticulously scrutinized and approved TMI's Fixed O&M, Energy and Fuel Fees, as well as its asset base in determining the Capital Recovery Fee.

x x x x

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[9] See Letter dated November 25, 2015 of SMC Global Power; *rollo*, pp. 162-163.

[10] See Letter dated December 1, 2015 of Philippine Rural Electric Cooperative Association, Inc.; id. at 164.

Since Section 4 of the Resolution states that the CSP requirement shall not apply to PSAs (or ESAs) already filed with the ERC, we are of the understanding that an extension of an existing ESA, which is part of the provisions submitted to and has been approved by the ERC, albeit provisionally, is outside the coverage of the present Resolution. Hence, we intend to enter into an extension of our existing ESA with TMI, applying the same methodology and asset base as approved by the Honorable Commission in arriving at the rates. x x x[11]

(d) Reiteration by SMC Global Power of its request to the ERC to accept and allow the filing of their PSCs already signed prior to the issuance of ERC Resolution No. 13, s. 2015:

Further to our letter dated November 25, 2015, we would like to reiterate our request to the Honorable Commission En Banc to accept and allow the filing of Power Supply Contracts (PSC) already signed prior to its issuance Resolution No. 13, Series of 2015 "A Resolution Directing All Distribution Utilities (DUs) to Conduct Competitive Selection Process (CSP) in the Procurement of Their Supply to the Captive Market."

We wish to stress that in the event the subject PSCs cannot be filed, the Honorable Commission would effectively invalidate the same to the detriment of the contracting parties and the industry. It is significant to note that the Distribution Utilities (DU) and Electric Cooperatives (EC) have carefully evaluated and considered the most advantageous terms and conditions for its consumers prior to signing the subject PSCs.

x x x x

Meanwhile, another round of CSP may likely alter the terms of the contract that could prove to be disadvantageous to the DU or EC.

Considering the execution of the PSCs and the stage of their application process prior to the issuance of the CSP requirement, we beg the indulgence of the Honorable Commission En Banc to accept the subject PSCs and allow the filing thereof to proceed.[12]

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[11] See Letter dated December 10, 2015 of Agusan del Norte Electric Cooperative, Inc.; id. at 167-168.

[12] See Letter dated December 14, 2015 SMC Global Power; id. at 169-170.

(e) Request of Astronergy Development for a meeting to discuss their peculiar situation following the issuance of Resolution No. 13, s. 2015 in that, it impairs the contracts that were entered into in good faith:

> We respectfully request a meeting with you at your earliest convenience, so that we can discuss our peculiar situation following the issuance of the Resolution. Our meeting objective is to understand your views regarding the retroactive application of the Resolution and further, to understand how to harmonize Resolution in light of the third party legal opinion we have attached herein for your consideration. Lastly, we hope to be allowed a brief opportunity to present and discuss our views on why the Commission's staff should interpret the Resolution in a manner that is consistent with the Commission's past written responses on RE to the Senate Energy Committee; and the Commission's related Decision relevant to our particular circumstances.
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> x x x x
>
> Section 4 of the Resolution requires the DUs to conduct a CSP for PSAs that have not yet submitted its PSA with the ERC. We believe the result is a retroactive application of the Resolution that impairs our contracts that were entered into in good faith. This creates uncertainties, including the possible revision and rescission of existing binding agreements, which our group of companies, and their shareholders and creditors, are greatly concerned about. There are also specific considerations with each DU: for each PSA we have executed since the application of the Resolution would potentially lead to losses and additional project delay. Any further delay (such as revisiting CSP) would result in a breach of contract for not meeting deadlines.[13]

(f) Request of Camarines Sur IV Electric Cooperative, Inc. and Unified Leyte Geothermal Energy, Inc. for an extension to file their joint application for the approval of a power supply agreement:

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[13] See Letter dated December 15, 2015 of Astronergy Development; id. at 176-177.

On 03 August 2015, CASURECO IV and San Miguel Energy Corporation ("SMEC") entered into a mutual agreement before this Honorable Commission to pre-terminate the Power Supply Contract dated 23 August 2013 between CASURECO IV and SMEC ("SMEC PSC"). As a result of the pre-termination of SMEC PSC, beginning 00:00H of 26 August 2015, SMEC ceased to supply power to CASURECO IV.

x x x Because CASURECO IV received no proposals for its power supply requirements, it began direct negotiations with ULGEI.

x x x x

Since CASURECO IV received such letter on 24 September 2015, CASURECO IV and ULGEI had until 23 November 2015 to file a joint-application for the approval of a power supply agreement. Due, however, to the extensive negotiations conducted to provide the Franchise Area a competitive and reliable supply of power, and since it will take time to prepare and finalize a power supply agreement, CASURECO IV and ULGEI requested this Honorable Commission for an additional thirty (30) days within which to file a joint-application, or until 23 December 2015.[14]

(g) Query of Aklan Electric Cooperative, Inc. regarding the CSP requirement:

We write to advance our queries pertaining to the Competitive Selection Process which is now part of the Power Supply Procurement requirements for all DUs. The related ERC Resolution No. 13, Series of 2015 was already in effect 15 days after its publication last October 20, 2015.

In the case of AKELCO where in previous years, two (2) Power Supply Contracts for base load requirements were already signed by both parties but were not filed with the ERC before the effectivity of the CSP. The queries are as follows:

1. If the Power Supply Contracts that were not filed due to non-compliance to CSP still binding?

2. What are the ERC's recommended modes of CSPs? Is the so-called "Price Challenge" or Swiss Challenge allowed? And,

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[14] See Letter dated December 21, 2015 of Camarines Sur IV Electric Cooperative, Inc. and Unified Leyte Geothermal Energy, Inc.; id. at 171-174.

3. Presuming that some of the stipulated provisions (*i.e.*, date of initial delivery, base load demand requirements) in the said contracts cannot be met due to CSP requirement or already unacceptable to either of the party, can we still re-negotiate the provisions and at the same time introduce the ERC recommended terms of reference?[15]

To my mind, absent any other circumstance showing that some illicit interest was involved in the issuance of Resolution No. 1, s. 2016, the foregoing concerns of the various stakeholders of the power industry evince the good faith of petitioners and in turn, negate the existence of probable cause anent the element of manifest partiality or evident bad faith on their part.

Neither can it be said that the said resolution was issued with gross inexcusable negligence since, as may be seen from the varied opinions in G.R. No. 227670,[16] captioned as *Alyansa Para sa Bagong Pilipinas, Inc. (ABP) v. ERC*, the matter regarding the propriety of extending the CSP requirement did not involve simple questions of law; hence, their eventual mistake in extending the CSP may be said to have been done in good faith. Jurisprudence states that a "[m]istake upon a doubtful or difficult question of law may properly be the basis of good faith,"[17] as in petitioners' mistaken extension of the CSP requirement, *especially when considered with the fact that they were only prompted to suspend the implementation of the CSP in light of the pressing and legitimate queries coming from the various stakeholders in the power industry*.

At this juncture, I find it apt to clarify that the eventual illegality of Resolution No. 1, s. 2016, as pronounced in the *ponencia*[18] of retired Senior Associate Justice Antonio T. Carpio

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[15] See Letter dated March 9, 2016 of Aklan Electric Cooperative, Inc.; id. at 175.

[16] See my Separate Concurring Opinion, Justice Alfredo Benjamin S. Caguioa's Dissenting Opinion, and Justice Andres Reyes, Jr.'s Dissenting Opinion in G.R. No. 227670.

[17] *Tio v. Abayata*, 578 Phil. 731, 747 (2008); citation omitted.

[18] Promulgated on May 3, 2019.

in G.R. No. 227670, does not — as it should not — automatically equate to a finding that there exists probable cause to hold those responsible for the void issuance criminally liable under Section 3(e) of RA 3019. Clearly, a case to determine whether or not a particular government issuance is void for having been issued with grave abuse of discretion is different from a case to determine whether or not probable cause exists to prosecute a government official for violation of RA 3019. Not only are their purposes different, the legal parameters which the Court utilizes in these types of cases substantially vary. As earlier intimated, the determination of probable cause rises and falls on the ostensible presence of the imputed crime's elements. Thus, since the Ombudsman's finding of probable cause fails to adequately demonstrate the element of manifest partiality, evident bad faith, or gross inexcusable negligence — which is integral to the charge of Section 3 (e), RA 3019 — the said finding was tainted with grave abuse of discretion. Accordingly, the present petition must be granted.

SEPARATE OPINION

LEONEN, ***J.*:**

A petition for certiorari is the appropriate remedy if the prosecution's finding of probable cause was made with grave abuse of discretion. However, before determining if there was any grave abuse of discretion, this Court must first determine if the petition was the "plain, speedy, and adequate remedy in the ordinary course of law[.]"[1] Once probable cause has been judicially determined, any petition questioning the executive determination of probable cause ceases to be the plain, speedy, and adequate remedy.

The controversy in this case arose from the Department of Energy's issuance of Circular No. DC2015-06-0008. This Circular provided that all distribution utilities shall procure

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[1] RULES OF COURT, Rule 65, Sec. 1.

power supply agreements only through a competitive selection process, conducted through a third party recognized by the Department of Energy and the Energy Regulatory Commission.[2] In view of this Circular, on November 4, 2015, the Energy Regulatory Commission issued Resolution No. 13, Series of 2015, requiring a successful, transparent, and competitive selection process as a precondition to an award of a supply agreement. Direct negotiation was allowed only when the competitive selection process fails twice.[3]

The Resolution likewise exempted all power supply agreements already filed and pending review with the Energy Regulatory Commission by November 6, 2015, the date the Resolution would take effect.[4]

Manila Electric Company (Meralco) was among the stakeholders that requested to be exempted from the requirement of competitive selection process. This request was denied.[5]

On March 15, 2016, the Energy Regulatory Commission issued Resolution No. 1, Series of 2016, which extended the effectivity date of Resolution No. 13 from November 6, 2015 to April 30, 2016. The extension was allegedly meant to be a transition period for the full implementation of Resolution No. 13.[6]

Meralco allegedly entered into seven power supply agreements on April 26, 2016, and filed them all with the Energy Regulatory

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[2] Ponencia, p. 2.

[3] Id.

[4] Id. at 3. *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019, <https://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/65064> [Per J. Carpio, En Banc], however, states that the effectivity date of the Department of Energy Circular was June 30, 2015. When the Energy Regulatory Commission issued the Competitive Selection Process Guidelines, the effectivity date was reset to November 7, 2015.

[5] Id.

[6] Id.

Commission on April 29, 2016, a day before the new effectivity date.[7]

Thus, before the Office of the Ombudsman, Alyansa Para sa Bagong Pilipinas, Inc. (Alyansa) filed a verified Complaint against the Chair and Commissioners of the Energy Regulatory Commission for violating Section 3(e)[8] of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act. It alleged that the extension of Resolution No. 13's effectivity date was meant to allow Meralco to acquire lucrative power supply agreements without undergoing the competition selection process. It alleged that the agreements Meralco entered into and pending approval from the Energy Regulatory Commission would prejudice the public in the next 20 years due to overpriced power charges.[9]

Alyansa simultaneously filed a Petition for Certiorari and Prohibition before this Court, docketed as G.R. No. 227670.[10] It prayed that Resolution No. 1 be voided for having been issued with grave abuse of discretion.

In the meantime, the Office of the Ombudsman proceeded to investigate the Complaint filed before it. In a September 29,

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[7] Id. at 4.

[8] Republic Act No. 3019 (1960), Sec. 3 provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[9] Ponencia, p. 4.

[10] *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65064> (Per J. Carpio, En Banc].

2017 Resolution, it found probable cause to charge Energy Regulatory Commission Chair Jose Vicente Salazar, as with Commissioners Gloria Victoria C. Yap-Taruc, Alfredo J. Non, Josephina Patricia A. Magpale-Asirit, and Geronimo D. Sta. Ana (collectively, the Commissioners), for violating Section 3(e) of Republic Act No. 3019.[11]

The beleaguered Chair and Commissioners filed their Joint Motion for Reconsideration and Supplemental Motion for Reconsideration, but these were denied by the Office of the Ombudsman in an April 20, 2018 Order.[12] Subsequently, on June 7, 2018, an Information was filed against them before the Regional Trial Court of Pasig City.[13] They were later arraigned on November 21, 2018.[14]

Aggrieved, the Commissioners[15] filed this Petition for Certiorari, assailing the Office of the Ombudsman's finding of probable cause for allegedly being tainted with grave abuse of discretion. They claim that the finding was not supported by substantial evidence and that the constitutionality of Resolution No. 1 had yet to be determined in G.R. No. 227670, which had still been pending at the time this Petition was filed.[16]

On May 3, 2019, a ruling in G.R. No. 227670 was rendered. Granting Alyansa's Petition, this Court declared, among others, that Resolution No. 1 was void for being tainted with grave abuse of discretion.[17]

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[11] Ponencia, pp. 4-5.

[12] Id. at 5.

[13] Id.

[14] *See* J. Zalameda, Dissenting Opinion, p. 9.

[15] Chair Jose Vicente Salazar filed a separate Petition for Certiorari before this Court, docketed as G.R. No. 240288. There is no explanation why these cases were not consolidated.

[16] Ponencia, p. 6.

[17] *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65064> [Per J. Carpio, En Banc].

Here, the majority resolved to grant the Commissioners' Petition. In so ruling, it opined that while this Court generally exercises a policy of non-interference with the Office of the Ombudsman's finding of probable cause, it can still review such finding if it is alleged to be tainted with grave abuse of discretion.[18] The majority then explained that while G.R. No. 227670 later nullified Resolution No. 1, this is not enough basis to find probable cause to charge petitioners with violation of Section 3(e) of Republic Act No. 3019.[19]

While I agree that a petition for certiorari is appropriate when the finding of probable cause is made with grave abuse of discretion, this Court must first determine if the petition filed was procedurally sound. It must be, under the Rules of Court, the "plain, speedy, and adequate remedy in the ordinary course of law[.]"[20]

Here, petitioners had been charged[21] and arraigned.[22] The Regional Trial Court of Pasig City has already assumed jurisdiction over the case. Any question on the finding of probable cause should have been addressed to its sound discretion. Filing the present Petition for Certiorari before this Court, therefore, was not the "plain, speedy, and adequate remedy" contemplated by the Rules.

I

The Constitution grants the Office of the Ombudsman a wide latitude to act on criminal complaints against government officers and employees.[23] Republic Act No. 6770, or the Ombudsman

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[18] Id. at 7.

[19] Id. at 16-17.

[20] RULES OF COURT, Rule 65, Sec. 1.

[21] Ponencia, p. 5.

[22] *See* J. Zalameda, Dissenting Opinion, p. 9.

[23] CONST., Art. XI, Sec. 12 provides:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against

Act of 1989, was enacted as a statutory reinforcement of its mandate as the protectors of the people. The Office of the Ombudsman is an independent constitutional body "beholden to no one," and "acts as the champion of the people and the preserver of the integrity of the public service."[24] Giving "respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman[,]"[25] this Court has adopted, as a general rule, a policy of non-interference with its prosecutorial discretion.

Another reason for this Court's policy of non-interference is that the determination of probable cause is highly factual in nature.[26] It requires the examination of the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."[27] In *Dichaves v. Office of the Ombudsman*:[28]

> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[29] (Citation omitted)

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public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[24] *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 415 Phil. 145, 151 (2001) [Per J. Pardo, En Banc].

[25] *Republic v. Desierto*, 541 Phil. 57, 67 (2007) [Per J. Azcuna, First Division].

[26] *People v. Court of Appeals*, 361 Phil. 401, 410-413 (1999) [Per J. Panganiban, Third Division].

[27] *Pilapil v. Sandiganbayan*, 293 Phil. 368, 381-382 (1993) [Per J. Nocon, En Banc].

[28] 802 Phil. 564 (2016) [Per J. Leonen, Second Division].

[29] Id. at 590.

Deference to the factual findings of prosecutorial bodies also serves a practical purpose:

> [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complaint.[30]

This policy of non-interference, however, is a general rule. This Court will *generally* defer to the Office of the Ombudsman's finding of probable cause, *except when the findings were arrived at with grave abuse of discretion*.[31] Conversely, mere errors of judgment are not sufficient. A petitioner must show that the Office of the Ombudsman acted in an "arbitrary and despotic manner because of passion or personal hostility."[32] In *Reyes v. Office of the Ombudsman*:[33]

> [D]isagreement with the Ombudsman's findings is not enough to constitute grave abuse of discretion. It is settled:
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> > An act of a court or tribunal may constitute grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.

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[30] *Republic v. Desierto*, 541 Phil. 57, 67-68 (2007) [Per J. Azcuna, First Division].

[31] CONST., Art. VIII, Sec. 1.

[32] *Reyes v. Office of the Ombudsman*, 810 Phil. 106, 115 (2017) [Per J. Leonen, Second Division].

[33] 810 Phil. 106 (2017) [Per J. Leonen, Second Division].

Thus, for this Petition to prosper, petitioner would have to show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law.[34]

Here, the Office of the Ombudsman's assailed Resolution does not indicate any capricious or arbitrary exercise of power, and nor does it show a virtual refusal to perform a duty. On the contrary, its findings appear to have been arrived at objectively, with due regard to the evidence on hand:

> [R]espondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they suspended the implementation of the required CSP, to accommodate the PSAs/PSCs of DUs and GenCos, particularly of Meralco, thereby exempting them from the CSP mandated requirement.
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> The manifest partiality, evident bad faith or gross inexcusable negligence of respondents can be gleaned from the following documented chronological events:
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> . . . .
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> The justifications given by respondents in not implementing the CSP requirement are untenable. The requirement for CSP as mandated by EPIRA, DOE and ERC, cannot be reasonably stopped by the requests for clarification, exception and/or exemption from CSP from numerous industry participants, especially when the stakeholders were already heard in extensive consultations conducted by the ERC. Respondents themselves bared in the "WHEREAS CLAUSES" of the 2015 CSP Resolution that stakeholders have been informed, heard and consulted about the CSP, thus:
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> . . . .
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> Furthermore, the CSP is an acknowledged mechanism to make the cost of PSAs more reasonable. Hence, accommodating companies' request to be exempted from CSP was a deviation from respondents' duty to promote public interest through the CSP requirement. The gross inexcusable negligence of respondents benefitted 38 more

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[34] Id. at 115 citing *Angeles v. Secretary of Justice*, 503 Phil. 93, 100 (2005) [Per J. Carpio, First Division].

companies who were able to enter into PSAs and file them with ERC without complying with the CSP requirement.

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Respondents, in their exercise of their official regulatory functions, have given unwarranted benefits, advantage or preference to MERALCO and other companies. Under the CSP Resolution, said companies were not qualified to file their PSAs for being non-compliant with the CSP requirement. But respondents' failure to recognize the effects of the suspension of the implementation of CSP gave said companies the concession to file their PSAs and PSCs without having to comply with the CSP policy.[35]

These findings are evidentiary. Any error requires the review of evidence, something that is usually done during trial. In *Drilon v. Court of Appeals*:[36]

Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[37]

Thus, the finding of probable cause may only be reviewed when there is reason to believe that it was arrived at in a

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[35] *Rollo*, pp. 44-49 as cited in J. Zalameda's Dissenting Opinion, p. 3.

[36] 327 Phil. 916 (1996) [Per J. Romero, Second Division].

[37] Id. at 923 citing *Salonga v. Cruz-Paño*, 219 Phil. 402 (1985) [Per J. Gutierrez, Jr., En Banc]; *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per J. Laurel, En Banc]; *Paderanga v. Drilon*, 273 Phil. 290 (1991) [Per J. Regalado, En Banc]; and J. Francisco, Concurring Opinion in *Webb v. De Leon*, 317 Phil. 758, 809-811 (1995) [Per J. Puno, Second Division].

capricious, whimsical, arbitrary, and despotic manner. The mere exercise of prosecutorial discretion, when done within the bounds of law and the rules of procedure, should not be subject to this Court's review. Excessive interference in matters that are distinctly prosecutorial may result in contradictory rulings based on the same set of facts, as what happened in this case. The majority here stated that Resolution No. 1 was issued with "sound judgment":

> The issuance of the subject resolution was in the exercise of ERC's sound judgment as a regulator and pursuant to its mandate under the EPIRA to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power. Thus, it cannot be classified as arbitrary, whimsical or capricious. The transition period, together with the clarifications provided in Resolution No. 1, constitute a reasonable response to the various concerns posed by DUs, GenCos and electric cooperatives.[38]

This is in direct contradiction to the ruling in G.R. No. 227670, *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*,[39] where this Court found that Resolution No. 1 was issued with grave abuse of discretion:

> The issuance of the ERC Clarificatory Resolution was attended with grave abuse of discretion amounting to lack or excess of jurisdiction for the following reasons:
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> (1) Postponing the effectivity of CSP from 30 June 2015 to 7 November 2015, and again postponing the effectivity of CSP from 7 November 2015 to 30 April 2016, or a total of 305 days, allowed DUs nationwide to avoid the mandatory CSP;
>
> (2) Postponing the effectivity of CSP effectively freezes for at least 20 years the DOE-mandated CSP to the great prejudice of the public. The purpose of CSP is to compel DUs to purchase their electric power at a transparent, reasonable, and least-cost basis, since this cost is entirely passed on to consumers. The ERC's postponement

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[38] Ponencia, pp. 11-12.

[39] G.R. No. 227670, May 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65064> [Per J. Carpio, En Banc].

unconscionably placed this public purpose in deep freeze for at least 20 years.

Indisputably, the ERC committed grave abuse of discretion amounting to lack or excess of jurisdiction when the ERC postponed the effectivity of CSP. The postponement effectively prevented for at least 20 years the enforcement of a mechanism intended to ensure "transparent and reasonable prices in a regime of free and fair competition," as mandated by law under EPIRA, a mechanism implemented in the 2015 DOE Circular which took effect on 30 June 2015.[40]

I agree with the majority that a finding of grave abuse of discretion does not equate to a finding of probable cause. However, at the very least, this Court should remain consistent. The majority's statement makes it appear as if there could have been no probable cause to charge petitioners since the assailed Resolution was not issued with grave abuse of discretion.

Incidentally, Justice Alfredo Caguioa (Justice Caguioa) concurs with the majority and points out that "the Court cannot, under the guise of non-interference, abdicate its solemn duty 'to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,' including the Ombudsman."[41]

This Court does not have the exclusive jurisdiction to determine grave abuse of discretion on findings of probable cause. This jurisdiction, by reason of judicial efficiency and the doctrine of hierarchy of courts, is concurrent with other courts. *People v. Cuaresma*[42] explains:

This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional

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[40] Id.

[41] J. Caguioa, Concurring Opinion, pp. 2-3 citing CONST., Art. VIII, Sec. 1.

[42] 254 Phil. 418 (1989) [Per J. Narvasa, First Division].

Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of Batas Pambansa Bilang 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard — resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court's corresponding jurisdiction, would have had to be filed with it.[43] (Citations omitted)

Diocese of Bacolod v. Commission on Elections[44] further refines this concept and discusses:

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence

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[43] Id. at 426-427.

[44] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[45] (Citation omitted)

We must be careful to distinguish between special civil actions filed under Rule 65 of the Rules of Court and those special civil actions which invoke this Court's power of judicial review under Article VIII, Section 1 of the Constitution. These are two different remedies.

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[45] Id. at 329-330.

A petition under Rule 65 is limited only to the review of judicial and quasi-judicial acts.[46] Meanwhile, the action under Article VIII, Section 1 — the one that Justice Caguioa cites — involves constitutional questions and generally refers to another constitutional organ's actions. It requires *prima facie* showing that a government branch or instrumentality has gravely abused its discretion. This Court, by its constitutional power to relax its own rules of procedure and by reason of efficiency, allowed Rule 65 to be used in petitions that invoke this expanded jurisdiction.[47]

This Court is not a trier of facts. Its finding of grave abuse of discretion made in its original jurisdiction should only be in cases where the materials facts are not contested.[48] This is antithetical to the inherently factual nature of determining probable cause. Thus, the policy of non-interference requires this Court to intervene only in situations where the material facts are not contested and there has been a capricious, whimsical, and arbitrary refusal to perform one's duty according to the law.

Where the trial court has found probable cause to issue a warrant of arrest and has arraigned the accused, any question as to the propriety of the trial court's acts should be addressed to its sound discretion. Owing to the trial court's concurrent jurisdiction, actions under Rule 65 may still be properly filed

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[46] *See* J. Leonen, Concurring Opinion in *Inmates of the New Bilibid Prison v. De Lima*, G.R. Nos. 212719 and 214637, June 25, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65257> [Per J. Peralta, En Banc] citing *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 142 (2016) [Per J. Brion, En Banc].

[47] *See GSIS Family Bank Employees Union v. Villanueva*, G.R. No. 210773, January 23, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64921> [Per J. Leonen, Third Division] citing *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 142 (2016) [Per J. Brion, En Banc].

[48] *See* J. Leonen, Separate Opinion in *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970> [Per J. Jardeleza, En Banc].

before the trial courts, which may have better competence than this Court to address the factual issues. These questions can likewise be properly raised as defenses before the trial court that arraigned the accused. "[T]he trial court must consider that trial is always available after arraignment and is a forum for the accused as much as it is for the prosecution to carefully examine the merits of the case."[49]

In any case, the finding of probable cause does not require a finding of guilt beyond reasonable doubt. It merely requires:

> . . . the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. [50] (Citations omitted)

Considering that probable cause merely requires a probability of guilt, and not the absolute certainty of it, a review of its determination requires no less than a showing of grave abuse of discretion. This is usually done through a petition for certiorari under Rule 65[51] of the Rules of Court. Parties are always too

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[49] *Personal Collection Direct Selling v. Carandang*, 820 Phil. 706, 722 (2017) [Per J. Leonen, Third Division].

[50] *Chan v. Secretary of Justice*, 572 Phil. 118, 132 (2008) [Per J. Nachura, Third Division].

[51] RULES OF COURT, Rule 65, Sec. 1 provides:

> SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings

quick to assume that their petitions will be entertained once they state the litany of acts alleged to be grave abuse of discretion. These parties forget that before delving into the substantial requirements of the petition, they must first prove that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law[.]"[52]

Once probable cause has been judicially determined, any petition that questions the executive determination of probable cause ceases to be the plain, speedy, and adequate remedy available to the parties.

II

It is settled that there are two stages in the determination of probable cause: first, an executive determination, done by the prosecutor in a preliminary investigation; and second, a judicial determination.[53]

The statutory basis for the executive determination of probable cause is found in the Rules of Court,[54] Republic Act No. 6770,[55] and various issuances by the Department of Justice.[56] Meanwhile, the judicial determination of probable cause is guided by the Bill of Rights of the Constitution:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination

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of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[52] RULES OF COURT, Rule 65, Sec. 1.

[53] *People v. Castillo*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[54] *See* RULES OF COURT, Rule 112.

[55] The Ombudsman Act of 1989.

[56] The most common being the 2000 National Prosecution Service Rules on Appeal.

under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.[57]

Although they may rely on the same evidence and case records, the prosecutor's finding of probable cause is not the same as the trial court's finding of probable cause. *People v. Castillo*[58] explains:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[59]

The trial court arrives at a finding independently of the prosecutor's findings. It cannot just blindly accept the prosecutor's

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[57] CONST., Art. III, Sec. 2.

[58] 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[59] Id. at 764-765 citing *Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per J. Regalado, En Banc]; *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568, 620-621 (1996) [Per J. Davide, Jr., En Banc]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per J. Panganiban, En Banc]; and *People and Dy v. Court of Appeals*, 361 Phil. 401 (1999) [Per J. Panganiban, Third Division].

conclusions that there was probable cause to issue a warrant of arrest. In *Ho v. People*:[60]

> Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, *i.e.*, whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.
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> Second, since their objectives are different, the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest. Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land. Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.
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> Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents

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[60] 345 Phil. 597 (1997) [Per J. Panganiban, En Banc].

(such as the complaints, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution, we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest. This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[61]

If the prosecutor finds probable cause, an information is filed in court. Once the information has been filed, the court acquires full jurisdiction over the case.[62] Any question on the finding of probable cause, therefore, must be addressed to its sound discretion. In *Crespo v. Mogul*:[63]

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court who has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or

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[61] Id. at 611-612 citing RULES OF COURT, Rule 112, Sec. 6 (b) and J. Puno, Dissenting Opinion in *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996) [Per J. Davide, Jr., En Banc].

[62] *See People v. Castillo*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

[63] 235 Phil. 465 (1987) [Per J. Gancayco, En Banc].

upon instructions of the Secretary of Justice who reviewed the records of the investigation.[64]

Even after the information is filed, a slew of other remedies is still available to the accused prior to arraignment. The accused may file a petition for review with the Secretary of Justice assailing the prosecutor's resolution finding probable cause. If the Secretary of Justice reverses the prosecutor's findings, they can move to dismiss the information.[65] The trial court then has the discretion whether to dismiss the information or to proceed with the case. Its refusal to dismiss the case may also be subject to a petition for certiorari under Rule 65. Meanwhile, filing the petition for review before the Secretary of Justice also effectively suspends the arraignment.[66] If the trial court refuses to suspend the arraignment despite the pendency of the petition for review, the accused may also file a certiorari action under Rule 65.

The accused may also move to quash the information based on the grounds stated under Rule 117, Section 3[67] of the Rules

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[64] Id. at 476.

[65] *See* RULES OF COURT, Rule 112, Sec. 4.

[66] *See* RULES OF COURT, Rule 116, Sec. 11.

[67] RULES OF COURT, Rule 117, Sec. 3 provides:

SECTION 3. Grounds. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That the officer who filed the information had no authority to do so;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

of Court. The denial of a motion to quash, however, is merely interlocutory and cannot be subject to a certiorari petition under Rule 65. The arguments in the motion to quash, however, can still be raised as defenses during trial. Should there be intervening actions by higher courts, as in this case, the accused may also file, apart from the motion to quash, a motion to dismiss based on the tenor of the intervening decision. Also, after evidence has been offered by the prosecution, it can likewise file a demurrer to evidence.

When properly filed, these remedies may in effect dismiss the information, the same relief that is often brought before this Court in certiorari actions questioning the determination of probable cause. Thus, to satisfy the requirement that there should be no other plain, speedy, and adequate remedy, the petitioners should show that the reliefs they seek from this Court are the same ones previously denied by the lower courts.

In this case, the trial court arraigned petitioners on November 21, 2018,[68] which means that it had already found probable cause to issue the warrants of arrest against them. Probable cause has already been judicially determined. The prudent course of action was to proceed to trial.

In *De Lima v. Reyes*,[69] this Court dismissed a petition for review on certiorari questioning the Secretary of Justice's finding of probable cause against the accused for being moot, as probable cause had already been judicially determined:

> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists to cause the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to

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(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

[68] *See* J. Zalameda, Dissenting Opinion, p. 9.

[69] 776 Phil. 623 (2016) [Per J. Leonen, Second Division].

the trial court. A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.[70]

I understand that there is some hesitation with such a drastic pronouncement, since "[t]he purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect [them] from an open and public accusation of crime, from the trouble, expense and anxiety of a public trial, and also to protect the state from useless and expensive trials."[71] This Court, however, should be mindful enough to distinguish between fishing expeditions and legitimate investigations done to protect the public trust.

A judicial determination of probable cause does not always result in a warrant of arrest. A complaint may very well be dismissed outright if it does not show sufficient evidence to engender a reasonable belief that a crime had probably been committed. Entertaining these kinds of petitions only shows how little trust this Court has in the trial courts' and the Sandiganbayan's abilities to determine if a criminal suit was malicious or oppressive.

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[70] Id. at 652-653 citing RULES OF COURT, Rule 65, Sec. 1.

[71] *Salonga v. Hon. Paño*, 219 Phil. 402, 428 (1985) [Per J. Gutierrez, Jr., En Banc].

We should refrain from making our own determination of probable cause whenever petitions of this nature are filed before us. Preliminary investigations are evidentiary in nature. We should not delve into intricate factual matters and make our own factual assumptions at our level. This Court's determination should be purely procedural — whether the petition before us was the plain, speedy, and adequate remedy provided by law.

The policy of non-interference in exclusively prosecutorial matters is grounded on sound reasoning. This Court should have enough confidence in our lower courts to weed out unnecessary prosecutions and useless trials. A petition for certiorari before this Court is not always the proper remedy to question the finding of probable cause. The petitioner must prove that the finding of probable cause was done in a capricious, whimsical, arbitrary, and despotic manner. Anything less than grave abuse of discretion should be dismissed.

ACCORDINGLY, I vote to **DISMISS** the Petition.

CONCURRING OPINION

CAGUIOA, ***J.*:**

I concur with the *ponencia* in granting the petition, reversing and setting aside the September 29, 2017 Resolution and April 20, 2018 Order of the Ombudsman, and directing the dismissal of the Information. The *ponencia* is absolutely correct in finding that the Ombudsman committed grave abuse of discretion when it found the existence of probable cause that petitioners violated Section 3(e) of Republic Act (R.A.) No. 3019.[1]

To my mind, this case highlights the need for the prosecutorial arms of the State to carefully balance the need to prosecute criminal offenses, on the one hand, and the duty to protect the innocent from baseless suits, especially when innocent public officers are involved, on the other.

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[1] ANTI-GRAFT AND CORRUPT PRACTICES ACT, dated August 17, 1960.

At the very heart of a preliminary investigation is the **duty** to secure the innocent against hasty, malicious and oppressive prosecution, and to protect them from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial. Indeed, the Ombudsman has this duty, as well as the duty to protect the State from useless and expensive trial. As the Court held in *Baylon v. Office of the Ombudsman*[2] *(Baylon)*:

> Agencies tasked with the preliminary investigation and prosecution of crimes must always be wary of undertones of political harassment. They should never forget that the purpose of a preliminary investigation is to secure the innocent against hasty, malicious and oppressive prosecution, and to protect one from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial, and also to protect the State from useless and expensive trial. **It is, therefore, imperative upon such agencies to relieve any person from the trauma of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused**.[3]

The Ombudsman's grave abuse of discretion in this case is starkly evident when it found the existence of probable cause **even if no proof *at all* was presented of the elements of Section 3(e) of R.A. No. 3019**.

Courts and the prosecutorial arms of the State ought to bear in mind that our penal laws on corrupt public officials are meant to enhance, instead of stifle, public service. If every mistake, error, or oversight is met with criminal prosecution, then no one would ever dare take on the responsibility of serving in the government. **We cannot continue to weaponize each little misstep lest we lose even the good people in government**.[4]

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[2] G.R. No. 142738, December 14, 2001, 372 SCRA 437.

[3] *Baylon v. Office of the Ombudsman*, id. at 438; citing *Venus v. Desierto*, 358 Phil. 675, 699-700 (1998).

[4] Concurring Opinion of Justice Caguioa in *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020.

Lack of elements of Section 3 (e) of R.A. No. 3019

The elements of a violation of Section 3(e) of R.A. No. 3019 are:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[5]

Petitioners are public officers who acted in the discharge of their official functions, thus the presence of the first two elements above are present. The third and fourth elements, however, are completely absent in the case at bar.

While it is true that finding probable cause is a prosecutorial prerogative, the Court cannot, under the guise of non-interference, abdicate its solemn duty "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government,"[6] including the Ombudsman. Stated differently, one of the known exceptions to the rule on non-interference with respect to the Ombudsman's determination of probable cause is when there is grave abuse in the exercise of its discretion.[7]

More important than the conventional adherence to rules of procedure is the right of persons to be free from unwarranted and vexatious prosecution.[8] Thus, the general rule that the Court

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[5] *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010, 614 SCRA 670, 679.

[6] CONSTITUTION, Art. VIII, Sec. 1.

[7] *Baylon v. Office of the Ombudsman*, supra note 2 at 448.

[8] *Posadas v. Ombudsman*, G.R. No. 131492, September 29, 2000, 341 SCRA 388, 400.

does not interfere with the discretion of the Ombudsman to determine the existence of probable cause has several settled exceptions in jurisprudence, [9] including grave abuse of discretion.

In *Baylon*, the Court ruled that the Ombudsman committed grave abuse of discretion because an Information was filed against therein petitioner for violation of Section 3(e), R.A. No. 3019 despite the lack of probable cause. In the case, the Court emphatically pointed out that some essential elements of the offense charged were missing; **hence, the Ombudsman's resolution finding probable cause against therein petitioner was reversed and set aside and the Sandiganbayan was ordered to dismiss the criminal case**.

In the same vein, the Court in *Venus v. Desierto*[10] set aside the Ombudsman's finding of probable cause because of the absence of a *prima facie* case. The case involved a public officer, Eriberto L. Venus (Venus), who was charged with the violation of Section 3(e) of R.A. No. 3019. In a petition for prohibition under Rule 65, Venus assailed among others, the filing of an Information against him based on the alleged existence of bad faith on his part, and argued that the facts did not make out even a *prima facie* case for violation of Section 3(e) of R.A. No. 3019. The Court examined the facts and eventually ruled that the finding of bad faith, and thus probable cause, by the Ombudsman was unsupported. In any event, to be liable under the law, "evident" bad faith must be shown. There being no bad faith to speak of in the first place, there was no reasonable ground to believe that Venus had violated the law. **Hence, the Court ordered the dismissal of the criminal case in the Sandiganbayan for want of probable cause**.

Significantly, in the Court's discussion explaining its reasons for ordering the dismissal of the case, it cautioned the agencies tasked with the preliminary investigation and prosecution of crimes to be wary of undertones of political harassment. **Further,**

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[9] See *Posadas v. Ombudsman*, id. at 397.

[10] See note 3.

the Court emphasized that these agencies were duty-bound to relieve any person from the trauma of going through a trial after ascertaining that the evidence was insufficient to sustain a *prima facie* case or that no probable cause existed to form a sufficient belief as to the guilt of the accused.

As will be shown below, the Ombudsman gravely abused its discretion in finding probable cause against petitioners despite the absence of the third and fourth elements in accordance with the above jurisprudential rulings.

Lack of the third element: Manifest partiality, or evident bad faith, or gross inexcusable negligence

In *Sison v. People*,[11] it was held that "[t]he third element of Section 3(e) of [R.A. No.] 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence."[12]

A perusal of the complaint filed against the Energy Regulatory Commission (ERC) Commissioners, however, reveals that there was absolutely no substantiation at all (*i.e.*, no reference to any proof or evidence) of its accusation that the restatement of the effectivity date of the competitive selection process (CSP) requirement was done with "manifest partiality, evident bad faith, or gross inexcusable negligence." All that the complaint did was make blanket claims that the issuance of Resolution No. 1, series of 2016[13] (Resolution No. 1) was meant to favor Manila Electric Company (MERALCO) and its sister companies, as there was allegedly "no visible valid reason"[14] for the ERC Commissioners to extend the effectivity of the CSP requirement.

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[11] Supra note 5.

[12] Id. at 679.

[13] A RESOLUTION CLARIFYING THE EFFECTIVITY OF ERC RESOLUTION NO. 13, SERIES OF 2015, issued on March 15, 2016.

[14] *Rollo*, Vol. I, p. 65.

The complaint thus appears only to hint that the issuance of Resolution No. 1 was done with **manifest partiality** in favor of MERALCO.

Manifest partiality, however, is defined in jurisprudence as "clear, notorious, or plain inclination or predilection to favor one side or person rather than another."[15] Viewed from this definition, it is quite clear that there could not be any reasonable belief that Resolution No. 1 was issued with manifest partiality. To repeat, there was absolutely no proof submitted to establish this point. **In contrast, the ERC Commissioners submitted a considerable amount of evidence establishing the contrary**.

In one of the Whereas Clauses of Resolution No. 1 itself, there is mention of the letters for clarification received by the ERC from various stakeholders. It reads:

> **WHEREAS**, since the publication of the CSP Resolution on 06 November 2015, the Commission has received several letters from stakeholders which raised issues on the constitutionality of the effectivity of the CSP Resolution, sought clarification on the implementation of the CSP and its applicability to the renewal and extension of PSAs, as requested a determination of the accepted forms of CSP, and submitted grounds for exemption from its applicability, among others.[16]

The letters referred to in the above Whereas Clause were submitted by petitioners as attachments in their Joint Counter-Affidavit dated February 1, 2017 and again in their Motion for Reconsideration dated December 27, 2017 before the Ombudsman. Some of these letters include:

a. In a November 25, 2015 letter, SMC Global Power **requested that it be allowed to file its Power Supply Contracts (PSCs) because the requirements imposed pursuant to the CSP implementation were non-existent when their PSCs were evaluated and signed**:

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[15] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 290.

[16] Seventh Whereas Clause, Resolution No. 1.

Upon filing with the ERC, however, our counter-part counsel for the DUs and the ECs (Dechavez & Evangelista Law Offices) informed us that even at the pre-filing stage, the ERC rejects applications which do not include the following: DUs/ECs Invitation to Participate and Submit Proposal, DUs/ECs' Terms of Reference, Proposals Received by the DU/EC, tender offers, DUs/ECs Special Bids and Awards Committees (SBAC) Evaluation Report, DU Board Resolution confirming the approval of the SBAC Evaluation Report and Notice of Award issued by the DU/EC.

It is significant to note that all of these requirements, even the creation of the SBAC, were non-existent when our PSCs were evaluated and signed. x x x

To this end, we respectfully request the consideration of the Honorable Commission to allow us to file, and for the Commission to accept, the applications for approval of the subject PSCs. In our case, mere filing is critical for us to achieve financial close for purposes of funding our power plant project.

The filing of the application will enable us to continue financing the Limay Phase 1 Project, Malita Project and proceed with Limay Phase 2 Project to augment the capacity in the Luzon and Mindanao Grids and prevent the projected shortage in 2017.[17]

b. In another letter dated December 14, 2015 letter, SMC Global Power, **reiterated its request above for the acceptance and approval of its PSCs that were signed prior to the issuance of ERC Resolution No. 13**:

Further to our letter dated November 25, 2015, we would like to reiterate our request to the Honorable Commission En Banc to accept and allow the filing of Power Supply Contracts (PSC) already signed prior to its issuance Resolution No. 13, Series of 2015 "A Resolution Directing All Distribution Utilities (DUs) to Conduct Competitive Selection Process (CSP) in the Procurement of Their Supply to the Captive Market."

We wish to stress that in the event the subject PSCs cannot be filed, the Honorable Commission would effectively invalidate the same to the detriment of the contracting parties and the industry. It

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[17] *Rollo*, Vol. I, p. 163.

is significant to note that Distribution Utilities (DU) and Electric Cooperatives (EC) have carefully evaluated and considered the most advantageous terms and conditions for its consumers prior to signing the subject PSCs.

x x x x

Meanwhile, another round of CSP may likely alter the terms of the contract that could prove to be disadvantageous to the DU or EC.

Considering the execution of the PSCs and the stage of their application process prior to the issuance of the CSP requirement, we beg the indulgence of the Honorable Commission En Banc to accept the subject PSCs and allow the filing thereof to proceed.[18]

c. In a December 1, 2015 letter, Philippine Rural Electric Cooperative Association, Inc. (PHILRECA) **requested for exemption from coverage of Department Circular No. DC2015-06-0008**:

May we respectfully furnish you a copy of the PHILRECA Board Resolution No. 10-23-2015 "Resolution Requesting the Department of Energy and the Energy Regulatory Commission (ERC) to exempt the Southern Philippines Power Corporation (SPPC) and Western Mindanao Power Corporation (WMPC) from the coverage of Department Circular No. DC2015-06-0008."[19]

In the Board Resolution, PHILRECA stated that "Mindanao is currently experiencing power shortage and the Electric Cooperatives (ECs) to undergo the competitive selection process in order to enter into a contract with these two (2) power plants **will further aggravate the power situation in Mindanao**."[20]

d. In a December 10, 2015 letter, Agusan del Norte Electric Cooperative, Inc. (ANECO), **asked for confirmation that any extension of PSAs or Energy Supply Agreements**

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[18] Id. at 169-170.

[19] Id. at 164.

[20] Id. at 165; emphasis and underscoring supplied.

(ESAs) previously approved is outside the scope of ERC Resolution No. 13:

The ESA, as amended and supplemented, will expire on 25 June 2016. Given the power shortage in Mindanao, the insufficiency of the NPC/PSALM supply, taken together with the continuing demand growth of our end-users, we wish to exercise the option provided under the Amendment to the ESA to extend the Term of Our Agreement and Supplemented ESA with TMI x x x:

x x x x

Relating to this provision to Reso 13, we are of the impression that Reso 13 may not be strictly applied to ESA extensions, especially considering that the Honorable Commission has already meticulously scrutinized and approved TMI's Fixed and O&M, Energy and Fuel Fees, as well as its asset base in determining the Capital Recovery Fee.

x x x x

Since Section 4 of the Resolution states that the CSP requirement shall not apply to PSAs (or ESAs) already filed with the ERC, we are of the understanding that an extension of an existing ESA, which is part of the provisions submitted to and has been approved by the ERC, albeit provisionally, is outside the coverage of the present Resolution. Hence, we intend to enter into an extension of our existing ESA with TMI, applying the same methodology and asset base as approved by the Honorable Commission in arriving at the rates.[21]

e. In a December 21, 2015 letter of Camarines Sur IV Electric Cooperative, Inc. (CASURECO) and Unified Leyte Geothermal Energy, Inc. (ULGEI), **they asked for an extension to file their joint application**:

On 03 August 2015, CASURECO IV and San Miguel Energy Corporation (SMEC) entered into a mutual agreement before this Honorable Commission to pre-terminate the Power Supply Contract dated 23 August 2013 between CASURECO IV and SMEC. As a result of the pre-termination of SMEC PSC, beginning 00:00H of 26 August 2015, SMEC ceased to supply power to CASURECO IV. x x x

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[21] Id. at 167-168.

x x x x

x x x Because CASURECO IV received no proposals for its power supply requirements, it began direct negotiations with ULGEI. x x x

x x x x

Since CASURECO IV received such letter on 24 September 2015, CASURECO IV and ULGEI had until 23 November 2015 to file a joint application for the approval of a power supply agreement. Due, however, to the extensive negotiations conducted to provide the Franchise Area a competitive and reliable supply of power, and since it will take time to prepare and finalize a power supply agreement, CASURECO IV and ULGI requested this Honorable Commission for an additional thirty (30) days within which to file a joint application, or until 23 December 2015.[22]

f. In a March 9, 2016 letter of Aklan Electric Cooperative, Inc. (AKELCO), **it posed some queries regarding the CSP requirement**:

We write to advance our queries pertaining to the Competitive Selection Process which is now part of the Power Supply Procurement requirements for all DUs. The related ERC Resolution No. 13, Series of 2015 was already in effect 15 days after its publication last October 20, 2015.

In the case of AKELCO where in previous years, two (2) Power Supply Contracts for base load requirements were already signed by both parties but were not filed with the ERC before the effectivity of the CSP. The queries are as follows:

1. If the Power Supply Contracts that were not filed due to non-compliance to CSP still binding?
2. What are the ERC's recommended mode of CSPs? Is the so-called "Price Challenge" or Swiss Challenge allowed? And
3. Presuming that some of the stipulated provisions (*i.e.*, date of initial delivery, base load demand requirements) in the said contracts cannot be met due to CSP requirement or already unacceptable to either of the party, can we still

[22] Id. at 171-172.

renegotiate the provisions and at the same time introduce the ERC recommended terms of reference?[23]

g. In a December 15, 2015 letter of Astronergy Development, **it raised the issue of impairment of contracts**:

We respectfully request a meeting with you at your earliest convenience, so that we can discuss our peculiar situation following the issuance of the Resolution. Our meeting objective is to understand your view regarding the retroactive application of the Resolution and further, to understand how to harmonize [the] Resolution in light of the third party legal opinion we have attached herein for your consideration. Lastly, we hope to be allowed a brief opportunity to present and discuss our views on why the Commission's staff should interpret the Resolution in a manner that is consistent with the Commission's past written responses on RE to the Senate Energy Committee; and the Commission's related Decision relevant to our particular circumstances.

x x x x

Section 4 of the Resolution requires the DUs to conduct a CSP for PSAs that have not yet submitted its PSA with the ERC. We believe the result is a retroactive application of the Resolution that impairs our contracts that were entered into in good faith. This creates uncertainties, including the possible revision and rescission of existing binding agreements, which our group of companies, and their shareholders and creditors, are greatly concerned about. There are also specific considerations with each DU: for each PSA we have executed since the application of the Resolution would potentially lead to losses and additional project delay. Any further delay (such as revisiting CSP) would result in a breach of contract for not meeting deadlines.[24]

Even the Department of Energy (DOE) itself recognized the reasonable and legitimate concerns when it endorsed one letter to the ERC. On January 18, 2016, the DOE endorsed **for the ERC's consideration** to allow Abra Electric Corporation (ABRECO) to directly negotiate with a power supplier, albeit

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[23] Id. at 175.

[24] Id. at 176-177.

without following the CSP requirement.[25] The DOE explained that the said request for endorsement was made in consideration of ABRECO's situation as an ailing electric cooperative and to prevent its vulnerability to volatile wholesale electricity spot market (WESM) prices given that its supply is sourced from it.[26]

Another fact that negates the existence of any manifest partiality by the ERC Commissioners in favor of MERALCO is the **ERC's denial of MERALCO's request for exemption from the CSP requirement**. Even the Ombudsman itself, in the Resolution in question, acknowledged that ERC had denied MERALCO's request on December 10, 2015.[27]

Lastly, the complaint lamented that, as a consequence of the issuance of Resolution No. 1, MERALCO was able to submit to ERC, for its approval, seven[28] Power Supply Agreements (PSAs) that did not go through CSP. In the same breath, however, the Ombudsman noted that there were "38 more companies who were able to enter into PSAs and file them with ERC *without complying with the CSP requirement*."[29]

Given the foregoing, it is thus worth asking: how could there be manifest partiality in favor of MERALCO when it was not just the said company who sought clarification/exemption from the CSP requirement? How could there be manifest partiality when the ERC itself denied MERALCO's request for exemption? How could there be manifest partiality when the perceived benefit, if there even was any, was enjoyed not just by MERALCO but by 38 more companies?

To reiterate, "manifest partiality" requires that there be a **clear, notorious, or plain inclination or predilection to favor**

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[25] Id. at 178.

[26] Id.

[27] Id. at 45.

[28] *See* id. at 63-64.

[29] Id. at 48. Italics in the original.

one side or person rather than another.[30] It is abundantly clear from the foregoing discussion that the evidence or proof that had been submitted by the ERC Commissioners, not to mention the recitals of Resolution No. 1 itself, showed that there was no manifest partiality to favor one side, *i.e.*, MERALCO.

The same is true with respect to the Ombudsman's "finding" of gross inexcusable negligence and evident bad faith in its Resolution: **its existence is not supported by any evidence**.

To recall, the Ombudsman's Resolution states that "[t]he gross inexcusable negligence of [the ERC Commissioners] benefitted 38 more companies who were able to enter into PSAs and file them with ERC *without complying with the CSP requirement*."[31]

On the other hand, for evident bad faith, the Ombudsman merely made the following blanket statement:

> The manifest partiality, evident bad faith or gross inexcusable negligence of respondents can be gleaned from the following documented chronological events:
>
> 1. On 20 October 2015, the ERC issued Resolution No. 13, Series of 2015 with the provision that all PSAs and PSCs not filed with the ERC as of 06 November 2015 should already be covered by CSP as their Mandatory Selection Process;
> 2. Thus, by 07 November 2015, the requirement that PSAs not filed with ERC as of said date should already be covered by CSP, already took effect *(sic)*;
> 3. In a Letter dated 26 November 2015, Meralco sought the permission of ERC to exempt their PSCs from CSP requirement;
> 4. On 10 December 2015, the ERC, through Salazar's letter, denied MERALCO's request;

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[30] *Albert v. Sandiganbayan*, supra note 15.

[31] *Rollo*, Vol. I, p. 48. Italics in the original.

5. On 15 March 2016, ERC, through respondents, issued Resolution No. 1, Series of 2016, modifying the effectivity of the Resolution from 07 November 2015 to 30 April 2016, thus, giving a window period for PSAs without CSPs to be filed from 15 March 2016 to 30 April 2016;

6. On 29 April 2016, a day before the extended deadline of 30 April 2016, Meralco filed seven PSAs that did not undergo the CSP requirement.[32] (Italics and underscoring omitted)

Based on jurisprudence, "gross inexcusable negligence" refers to negligence characterized by **the want of even the slightest care**, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[33]

However, apart from the use in passing of the term "gross inexcusable negligence," **there is absolutely no factual allegation or any logical explanation in the Resolution** supporting the conclusion that the ERC Commissioners can be held guilty of gross inexcusable negligence.

The same is true for the Ombudsman's conclusion of the existence of evident bad faith. Evident bad faith "connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will."[34] It "contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purpose[s]."[35] Simply put, it partakes of the nature of fraud.[36]

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[32] Id. at 44-45.

[33] *Sanchez v. People*, G.R. No. 187340, August 14, 2013, 703 SCRA 586, 593.

[34] *Albert v. Sandiganbayan*, supra note 15.

[35] Id.

[36] *Fonacier v. Sandiganbayan*, G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53417 & 53520, December 5, 1994, 238 SCRA 655, 687.

The presence of evident bad faith requires that the accused acted with a malicious motive or intent, or ill will. **It is not enough that the accused violated a provision of law. *To constitute evident bad faith, it must be proven that the accused acted with fraudulent intent.***[37]

As explained by the Court in *Sistoza v. Desierto (Sistoza)*[38] "mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be *evident* or *manifest*."[39]

Because evident bad faith entails manifest deliberate intent on the part of the accused to do wrong or to cause damage, **it must be shown** that the accused was "spurred by any corrupt motive."[40] Mistakes, therefore, no matter how patently clear, committed by a public officer are not actionable **"absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith."**[41]

In the present case, much like with the other modes of committing the third element, there is absolutely no proof to prove the existence of bad faith. **If there is not even an iota of bad faith exhibited here, then how could there be *evident* bad faith?**

More importantly, there could be no evident bad faith on the part of the ERC Commissioners in issuing Resolution No. 1 because it is quite evident from the chronology of events outlined by the Ombudsman itself that they believed, in good faith, that they possessed powers granted under the Electric Power Industry Reform Act of 2001 (EPIRA) to issue Resolution No. 1.

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[37] Concurring Opinion of Justice Caguioa in *Villarosa v. People*, supra note 4.

[38] G.R. No. 144784, September 3, 2002, 388 SCRA 307.

[39] Id. at 324. Italics in the original.

[40] *Republic v. Desierto*, G.R. No. 131397, January 31, 2006, 481 SCRA 153, 161.

[41] *Collantes v. Marcelo*, G.R. Nos. 167006-07, August 14, 2007, 530 SCRA 142, 155.

There is good faith in this case because not only is there a presumption that official duty has been regularly performed,[42] but also because mistakes committed upon a doubtful or difficult question of law may be the basis of good faith.[43] Considering that even members of the Court differed[44] in their opinions as regards the extent of ERC's — and its Commissioners' — powers, the question is thus undoubtedly a difficult question of law, which is certainly basis of the Commissioners' good faith.

Clear from the foregoing, therefore, is that there could be no evident bad faith that can be ascribed to the ERC Commissioners.

Absence of the fourth element: Causing undue injury to any party, or giving any private party any unwarranted benefit

With regard to the fourth element, the Court held in *Santiago v. Garchitorena*[45] that there are "two ways of violating Section 3(e) of R.A. No. 3019. These are: (a) by causing any undue injury to any party, including the Government; and (b) by giving any private party any unwarranted benefit, advantage or preference."[46] Similar to the third element, the last element of *either* causing undue injury to any party *or* giving any private party any unwarranted advantage or benefit is likewise absent.

The Ombudsman, in its Resolution finding probable cause against the ERC Commissioners, ruled that the element was present, ratiocinating as follows:

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[42] RULES OF COURT, Rule 131, Sec. 3 (m).

[43] CIVIL CODE, Art. 526.

[44] *See* Dissenting Opinions of Justices Alfredo Benjamin S. Caguioa and Andres B. Reyes, Jr. in *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission*, G.R. No. 227670, May 3, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65064>.

[45] G.R. No. 109266, December 2, 1993, 228 SCRA 214.

[46] Id. at 222.

Respondents, in the exercise of their official regulatory functions, have given unwarranted benefits, advantage or preference to MERALCO and other companies. Under the CSP Resolution, said companies were not qualified to file their PSAs for being non-compliant with the CSP requirement. But respondents' failure to recognize the effects of the suspension of the implementation of CSP gave said companies the concession to file their PSAs and PSCs without having to comply with the CSP policy.

They committed the offense in connection with the duty to promote competition as mandated by the EPIRA and to implement CSP as required by several DOE and ERC Resolutions. In performing their duty, they issued [Resolution No. 1], purportedly to pursue the government's policy of infusing competition and implementing CSP in PSAs and PSCs, but which, as evidence shows, digresses from said policies to favor companies.[47]

This is sheer grave abuse of discretion.

First of all, the element of "unwarranted benefits" must be understood in the context of corruption. As I stated at length in my Concurring Opinion in *Villarosa v. People*:[48]

As its name implies, and as what can be gleaned from the deliberations of Congress, RA 3019 was crafted as an anti-graft and corruption measure. At the heart of the acts punishable under RA 3019 is *corruption*. As explained by one of the sponsors of the law, Senator Arturo M. Tolentino, "[w]hile we are trying to penalize, the main idea of the bill is graft and corrupt practices. x x x Well, the idea of graft is the one emphasized."[49] Graft entails the acquisition of gain in *dishonest* ways.[50]

Hence, in saying that a public officer gave "unwarranted benefits, advantage or preference," it is not enough that the benefits, advantage, or preference was obtained in transgression of laws, rules and regulations. **Such benefits must have been given by the public**

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[47] *Rollo*, Vol. I, pp. 48-49.

[48] Supra note 4.

[49] Senate Deliberations of R.A. No. 3019 dated July 1960; underscoring supplied.

[50] BLACK'S LAW DICTIONARY 794 (9th ed. 2009).

officer to the private party with *corrupt intent, a dishonest design, or some unethical interest.* This is in alignment with the spirit of RA 3019, which centers on the concept of graft.

I recognize that this is not the understanding under the current state of jurisprudence. Jurisprudence has defined the term "*unwarranted*" as simply lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "*Advantage*" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "*Preference*" signifies priority or higher evaluation or desirability; choice or estimation above another.[51] The term "private party" may be used to refer to persons other than those holding public office,[52] which may either be a private person or a public officer acting in a private capacity to protect his personal interest.[53]

Thus, under current jurisprudence, in order to be found guilty for giving any unwarranted benefit, advantage, or preference, it is enough that the public officer has given an unauthorized or unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.[54] By giving any private party unwarranted benefit, advantage, or preference, *damage is not required*. It suffices that the public officer has given unjustified favor or benefit to another in the exercise of his official functions.[55] Proof of the extent or quantum of damage is not even essential, it being sufficient that the injury suffered or benefit received could be perceived to be substantial enough and not merely negligible.[56]

I respectfully submit, and evidently the majority agrees, that it is high time for the Court to revisit this line of reasoning.

The foregoing understanding of "unwarranted benefit, advantage, or preference" is too broad that every single misstep committed by

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[51] *Cabrera v. Sandiganbayan*, 484 Phil. 350, 364 (2004).

[52] *Bautista v. Sandiganbayan*, 387 Phil. 872, 884 (2000).

[53] *Ambil, Jr. v. Sandiganbayan*, 669 Phil. 32 (2011).

[54] *Gallego v. Sandiganbayan*, 201 Phil. 379, 384 (1982).

[55] Supra note 5.

[56] *Soriquez v. Sandiganbayan (Fifth Division)*, 510 Phil. 709, 718 (2005).

public officers that result in benefits to private parties falls under the definition and would thus possibly be criminally punishable. Every little error — no matter how minor — would satisfy the fourth element as the threshold is simply that the benefit be "unjustified," "unauthorized," or "without justification." For instance, a contract awarded in good faith based on an interpretation of the law that would later on be judicially declared incorrect would be sufficient basis for affirming the existence of the fourth element, which may lead to the incarceration of a public officer simply because a private party received a benefit "without justification," yet was revealed to be so only in hindsight.

While it is true that public office is a public trust, the Court is called upon to likewise play its part in not interpreting the laws to effectively be a disincentive to individuals in joining the public service. It is simply absurd to criminally punish every minute mistake that incidentally caused a benefit to private parties even when these acts were **not** done with ***corrupt intent***.[57] (Emphasis and underscoring supplied)

In this case, as discussed, **there is absolutely no proof that the incidental benefits received by the companies — *if there is any at all* — was linked to, or rooted in, any corrupt intent.**

Second, the Court must view the actions of the ERC within the context of the process of approval of PSAs. **The mere filing of an application for the approval of a PSA does not equate to an approval of the PSA.** There is no guarantee that the ERC would eventually approve the same. PSAs themselves are bilateral power supply contracts that are made subject to review by the ERC precisely to promote true market competition and prevent harmful monopoly and market power abuse.[58]

Thus, prior to the approval of the PSA, the PSA could not affect the consumers, as the distribution utilities (DUs) and the power producers (or Generation Companies or

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[57] Concurring Opinion of Justice Caguioa in *Villarosa v. People*, supra note 4.

[58] Republic Act No. 9136, otherwise known as Electric Power Industry Reform Act (EPIRA), Section 45.

"GenCos") cannot implement the PSA without the ERC's approval. In the same manner that the consumers are not affected, the DUs and the GenCos cannot benefit from a PSA that has yet to be approved by the ERC.

As I discussed in my Dissenting Opinion in *Alyansa Para sa Bagong Pilipinas v. Energy Regulatory Commission*[59] *(Alyansa)*, to get the approval of the ERC, the applicant must submit documents and agreements as listed in Rule 20 B, Section 2 of ERC Rules,[60] which include, among others, their Articles of Incorporation, Certificate of Registration from the Securities and Exchange Commission, Certificate of Registration from the Board of Investments, the Power Supply Agreement itself (including an Executive Summary, Sources of Funds, Purchased Power Rate, etc.), and many other documents to show the financial and economic impact of the transaction to the DUs, GenCos and the consumers.

The application has to likewise comply with pre-filing requirements,[61] jurisdictional requirements of publication and notice to all affected parties,[62] pre-trial,[63] and public hearings[64] where the applicant presents its witnesses, who will be subject to cross-examination, re-direct examination, and re-cross examination.[65]

It is only then that the ERC issues a decision on the application after the reception of evidence and compliance with the foregoing requirements.[66]

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[59] Supra note 44.

[60] ERC RULES OF PRACTICE AND PROCEDURE, Rule 20 B, Sec. 2.

[61] Id. at Rule 6.

[62] Id.

[63] Id. at Rule 16, Sec. 1.

[64] Id. at Rule 18, Sec. 1.

[65] Id. at Rule 18.

[66] Id. at Rule 20 B.

In the interim, parties may request for provisional authority together with their application for approval of their PSA. The ERC resolves these requests within 75 days from the filing of the application, and if it issues a provisional authority, the ERC is mandated to start the hearing on the application within 30 days from the issuance of the provisional authority.[67] The ERC then resolves the application within 12 months from the issuance of the provisional authority.[68]

The foregoing shows that a PSA will have no impact on consumers unless the ERC has issued a provisional authority or when it approves the application.

There is therefore no basis for the Ombudsman's holding that "there is sufficient evidence that [petitioners] gave unwarranted benefits to Meralco and other companies by exempting them from the coverage of the CSP requirement."[69] There is likewise no basis in the Ombudsman ruling that "[petitioners'] gross inexcusable negligence led to the circumvention of the government policy requiring CSP, and denied the consumers the opportunities to elicit the best price offers and other PSA terms and conditions from suppliers."[70] To be sure, all these are mere unwarranted conjectures.

The ERC, as the industry's independent regulatory body, possesses sufficient powers, as granted to it by the EPIRA, to disapprove or reject a PSA, even without the CSP requirement, if, in its discretion, the PSA would not allow the relevant player in the industry to supply electricity in the least cost manner. As I pointed out in my Dissenting Opinion in *Alyansa*:

Prior to the CSP requirement, DUs would secure their supply of electricity by entering into bilateral contracts with GenCos and the choice of which GenCos to have business with — or from which it

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[67] Id. at Rule 14, Sec. 3.

[68] Id.

[69] *Ponencia*, p. 10.

[70] Id.

will get their supply — rested on the sole discretion of the DUs. **This did not mean, however, that prior to the CSP requirement, the DUs had unbridled discretion on the price of electricity to impose on consumers**. Far from it. The EPIRA itself provides that DUs "shall have the obligation to supply electricity in the least cost manner to [their] captive market, ***subject to the collection of retail rate duly approved by the ERC***." Further, the ERC was empowered by the EPIRA to review "bilateral power supply contracts" entered into by DUs, **and to likewise *impose price controls*** and ***order the disgorgement of excess profits*** where, for instance, the DU is found to be engaged in market power abuse or anti-competitive behavior.

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Indeed, the EPIRA was passed as far back as 2001, or 18 years ago, and the DOE and ERC only conceptualized the CSP in recent years. **Throughout the years that the EPIRA was already in effect, *and while there was still no CSP requirement in place*, the ERC had been continuously doing its mandate of regulating the industry — particularly the DUs — to ensure that the prices passed on to the consumers are at a reasonable cost**.[71] (Emphasis and underscoring in the original; citations omitted)

The ERC Commissioners likewise did not cause any party undue injury. According to jurisprudence, "undue injury" as an element of Section 3(e) of R.A. No. 3019 is akin to the concept of actual damages in civil law, and must thus be quantified with certainty. In *Llorente v. Sandiganbayan*,[72] the Court explained:

This point is well-taken. Unlike in actions for torts, **undue injury in Sec. 3[e] cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime.** In fact, the causing of undue injury or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross

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[71] Dissenting Opinion of Justice Caguioa in *Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission*, supra note 44, citing Sections 23 and 45 of the EPIRA.

[72] G.R. No. 122166, March 11, 1998, 287 SCRA 382.

inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified** and proven to the point of moral certainty.

In jurisprudence, "undue injury" is consistently interpreted as "actual damage." *Undue* has been defined as "more than necessary, not proper, [or] illegal"; and *injury* as "any wrong or damage done to another, either in his person, rights, reputation or property [; that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

In turn, actual or compensatory damages is defined by Article 2199 of the Civil Code as follows:

> Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

Fundamental in the law on damages is that one injured by a breach of a contract, or by a *wrongful or negligent act or omission* shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must be actually proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.[73] (Emphasis and underscoring supplied; citations omitted)

The foregoing was affirmed in the case of *Pecho v. Sandiganbayan*,[74] where the Court *en banc* said:

Secondly, the third requisite of Section 3(e), *viz.*, "causing undue injury to any party, including the government," could only mean actual injury or damage which must be established by evidence. The

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[73] Id. at 399-400.

[74] G.R. No. 111399, November 14, 1994, 238 SCRA 116.

word *causing* is the present participle of the word *cause*. As a verb, the latter means "to be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make[;] to induce; to compel." The word *undue* means "more than necessary; not proper; illegal." And the word *injury* means "any wrong or damage done to another, either in his person, rights, reputation or property. The invasion of any legally protected interest of another." **Taken together, proof of actual injury or damage is required.**[75] (Emphasis and underscoring supplied; citations omitted)

Here, the records are bereft of any showing that any party — whether the government or any private party — suffered any actual damage or injury. **To stress anew, there could be no injury to any party as the PSAs submitted during the period of extension had not been approved.**

As the ERC Commissioners clearly did not give any party unwarranted advantages or benefits, or caused any party undue injury, it is without doubt therefore that the fourth element of Section 3(e) of R.A. No. 3019 is not present in this case.

Given the foregoing, it is thus grave abuse of discretion amounting to lack or excess of jurisdiction for the Ombudsman to still find probable cause against the ERC Commissioners despite the evident absence of two of the four elements of the crime charged.

In his Dissenting Opinion, while Associate Justice Marvic Mario Victor F. Leonen (Justice Leonen) concedes that the Court will only interfere when the finding of probable cause was arrived at with grave abuse of discretion,[76] he posits that the Ombudsman did not commit grave abuse of discretion here as it arrived at its conclusion "objectively, with due regard to the evidence on hand."[77]

I respectfully disagree.

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[75] Id. at 133.

[76] Dissenting Opinion of Justice Leonen, p. 5.

[77] Id.

As threshed out above, there was, in fact, no evidence presented or relied upon by which any neutral person could conclude that there was probable cause. To repeat, the Ombudsman's findings were ***conjectures*** and failed to consider the process of arriving at PSAs and that the extension addressed concerns of numerous stakeholders. To my mind, in determining the existence of grave abuse of discretion, the Court is charged to take a look at whether there is evidence to support such finding of the Ombudsman. If the issue pertains to the weighing of evidence — that is, when evidence is presented and there is doubt as to whether the Ombudsman assessed them correctly as proving the existence of the elements of the offense — then a petition for *certiorari* is not the proper remedy. However, when the records show the absolute lack of evidence to support the Ombudsman's conclusion, then such conclusion was arrived at with grave abuse of discretion and may be subject of a petition for *certiorari*.

The case of *Villarosa v. Ombudsman*[78] aptly defines and describes grave abuse of discretion and how it may be shown, *viz.*:

> Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law.
>
> For the present petition to prosper, petitioners must show this Court that the Ombudsman conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty mandated by law, which petitioners have failed to do.[79]

In relation to this, *Sistoza* states that "[w]hen the Ombudsman does not take essential facts into consideration in the

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[78] *Villarosa v. Ombudsman*, G.R. No. 221418, January 23, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64916>.

[79] Id.

determination of probable cause, it has been ruled that he gravely abuses his discretion."[80]

Here, because the Ombudsman found probable cause to charge Non, *et al.*, with violating Section 3(e) of R.A. No. 3019 despite the lack of evidence supporting the existence of the elements of the offense, it is clear that the Ombudsman committed grave abuse of discretion.

A final word

At this juncture, it is well to point out that I am aware that the Court had already held in *Alyansa* that the issuance of Resolution No. 1 was attended with grave abuse of discretion. As I maintain my dissent therein — because, to my mind, EPIRA grants the ERC sufficient powers to set the effectivity of the CSP requirement — it is equally worth mentioning that a **finding of probable cause is *not* a necessary consequence of a finding of grave abuse of discretion**. Assuming *arguendo* that the ERC, through its Commissioners, erred in "restating" the effectivity of the CSP requirement, this error does not, and should not, mean that the Commissioners should automatically be criminally indicted for such error. Stated differently, errors in the performance of duty should not automatically merit criminal prosecution especially where, as here, no one suffered any undue injury as a result of the error.

For the foregoing reasons, I join the *ponencia* in granting the petition.

CONCURRING OPINION

LAZARO-JAVIER, *J.*:

Respondent Office of the Ombudsman (OMB) found probable cause to charge petitioners with violation of Section 3 (e) of Republic Act No. 3019 (RA 3019). This offense involves "causing any undue injury to any party, including the

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[80] *Sistoza v. Desierto*, supra note 38 at 323-324.

Government, or giving any private party, any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. . . ."

The finding of probable cause stems from these circumstances:

1. On October 20, 2015, Jose Vicente Salazar and petitioners, collectively as Chairperson and members of the Energy Regulatory Commission (ERC), issued Resolution No. 13, series of 2015 providing, among others, that all power supply agreements (PSAs) and power service contracts (PSCs) not filed with the ERC as of November 6, 2015 should already be covered by the mandatory competitive selection process (CSP).
2. As a result, the CSP took effect on November 7, 2015.
3. By Letter dated November 26, 2015, Manila Electric Company (MERALCO) sought ERC's permission to exempt their PSCs from the CSP requirement.
4. On December 10, 2015, ERC Chairperson Salazar denied MERALCO's request.
5. On March 15, 2016, ERC Chairperson Salazar and petitioners collectively issued Resolution No. 1, series of 2016 modifying the effectivity date of the CSP from November 7, 2015 to April 30, 2016.
6. Resolution No. 1 resulted in giving an additional window period for PSAs without CSPs to be filed from March 15, 2016 to April 30, 2016.
7. On April 29, 2016, a day before the extended deadline, MERALCO filed seven (7) PSAs that did not undergo the CSP requirement.

Notably, in G.R. No. 227670 entitled ***Alyansa Para sa Bagong Pilipinas, Inc. v. Energy Regulatory Commission, et al.***, the Court had nullified Resolution No. 1. The Court struck it down *not because* of the alleged shenanigans that motivated its issuance *but because* ERC did not have the power to issue Resolution

No. 1 since it was bound to observe Department of Energy Circular No. 15 which fixed the effectivity date of the CSP on June 30, 2015 and not beyond.

The OMB asserted that the extension granted under Resolution No. 1 gave unwarranted benefits to MERALCO and other power distribution companies by exempting them from the coverage of the CSP requirement which if not for Resolution No. 1 would have already taken effect after November 6, 2015. The OMB concluded that the extension of the deadline for compliance with the CSP gave MERALCO and other companies precisely that opportunity to dispense with this requirement, and as a result, led to the circumvention of the government policy requiring the CSP, denying power consumers the opportunities to elicit the best price offers and other PSA terms and conditions from suppliers.

Petitioners vehemently deny that Resolution No. 1 was passed specifically to favor MERALCO. They assert that it was intended to provide a transition period to facilitate the full implementation of Resolution No. 13 so that all PSAs executed on or after the later date would be bound without exemption to abide by the CSP requirement. This was after several industry participants, MERALCO being just one of them, and electric cooperatives wrote ERC letters-inquiries about the impact of Resolution No. 13 to existing PSAs, PSAs for renewal, and negotiated PSAs, the specific mechanics of and exemptions from, CSP.

There is no debate that the determination of probable cause for the filing of a criminal information lies with our public prosecutors. *But* it is equally true that persons indicted for an offense have the present recourse to challenge the finding of probable cause against them.

The test is not the correctness of the prosecutor's determination but whether the determination was an exercise of grave abuse of discretion. The test for the *review* of a prosecutor's determination of probable cause is reasonableness, just as the test for the *determination* of probable cause *itself* is whether a reasonable person could conclude that a crime has been

committed and the individual or individuals being held therefor is or are probably the perpetrators of the crime.

A *standard of correctness* requires correct answers — issues lend themselves to one specific, particular result. On the other hand, a *standard of reasonableness* gives rise to a number of possible, reasonable conclusions, and as a result, this standard affords a *margin of appreciation* to the decision-maker within the *range* of *acceptable* and *rational* solutions. A court conducting a *review for reasonableness* inquiries into the qualities that make a decision reasonable, referring both to the *process of articulating the reasons* and the *outcomes or decisions themselves*.

Reasonableness is to be assessed *not only* in terms of whether there exist justification, transparency, and intelligibility within the decision-making process, *but also* whether the *decision falls within a range of possible, acceptable outcomes* which are *defensible in respect of the facts and law*. Where there is *more than one possible interpretation of the events or circumstances*, a public prosecutor *must be guided* by the *elements of the offense charged*, the *reasonableness of competing interpretations*, and *whether an interpretation will result in an anomaly or a contradiction*.

The logical implication to be drawn from the assailed Resolution and Order is that the OMB pegged the gold standard of PSA and PSC terms and conditions upon the CSP requirement. Yet, ironically, *those persons responsible for the institution of the CSP requirement*, herein petitioners, are the ones being indicted for violation of Section 3 (e) of RA 3019 when they merely postponed its effectivity and enforceability by a number of days.

Alyansa noted that:

> Lest we forget, the ERC is expressly mandated in Section 43 (o) of the EPIRA of "ensuring that the x x x pass through of bulk purchase cost by distributors is transparent." The ERC's postponement of CSP twice, totalling 305 days and enabling 90 PSAs in various areas of the country to avoid CSP for at least 20 years, directly and glaringly

violates this express mandate of the ERC, resulting in the non-transparent, secretive fixing of prices for bulk purchases of electricity, to the great prejudice of the 95 million Filipinos living in this country as well as the millions of business enterprises operating in this country. This ERC action is a most extreme instance of grave abuse of discretion, amounting to lack or excess of jurisdiction, warranting the strong condemnation by this Court and the annulment of the ERC's action.

In his *Dissent*, Justice Caguioa, however, emphasized that "[i]ndeed, the EPIRA was passed as far back as 2001, or 18 years ago, and the DOE and ERC only conceptualized the CSP in recent years." Hence, petitioners cannot only be the ones criminally responsible — if we are to apply fairly the Ombudsman's logic in the determination of probable cause.

To sustain the assailed Resolution and Order is to *single out* petitioners for criminal prosecution when there are definitely those others in the ERC who did not even care to consider imposing the CSP as a requirement. It is *downright unfair* and a *misuse of the criminal apparatus* to run after petitioners because they sought to postpone the CSP requirement, *but let others formerly with the ERC off the hook when they did nothing about requiring and implementing the CSP*. We should not treat differently those who are situated alike.

If we are to be consistent in following the reasons of the OMB in directing the petitioners' indictment, the ERC officers who had *not* done anything to impose and require the CSP for eighteen (18) or nineteen (19) years must also be charged for sitting idly on the CSP requirement, because having failed to do so they also benefitted the industry players and electric cooperatives by exempting them from this alleged gold standard.

To recall, there are seven (7) circumstances to support the charge against petitioners, of which at least four (4) form the foundation for the accusation against petitioners: (i) MERALCO's request for exemption from the CSP requirement; (ii) denial of the request for exemption; (iii) issuance of Resolution No. 1 extending the deferment of the CSP requirement; and (iv) MERALCO's filing of PSAs that took advantage of the deferral under Resolution No. 1.

But not even one (1) of these circumstances comes out as a smoking gun to reasonably support the inference that (i) petitioners acted with manifest partiality, evident bad faith or gross inexcusable negligence to favor MERALCO; (ii) petitioners caused any undue injury to the public in terms of electricity charges; and (iii) petitioners gave MERALCO any unwarranted benefits, advantage or preference. Indeed, based alone on these circumstances, *without more*, it is quite a *leap in logic* to conclude that petitioners favored MERALCO with unwarranted benefits, and in the process, harmed the public in terms of unfavourable electricity charges.

This determination of probable cause *does not fall* within a range of possible, acceptable outcomes *defensible in respect of the facts and law*. As stated, where there is *more than one possible interpretation of the events or circumstances,* a public prosecutor *must be guided* by the *elements of the offense charged.* The OMB's determination of probable cause *was not guided* by the elements of Section 3 (e) of RA 3019. The finding of probable cause was at best speculative; as it was not based on facts and law. Consider:

One. Resolution No. 1 is *reasonable* as it was issued to address pressing concerns affecting the impact of the CSP upon the power industry. It *did not just extend the transition period* to allow every stakeholder to speak to the various issues, *but also resolved several other things* impacting the stakeholders, for example, *clarify* certain compliance requirements on the forms of CSP *and resolve* how PSAs with provisions allowing automatic renewal or extension of their terms would be dealt with.

In his *Dissent*, Justice Caguioa aptly summarized the *factual* context that spurred the need for issuing Resolution No. 1. He said that the issuance of Resolution No. 1 was in the exercise of ERC's sound judgment as a regulator and pursuant to its mandate under the EPIRA to "protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power." In the exercise of its regulatory powers, the ERC's restatement of the effectivity date of the CSP implementation is clearly valid. The creation of the transition

period was done in good faith and was neither whimsical nor capricious. It was prompted by the ERC's receipt of numerous letters from stakeholders posing various concerns. These concerns were recognized to be reasonable and legitimate by the DOE itself as shown by the act of the DOE of endorsing one of these letters to the ERC. On January 18, 2016, the DOE endorsed for the ERC's consideration to allow Abra Electric Cooperative (ABRECO) to directly negotiate with a power supplier, albeit without following the CSP requirement. According to the DOE, the request for endorsement was made in consideration of ABRECO's situation as an ailing electric cooperative and to prevent its vulnerability to volatile wholesale electricity spot market (WESM) prices given that its supply is sourced from it. This letter is a recognition by the DOE that the power of whether to exempt an entity from the CSP is lodged solely with the ERC.

Further, Justice Caguioa opined that the ERC reasonably deemed it necessary to restate the effectivity of the CSP implementation. Hence, the effectivity date of the CSP implementation was restated from November 7, 2015 to April 30, 2016, creating a transition period of five (5) months. This transition period was deemed by the ERC enough to allow the completion of the PSAs or those already executed but not yet filed and to prohibit PSAs which were still too early in the negotiation or so far from execution. The ERC granted a period of transition in order to avoid the risk of inconsistency in resolving the individual requests for exemptions sought by DUs, GenCos, and electric cooperatives, while, at the same time, ensuring a steady electric supply for the period covered by the different calls for the CSP exemption. Further, as regulator, ERC had full knowledge and complete sense of the difficulty of adding a new requirement to an application for the approval of a PSA when the DUs and the GenCos had already executed their PSAs. As a matter of fact, requiring a CSP would most likely have resulted in the undoing of heavily and lengthily negotiated and executed agreements over which many computations and projections had already been done.

Justice Caguioa, too, keenly noted that Resolution No. 1 did not only restate the effectivity date of the CSP implementation but it also addressed certain concerns raised by these stakeholders. The ERC clarified certain compliance requirements on the other forms of CSP as provided in Resolution No. 13 and resolved that the PSAs with provisions allowing automatic renewal or extension of their term, whether such renewal or extension requires the intervention of the parties, may have one (1) automatic renewal or extension for a period not exceeding one (1) year from the end of their respective terms, provided that these PSAs were approved by the ERC before the effectivity of Resolution No. 1.

Justice Caguioa, thus, concluded that the issuance of Resolution No. 1 cannot be classified as arbitrary, whimsical, or capricious. The establishment of a transition period, together with the clarifications provided in Resolution No. 1, constitutes a reasonable well thought-out response to the various concerns posed by DUs, GenCos, and electric cooperatives.

Another *dissenter* in G.R. No. 227670 was Associate Justice (now retired) Andres B. Reyes, Jr. who likewise cited the *factual* bases for the issuance of Resolution No. 1:

> In this instance, the ERC has sufficiently established that "restating" the effectivity of ERC Resolution No. 13 at a later date is not exercised whimsically or capriciously. Neither is it an arbitrary exercise of power by reason of passion or hostility. Indeed, its issuance is clearly not without basis. In fact, the Court finds that the ratiocination put forth by the Office of the Solicitor General (OSG) is reasonable to justify ERC's action.
>
> First, the implementation of ERC Resolution No. 13 caused an avalanche of concerns and confusion from the stakeholders of the industry regarding the actual implementation of the provisions of the resolution, so much so that a multitude of DUs, mostly electric cooperatives, sought for an exemption from the guidelines in the resolution. There was a real possibility that the implementation of ERC Resolution No. 13 would invariably render nugatory the already pending negotiations among the DUs and generation companies. This fact is proven from the letters sent by SMC Global Power dated November 25, 2015 and December 14, 2015, Philippine Rural Electric

Cooperative Association, Inc. dated December 1, 2015, Agusan Del Norte Electric Cooperative, Inc. dated December 10, 2015, Camarines Sur IV Electric Cooperative, Inc. dated December 21, 2015, and Aklan Electric Cooperative, Inc. dated March 9, 2016.

A reading of these letters confronted the ERC with probabilities of discontinuance in the financing of projects during their implementation stage, aggravation of power shortages, confusion of ERC Resolution No. 13's applicability on PSAs already filed with the ERC, disenfranchisement of Power Supply Contracts (PSCs) which have already been signed but were still unfiled to the ERC prior to the effectivity of ERC Resolution No. 13, and the reality of the necessity of sufficient period within which to complete the applications which are still governed by the rules prior to ERC Resolution No. 13.

All these concerns were presented to the ERC, which then, by its mandate, acted accordingly. There is wisdom in the OSG's assertion that by granting a period of transition, the ERC would avoid the risk of inconsistency in resolving individual requests for exemptions sought by the DUs, generation companies, and electric cooperatives, while at the same time, it would secure the steady supply of electricity for the same period.

Justice Caguioa described Resolution No. 1 as a "reasonable well thought-out response to the various concerns posed by Distribution Utilities (DUs), Generation Companies (GenCos) and electric cooperatives which arose from the immediate implementation of the CSP," for creating a "transition period" for compliance with the CSP requirement. The original period of implementation was characterized as an "untimely and unrealistic immediate imposition of a requirement that could not be reasonably be complied with. . . ." Petitioners' exercise of discretion was described as having been done in "good faith, or on the basis of its interpretation of the powers granted to [petitioners as ERC members] by the EPIRA."

Note that the *Dissents* of both Justice Caguioa and Justice Reyes in G.R. No. 227670 are being cited here *not* for the purpose of overturning the already settled doctrine that the ERC did not have the power to amend the effectivity date of the CSP. Rather, the *Dissents* are brought to fore to buttress the claim that Resolution No. 1 was issued in good faith and as a reasonable

and calibrated response to the legitimate concerns of industry players and electric cooperatives, not just of MERALCO as claimed by the OMB, and to make way for the efficient and smooth implementation of the CSP.

Two. The PSAs endorsed by MERALCO have not been approved, much less, implemented. ERC has yet to approve the PSAs through an expensive, tedious, and exhaustive process. Approval of the PSAs and PSCs is *not* automatic simply because the applicants have filed their respective applications with the ERC. Hence, it cannot be inferred that the public has been unduly harmed by the mere submission of the PSAs and PSCs to the ERC. The Ombudsman's claim of undue harm, again, is speculative. At any rate, Justice Caguioa explained the tedious process that PSAs go through before the same may be approved and enforced, beginning with the filing of the applicant's Articles of Incorporation and other supporting documents numbering sixteen (16) altogether to the pre-trial and public hearings which include the presentation of evidence subject to cross-examination, re-direct examination, and re-cross examination.

Justice Caguioa also pointed out that the CSP is merely a tool and only one of the mechanisms to ensure the low cost of electricity. I fully agree with Justice Caguioa's submission that:

> **It is therefore premature, if not outrightly erroneous, to claim that the executions of the PSAs during the transition period have placed the CSP into "deep freeze" for the duration of the PSAs, and that the public will be prejudiced. During the transition period provided by Resolution No. 1, and even before the implementation of the CSP, the ERC, in compliance with its mandate under the EPIRA, has the power — nay, the duty — to ensure that any bilateral power supply contracts entered into by the DUs will be consistent with their mandate that they supply electricity to their captive market in the least cost manner.**
>
> x x x **Thus, with or without the CSP, the public is protected from practices that harm them or that would result in market increases arising from non-competitive practices.** x x x

Three. Resolution No. 1 was *available to all* industry players and electric cooperatives alike. It was *not limited* to MERALCO.

This is evident not only from the text of Resolution No. 1 but from the reasons that impelled petitioners to issue Resolution No. 1 — *to provide* a transition period for the facilitation of the full and encompassing implementation of Resolution No. 13, *and to allow* several industry participants, MERALCO being just one of them, and electric cooperatives *to adjust* to the impact of Resolution No. 13 to existing PSAs, PSAs for renewal, and negotiated PSAs, the specific mechanics of the CSP, and the ground rules for exemptions from the CSP, if any.

No evidence of any circumstance was referred to by the OMB to negate this specific intention in the issuance of Resolution No. 1. It was not shown that any or all of petitioners went out of his or her way to meet with any MERALCO representative. There was no letter, text, or communication of any kind to establish any contact, illicit or licit, prior to Resolution No. 1 or after, between petitioners or anyone of them and MERALCO.

The *net effect* of extending the waiting period prior to the implementation of the CSP was *merely to revert to the protocols* that have been *established and used since 2001*. From that year till today, no one in the power industry was ever indicted for using these protocols. Justice Caguioa clarified in his *Dissent* in G.R. No. 227670 how these prior-CSP protocols worked and we need not repeat it here.

In fine, it cannot *be reasonably concluded* that petitioners acted with manifest partiality, evident bad faith or gross inexcusable negligence, to favor MERALCO or any other industry player or electric cooperative, when Chairperson Salazar and petitioners issued Resolution No. 1 to extend the transition period prior to the CSP.

Four. Where there is *more than one possible interpretation of the events or circumstances*, a public prosecutor *must be guided* by the *reasonableness of competing interpretations*, and *whether an interpretation will result in an anomaly or a contradiction*.

In sum, what the OMB has against petitioners in terms of probable cause is *only a jump in logic* that neither the law nor

the facts can support. Its determination of probable cause against petitioners is based on prejudice and speculation — a conjecture that comes from the premise that just because MERALCO benefitted from Resolution No. 1, the latter was from the start meant only to give an undue and criminal benefit or advantage to MERALCO. This is an *incomplete*, nay *unreasonable* analysis of Resolution No. 1. To be able to reasonably conclude that petitioners violated Section 3 (e) of RA 3019 requires delving on several times more than seven circumstances that the OMB has utilized in its determination of probable cause. The complexity of the issues was not lost during the deliberations in G.R. No. 227670. Quoting again from Justice Caguioa's *Dissent*, *viz.*:

> At the outset, it should be pointed out that the present case contains several factual matters that are not cognizable by the Court, and which should be threshed out before the appropriate forum. **Whether the moving of the effective date of the CSP effectively puts the requirement into a "deep freeze," as maintained by the ponencia, is a factual matter that cannot intelligently be resolved by the Court. As to whether the restatement of the effectivity date of the CSP affected, or will continue to affect, the supply of electricity for the entire country is another matter that should be properly ventilated before a court equipped to receive evidence.** As well, **the problems that the DUs faced in the immediate effectivity of the requirement — which led them to seek exemption from the CSP requirement, and which later on prompted the ERC to issue Resolution No. 1 — are also better appreciated in the context of actual evidence.** In addition, **whether the restatement of the effectivity date of the CSP was reasonable, or effective in guaranteeing the steady supply of electricity for the entire country is a factual matter that demands the presentation of evidence. *All these factual matters need to be addressed before the Court can even begin to determine whether the ERC's act of issuing Resolution No. 1 can be considered to have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.***

If probable cause were to be based on a premise such as the one used by the OMB, decision-makers (especially judges) would be in danger of being indicted for violation of Section 3 (e) of RA 3019, because in general, the nature of their job is to rule

for one party against another. The interpretation made by the OMB in determining probable cause *has and will result in such an unfair outcome* and *is therefore unreasonable*. Verily, therefore, the action of the OMB to initiate a criminal action against petitioners does not fall within the range of possible, acceptable outcomes defensible in respect of the facts and law.

ACCORDINGLY, I vote to grant the petition and order the dismissal of the Information against petitioners for lack of probable cause and to set aside all criminal processes, including the warrants of arrest issued on each of them.

DISSENTING OPINION

ZALAMEDA, *J.*:

Petitioners ascribe grave abuse of discretion on the part of the Office of the Ombudsman (the Ombudsman) when it rendered the assailed Resolution dated 29 September 2017 and Order dated 20 April 2018, ultimately allowing for the filing of charges against petitioners for violation of Sec. 3 (e) of Republic Act No. (RA) 3019. Necessarily, in determining whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction, this Court have to review the Ombudsman's finding of probable cause against petitioners.

As a general rule, this Court does not interfere with the Ombudsman's exercise of its constitutional mandate. Both the Constitution[1] and RA 6770[2] give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees thereby giving rise to the **rule on non-**

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[1] Art. XI, Sec. 12 of the 1987 Constitution provides:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[2] The Ombudsman Act of 1989.

interference, which is based on the respect for the investigatory and prosecutorial powers of the Ombudsman.[3]

More importantly, the determination of probable cause for the purpose of filing an information in court is essentially an executive function. The State's self-preserving power to prosecute violators of its penal laws is a necessary component of the Executive's power and responsibility to faithfully execute the laws of the land.[4]

To justify judicial intrusion into what is fundamentally an executive domain, petitioners have the burden of proving that the Ombudsman committed grave abuse of discretion. Petitioners are duty-bound to demonstrate how the Ombudsman acted in an **arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law**, before judicial relief from a discretionary prosecutorial action may be obtained.[5] However, **petitioners' arguments in this case failed to overcome their burden**.

Petitioners' main contention is that the Ombudsman's decision to indict them for violation of Sec. 3(e) of RA 3019 was tainted with grave abuse of discretion **since the elements of the offense are wanting and not supported by evidence**. Yet, a perusal of the assailed issuances readily negates this argument. Contrary to petitioners' claim, the Ombudsman identified pertinent facts and evaluated them against the three (3) constitutive elements[6]

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[3] *See Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, 07 December 2016; 802 Phil. 564 (2016).

[4] *See Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. Nos. 159139 & 174777, 06 June 2017; 810 Phil. 400 (2017).

[5] *See Elma v. Jacobi*, G.R. No. 155996, 27 June 2012; 689 Phil. 307 (2012).

[6] The elements of violation of Section 3 (e) of RA 3019 are as follows: (a) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy

of the offense charged. The decision to indict petitioners was reached after a painstaking review of the facts and evidence, a valid exercise of the Ombudsman's discretion. For reference, the relevant portion of the Ombudsman's discussion is reproduced, as follows:

> The first element is present, respondents being all public officers of ERC at the time material to the charges, x x x
>
> On the second element, respondents acted with manifest partiality, evident bad faith or gross inexcusable negligence when they suspended the implementation of the required CSP, to accommodate the PSAs/PSCs of DUs and GenCos, particularly of Meralco, thereby exempting them from the CSP mandated requirement.
>
> The **manifest partiality, evident bad faith or gross inexcusable negligence** of respondents can be gleaned from the following documented chronological events:
>
> x x x x x x x x x
>
> The justifications given by respondents in not implementing the CSP requirement are untenable. The requirement for CSP as mandated by EPIRA, DOE and ERC, cannot be reasonably stopped by the requests for clarification, exception and/or exemption from CSP from numerous industry participants, especially when the stakeholders were already heard in extensive consultations conducted by the ERC. Respondents themselves bared in the *"WHEREAS CLAUSES"* of the 2015 CSP Resolution that stakeholders have been informed, heard and consulted about the CSP, thus:
>
> x x x x x x x x x
>
> Furthermore, the CSP is an acknowledged mechanism to make the cost of PSAs more reasonable. Hence, accommodating companies' request to be exempted from CSP was a deviation from respondents' duty to promote public interest through the CSP requirement. **The gross inexcusable negligence of respondents benefitted 38 more**

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with such public officers); (b) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions. (*Ferrer, Jr. v. People*, G.R. No. 240209, 10 June 2019)

companies who were able to enter into PSAs and file them with ERC **without complying with the CSP requirement**.

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The third element is also present.

Respondents, in their exercise of their official regulatory functions, have given unwarranted benefits, advantage or preference to MERALCO **and other companies**. Under the CSP Resolution, said companies were not qualified to file their PSAs for being non-compliant with the CSP requirement. But respondents' failure to recognize the effects of the suspension of the implementation of CSP gave said companies the concession to file their PSAs and PSCs without having to comply with the CSP policy.[7] (Emphasis supplied)

It must be emphasized that there are three (3) modes by which Sec. 3(e) of RA 3019 may be committed, namely, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence."[8] As can be gleaned from the above excerpt, the Ombudsman did not limit its finding to just one mode, but discussed how petitioners' actuations related to the recognized modes for committing the offense charged. Thus, in my perspective, the Ombudsman "covered all the bases" before it reached the conclusion that there was probable cause to indict petitioners.

Indeed, probable cause does not signify absolute certainty but only reasonable belief, to wit:

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, **it does not import absolute certainty**. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. **Probable cause implies probability of guilt and**

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[7] *Rollo*, pp. 44-49.

[8] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009; 580 SCRA 279, 290.

requires more than bare suspicion, but less than evidence which would justify conviction.[9] (Emphasis supplied)

Moreover, the finding of probable cause merely signifies that the suspect is to stand trial for the charges. **It is not a pronouncement of guilt**.[10] Thus, a finding of probable cause need only rest on evidence showing that **more likely than not** a crime has been committed and was committed by the suspects.[11]

For purposes of probable cause to file an information for the offense charged, I find that the Court's definition of "unwarranted benefits" is broad enough to **more likely** cover petitioners' actuations.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[12] The fact that the implementation of the CSP requirement was suspended twice, allowing for MERALCO and other companies to secure power supply agreements without the benefit of a CSP, supports a **preliminary finding** of the presence of the element of unwarranted benefit.

At any rate, the definitive finding of the presence or absence of the elements of the offense is a matter of evidence. Such finding is evidentiary in nature and consists of matters of defense, the truth of which can be passed upon after a full-blown trial on the merits. The validity and merit of a party's

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[9] *Pineda-Ng v. People*, G.R. No. 189533, 15 November 2010; 649 Phil. 225 (2010).

[10] *Gonzalez v. Hongkong & Shanghai Banking Corp.*, G.R. No. 164904, 19 October 2007; 562 Phil. 841 (2007).

[11] *Presidential Ad-Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 136225, 23 April 2008; 575 Phil. 468 (2008).

[12] *Rivera v. People*, G.R. Nos. 156577, 156587 & 156749, 03 December 2014; 749 Phil. 124 (2014).

allegation or defense, as well as the admissibility of testimonies and evidence, are also better ventilated at the trial proper than at the preliminary investigation level.[13] Accordingly, the issue of whether MERALCO and the other companies received unwarranted benefits, or whether petitioners acted in bad faith, with manifest partiality, or through gross inexcusable negligence would be conclusively determined, not in the preliminary investigation, but during trial.

A preliminary investigation is essentially inquisitorial. It is often the only means of discovering the persons who may be seasonably charged with a crime, allowing the prosecutor to prepare his complaint or information. It does not place the persons against whom it is taken in jeopardy. It is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.[14]

Further, assailing the Ombudsman's finding of probable cause on the ground of grave abuse of discretion raises questions of fact, which does not fall within the ambit of this Court's jurisdiction especially in an application for the extraordinary writ of *certiorari* where neither questions of fact nor even of law are entertained.[15]

This is not a case where there is a glaring absence of any of the elements of the offense charged demonstrating that the prosecutor acted in an arbitrary and despotic manner by reason of passion or personal hostility. On the contrary, petitioners' conduct actually engenders more suspicion that the elements of RA 3019 are present and thus, satisfy the requirement of probable cause. Petitioners may have good reasons for the

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[13] *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, 31 July 2018.

[14] *Olivarez v. Sandiganbayan*, G.R. No. 118533, 04 October 1995; 319 Phil. 45 (1995).

[15] *Id*.

suspension of the CSP requirement, but those reasons are a matter of defense and best left to the trial court's evaluation after trial.

Absent a clear showing that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in the issuance of its Resolution dated 29 September 2017 and Order dated 20 April 2018, the Court cannot depart from the policy of non-interference. Lest it be forgotten, the Information against petitioners had already been filed before the Regional Trial Court (RTC) of Pasig City during the pendency of this case. Its disposition now rests on the trial court's sound discretion. Although the prosecuting officer retains direction and control over the prosecution of the criminal case, he or she cannot impose any opinion on the trial court. The determination, conduct, and evaluation of the case lies within the exclusive jurisdiction of the trial court. For these reasons, this Court should have refrained from resolving the issues raised by petitioners. By refusing to bend the policy of non-interference, we are respecting the exclusive jurisdiction of the court trying the case and avoiding any pronouncement which would preempt its independent assessment. Undoubtedly, a determination by this Court of the existence or non-existence of probable cause would affect the resolution by the trial court of the matter still pending before it.

Surprisingly, this Court even went further, directing the dismissal of this Information already filed before the trial court. On this score, I wish to offer some discussion on the order to dismiss the Information where the trial court has already taken cognizance of the criminal case, if only to serve as a guide for future similar cases.

To recall, the Office of the Ombudsman's determination of the existence of probable cause during a preliminary investigation is an executive function, which is different from the judicial determination of probable cause. The executive determination of probable cause, is undertaken by either the public prosecutor or the Ombudsman for the purpose of determining whether an information charging an accused should be filed. On the other

hand, judicial determination of probable cause is the process for the judge to determine whether a warrant of arrest should be issued. Once the public prosecutor or the Ombudsman determines probable cause and files the case before the trial court or the Sandiganbayan, the judge will make a judicial determination of probable cause to determine if a warrant of arrest should be issued against the accused.[16]

The difference between the two (2) modes of determining probable cause was discussed in *People v. Castillo*,[17] *viz.*:

> x x x The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
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Thus, absent a finding that an information is invalid on its face or that the prosecutor committed manifest error or grave abuse of

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[16] *See Reyes v. Ombudsman*, G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, 15 March 2016; *Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, 213473-74 & 213538-39, 31 July 2018.

[17] G.R. No. 171188, 19 June 2009; 607 Phil. 754 (2009).

discretion, a judge's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether the arrest warrants should be issued against the accused.

Hence, aside from the prosecutor's determination of probable cause, a judge will also make his or her own independent finding of whether probable cause exists to order the arrest of the accused and proceed with trial. This is evident from Section 5(a) of Rule 112 of the Rules of Criminal Procedure, which gives the trial court three (3) options upon the filing of the criminal information: (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) issue a warrant of arrest if it finds probable cause; or (3) order the prosecutor to present additional evidence within five days from notice in case of doubt as to the existence of probable cause, *viz.*:

> Section 5. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.[18]

Probable cause ceases once the court acquires jurisdiction over the case. The court's broad control over the direction of the case was explained in *De Lima v. Reyes*,[19] to wit:

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[18] Formerly Section 6. The former Section 5 (Resolution of investigating judge and its review) was deleted per A.M. No. 05-8-26-SC, 03 October 2005.

[19] G.R. No. 209330, 11 January 2016; 776 Phil. 623 (2016).

The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court, the only qualification is that the action of the Court must not impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

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The rule therefore in this jurisdiction is that **once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.** x x x (Emphasis supplied)

Considering petitioners have already been arraigned on 21 November 2018,[20] the disposition of the case should have stayed within the sound discretion of the trial court if not for the ensuing dismissal ordered by this Court. Any action from this Court should have been limited to directing the Ombudsman to withdraw the Information by filing the appropriate motion with the trial court **instead of this Court dismissing the Information against petitioners for lack of probable cause**. For one, it gives the impression of ordering the trial court to dismiss the Information, which impinges upon its own discretion.

Noteworthy, too, is that petitioners are not at all seeking for this particular relief, to wit:

> WHEREFORE, it is respectfully prayed that this Honorable Court (1) GIVE DUE COURSE to this petition, before considering it on its merits, (2) ISSUE A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION restraining the Ombudsman and anyone acting in her behalf, from filing an Information for violation of Section 3(e) RA No. 3019 against the petitioners with the Sandiganbayan, and thereafter, (3) GRANT THE PETITION by declaring as void the Resolution dated September 29, 2017 and the Order dated April 20, 2018 of the Ombudsman and DISMISSING OMB-C-C-16-0497 for lack of probable cause.[21]

Petitioners are only assailing the executive finding of probable cause against them by the Ombudsman; their main prayer in their petition does not even involve the dismissal of the criminal case already filed in court. And, for this Court to order its dismissal preempts any exercise of jurisdiction by the trial court over the criminal case. To be sure, the decision whether to dismiss the case or not rests on the sound discretion of the trial court where the Information was filed.[22]

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[20] *Rollo*, p. 880.

[21] *Id.* at p. 32.

[22] *Chan v. Secretary of Justice*, G.R. No. 147065, 14 March 2008; 572 Phil. 118 (2008).

Admittedly, this Court has, in previous instances, quashed an Information or even directly dismissed a criminal case pending before a court even if the solitary issue for resolution was the alleged error of the prosecutor or the Ombudsman in determining probable cause. However, those cases are not on all fours with the present case, either as to the **stage of the criminal proceeding or the prayer of the petitioner/s**.

In *Brocka v. Enrile*,[23] Brocka, et al., came before the **Court to permanently enjoin the City Fiscal of Quezon City** from investigating charges of "Inciting to Sedition" filed against them. The Court granted their prayer after determining that a **sham preliminary investigation for a second charge** was hastily conducted in order to keep Brocka, et al., in detention.

Meanwhile, in *Venus v. Desierto*,[24] Eriberto L. Venus (Venus), prayed not only for the reversal of the Ombudsman's finding of probable cause, but also **for the Information against him to be set aside**. The **Sandiganbayan previously allowed Venus to file a motion for reconsideration directly with the Office of the Special Prosecutor**. The Special Prosecutor recommended the dismissal of the case, but the Ombudsman did not heed the recommendation. After the Sandiganbayan had set the arraignment, the **Court issued a temporary restraining order halting the proceedings**. The Court eventually ordered the Sandiganbayan to dismiss the criminal case upon finding the absence of probable cause for the crime charged.

This Court's pronouncement in *Baylon v. Office of the Ombudsman*[25] is also instructive. In that case, the **Sandiganbayan ordered the Ombudsman to conduct a reinvestigation of the case and suspended proceedings pending review. By doing so, the Sandiganbayan deferred to the Ombudsman's authority to reinvestigate the case.** The Ombudsman, however,

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[23] G.R. Nos. 69863-65, 10 December 1990; 270 Phil. 271 (1990).

[24] G.R. No. 130319, 21 October 1998; 358 Phil. 675 (1998).

[25] *Baylon v. Office of the Ombudsman*, G.R. No. 142738, 14 December 2001; 423 Phil. 705 (2001).

sustained its finding of probable cause and denied the motion for reconsideration of therein petitioner, Dr. Baylon, who assailed "the decision of the Ombudsman for having been issued with grave abuse of discretion." In his petition, Dr. Baylon **"prays that the Sandiganbayan be enjoined from further proceedings in the criminal case."** Upon finding of a lack of probable cause, this Court ordered the Sandiganbayan to dismiss the criminal case against Dr. Baylon and his co-accused.

Much like in *Venus* and in *Baylon*, **the Sandiganbayan** in *Sistoza v. Desierto*,[26] deferred to the authority of the Ombudsman when it **granted a reinvestigation** upon motion of therein petitioner. **Before resolving the case, this Court also issued a temporary restraining order to enjoin the Sandiganbayan** from conducting further proceedings in the criminal case against petitioner Sistoza.

Meanwhile, in *Roy III v. Ombudsman*,[27] Jose M. Roy III asserted that the temporary restraining order or a writ of preliminary injunction issued, restraining the filing of an information against him, as well as the issuances of the Ombudsman, be reversed and set aside for being issued with grave abuse of discretion amounting to lack or excess of jurisdiction. However, it seems the criminal proceedings against him had yet to commence when he filed the petition before this Court as he **prayed that the filing of an Information against him be restrained**. Later, he also prayed for the issuance of a writ of *certiorari* **setting aside and terminating any proceedings before the Sandiganbayan relative to his case**. After finding the utter lack of probable cause as **similarly found and recommended by the Office of the Solicitor General**, this Court granted the petition, reversed the ruling of the Ombudsman, and dismissed the criminal case against Jose M. Roy III before the Sandiganbayan.

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[26] G.R. No. 144784, 03 September 2002; 437 Phil. 117 (2002).

[27] G.R. No. 225718, 04 March 2020.

Other cases where this Court dismissed the Information or directly dismissed the criminal case consist of an action assailing issuances rendered by the very court trying the criminal case.

In *Fernando v. Sandiganbayan*,[28] the subjects of the case were the **two orders of the Sandiganbayan** which denied the motion to defer arraignment and set the date for the arraignment of petitioners therein. Although called upon to determine whether the Ombudsman correctly found a *prima facie* case against therein petitioners, this Court held that the scope of its review necessarily involved examining whether the Sandiganbayan gravely abused its discretion in the exercise of judicial powers when it issued the assailed orders.

Similarly, this Court ordered the Sandiganbayan to dismiss the pertinent criminal case in *Cabahug v. People*.[29] After the Ombudsman charged Susana Cabahug (Cabahug) with violation of Sec. 3 (e) of RA 3019, she filed with the Sandiganbayan a Motion for Re-determination of Existence of Probable Cause, which the latter denied. The case eventually reached this Court when Cabahug filed a "petition for *Certiorari* and/or Prohibition with Preliminary Injunction and/or Temporary Restraining Order **assailing two (2) Orders of the Sandiganbayan** in Criminal Case No. 23458."

Comparably, in *Principio v. Barrientos*,[30] this Court ordered the RTC to dismiss the criminal case involving therein petitioner Herminio C. Principio (Principio) for want of probable cause. That particular appeal stemmed from **the RTC's denial of Principio's motion to dismiss/motion to quash**, which was elevated to the Court of Appeals via petition for *certiorari*.

Since this Court, in resolving the above cases, determined whether there was grave abuse of discretion or whether there was error on the part of the issuing body, specifically either

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[28] G.R. Nos. 96182, 96183, 19 August 1992; 287 Phil. 753 (1992).

[29] G.R. No. 132816, 05 February 2002; 426 Phil. 490 (2002).

[30] G.R. No. 167025, 19 December 2005; 514 Phil. 799 (2005).

the trial court or the Sandiganbayan, then the actions specifically filed before this Court in the said cases may be utilized to stop the trial court from exercising its judicial power. However, the same does not hold true for the present case wherein the assailed issuances were rendered by the Ombudsman without any prayer pertaining to the proceedings before the RTC. Hence, the *certiorari* action in the case at bar is limited to reviewing the Ombudsman's acts and cannot transcend to another court's exercise of its own powers. Otherwise stated, if the trial court (or the Sandiganbayan) has jurisdiction over the person and subject matter of the controversy, **a petition for *certiorari*, which does not impute grave abuse of discretion on any of the trial court's (or Sandiganbayan's) issuances, will not lie to stop it from exercising judicial power**.

The foregoing discussion certainly does not mean that this Court cannot dismiss an Information or even dismiss the criminal case upon finding of a lack of probable cause. My concern rests upon the apparent **limits of herein petitioner's *certiorari* action** as I have expounded in my disquisition above.

Ultimately, it must be stressed that this Court's judicial power under Section 1, Article VIII [31] of the Constitution is **sufficiently broad and wide but it is not limitless**. There are still certain standards, most of which have been set by this Court itself, that must be fulfilled in the exercise of this Court's awesome power of review. For *certiorari* actions, our beacon is Section 65 of the Rules of Court, which specifically states:

SECTION 1. Petition for Certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted

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[31] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

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without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered** annulling or modifying the proceedings of such tribunal, board or officer, and **granting such incidental reliefs as law and justice may require**. (Emphasis supplied)

Petitioners must therefore **invoke this Court's power and specifically ask for the reliefs they seek** as stated in the rule instead of this Court volunteering reliefs outside the limits of the action. We cannot be so eager to exercise its powers and prerogatives at every turn, especially in a case where **petitioners are asking for the application of an exception to a general principle**, which by its innate nature, calls for a restrictive treatment.

This Court certainly has judicial discretion to decide matters relevant to a case, but it must only touch upon collateral matters **within the scope of an action and incorporated by issues clearly brought before it**. Indeed, this Court should always take caution not to make hasty generalizations at the expense of our well-entrenched doctrines.

ACCORDINGLY, I vote for the DISMISSAL of the present Petition.

EN BANC

[G.R. No. 243503. September 15, 2020]

ESTER B. VELASQUEZ, JUAN V. BOLO, ELADIO C. DIOKO, and GLEN M. PESOLE, as Former Members of the Board of Regents of the Cebu Normal University, *Petitioners*, *v.* **COMMISSION ON AUDIT**, *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; HIGHER EDUCATION MODERNIZATION ACT OF 1997 (RA 8292); THE RULING THAT JUDICIAL INTERPRETATION OF SECTION 4(d) OF RA 8292 IN THE CASE OF *BENGUET STATE UNIVERSITY* RETROACTS AS OF THE DATE THE LAW WAS ENACTED IN 1997, REITERATED AND APPLIED. — In the case of *Benguet State University*, the Court applied the statutory construction doctrine of *ejusdem generis* in construing that the power of the governing boards of government educational institutions are not plenary and absolute. Consequently, their power to defray their income is limited to disbursements for programs and projects intended for instruction, research, and extension. The Court interpreted "other programs or projects" as those programs/projects which are of similar nature to academic programs/projects for instruction, research, and extension. Guided by the pronouncement of the Court in the case of *Castro*, it is clear that the judicial interpretation of Section 4(d) of R.A. No. 8292 in the case of *Benguet State University* must be applied retroactively. Such interpretation did not revisit nor overturn an existing doctrine. Contrary to petitioners' assertion, the ruling of the Court in the *Benguet State University* case retroacts as of the date that R.A. No. 8292 was enacted in 1997. In fact, such construction was upheld in the 2019 case of *Rotoras v. Commission on Audit.* Therein, the Court identified that the tuition fees and other necessary school charges collected by the government educational institution constitute as special trust fund, which shall be used solely for instruction, research, extension, or other programs or projects of similar nature.

2. ID.; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); THE GRANT OF QUARTERLY RICE SUBSIDY AND *KALAMPUSAN* AWARD IN FAVOR OF CEBU NORMAL UNIVERSITY (CNU) EMPLOYEES, WHICH ARE APPARENTLY NOT IN LINE WITH ACADEMIC PURPOSES, ARE BEYOND THE POWERS OF THE BOARD OF DIRECTORS OF CNU, THUS, THE QUESTIONED NOTICES OF DISALLOWANCE (NDs) ISSUED BY COA ARE CORRECT. — With the retroactive application of the *Benguet State University* case, the grant of the quarterly rice subsidy and the incentives for the *Kalampusan* Award, which are apparently not in line with academic purposes, are beyond the powers of the BOR of CNU. Thus, the issuances of the NDs by the Commission Proper is correct.

3. ID.; ID.; ID.; ID.; HAVING ACTED IN GOOD FAITH WHEN THEY AUTHORIZED THE GRANT OF THE RICE SUBSIDY ALLOWANCE AND THE *KALAMPUSAN* AWARD, PETITIONERS ARE ABSOLVED FROM LIABILITY; NEITHER THE EMPLOYEES WHO RECEIVED SUCH INCENTIVES CAN BE HELD LIABLE TO REFUND THE SAME. — In this case, petitioners acted in good faith when they authorized the grant of rice subsidy allowance and the *Kalampusan* Award through the issuance of Board Resolutions in 2003 and 2004. Notably, it was only when the Court decided the case of *Benguet State University* in 2007 that the interpretation of the provisions of Section 4(d) of R.A. No. 8292 on the authority of the governing board of a government educational institution to disburse its income was settled. Prior to the Court's pronouncement in 2007, petitioners were utterly convinced that the grant of such incentives, relating to the efficiency and productivity of CNU employees, was in accordance with law. Neither can the payees of such incentives be held liable for the refund. Based on *Madera*, the Court resolves to excuse the return in this case. The disallowed rice subsidy is a reasonable amount of financial assistance which may be excused under No. 2(d) of the aforementioned Rules on Return, while the *Kalampusan* Award which was granted in consideration of services rendered, and is, thus, likewise excused under No. 2(d) of the same Rules only on the ground of undue prejudice to payees if the Court require the return of amounts they received 16 years earlier. Following our pronouncement in *Madera*, the Court holds that the petitioners, as approving officers, and

recipients of the rice subsidy allowance and the *Kalampusan* Award are not liable to refund the amount received.

APPEARANCES OF COUNSEL

Felipe S. Velasquez for petitioners.
Terrence A.L. Fernandez, collaborating counsel for petitioners.
The Solicitor General for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this Petition for *Certiorari*[1] are the Decision[2] dated January 28, 2015 and the Resolution[3] dated January 30, 2018 of the Commission on Audit (COA; Commission Proper), upholding Notice of Disallowance (ND) No. 2004-12-101-(2003) and ND Nos. 2004-04-101-(2003) to 2004-10-101-(2003), all of which are dated September 2, 2005, which involve the grant of the quarterly rice subsidy and the *Kalampusan* Award, respectively, in favor of Cebu Normal University (CNU) employees.

The Factual Antecedents

In Board Resolution No. 18, Series of 2003,[4] the members of the Board of Regents (BOR) of the CNU, consisting some of herein petitioners, approved the proposed Special Trust Fund Budget in the amount of ₱9,304,981.53. Among those listed in the proposed expenditures include the quarterly rice allowance for CNU employees, COA resident auditors, and members of the BOR.[5]

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[1] *Rollo*, pp. 158-181.

[2] Id. at 182-184.

[3] Id. at 185-191.

[4] Id. at 40.

[5] Id. at 41.

Subsequently, Board Resolution No. 28, Series of 2004,[6] approving the proposed budget for the use of university income, was issued by the BOR of CNU. The quarterly rice subsidy was likewise included among its proposed expenditures.[7]

The members of the BOR of CNU likewise granted the *Kalampusan* Award of ₱20,000.00 for each employee in recognition of his/her accomplishments manifested through the exemplary performance of CNU's graduates in various licensure examinations through Board Resolution No. 91, Series of 2003[8]

On September 2, 2005, the COA issued ND No. 2004-12-101-(2003),[9] stating that, among others, the disbursements in the amount of ₱1,277,240.00 pertaining to the grant of rice subsidy, were without legal basis and in violation of Section 5 of Presidential Decree (P.D.) No. 1597:

> SEC. 5. *Allowances, Honoraria, and Other Fringe Benefits*. Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

On even date, ND No. 2004-04-101-(2003)[10] was issued. Similarly, the grant of the quarterly rice subsidy was viewed by the COA as made without legal basis and in violation of Section 4(1), P.D. No. 1445:

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[6] Id. at 42.

[7] Id. at 43.

[8] Id. at 186.

[9] Id. at 45-50.

[10] Id. at 51-55.

SEC. 4. *Fundamental principles*. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

> 1. No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

In addition, ND No. 2004-10-101-(2003),[11] disapproving the disbursement of funds pertaining to the *Kalampusan* Award for having no legal bases, was issued by the COA.

Petitioners appealed the NDs, but such appeal was denied in Legal Services Sector (LSS) Decision No. 2010-011[12] dated February 3, 2010. Ruling against the petitioners, the COA LSS of the COA Central Office, through Director Amante A. Liberato, affirmed the NDs and held the petitioners solely liable for the refund of the disallowed benefits.

Aggrieved, petitioners filed a petition for review before the Commission Proper. In the assailed Decision[13] dated January 28, 2015, the petition was dismissed for belated filing.

Under the 2009 Revised Rules of Procedure of the COA, an appeal to the Director must be filed within six months or 180 days after the receipt of the ND, and the period of appeal before the Commission Proper shall be taken within the time remaining of the six months under the proceedings before the Director. The Commission Proper observed that the receipt of LSS Decision No. 2010-011 dated February 3, 2010 was on September 1, 2010, yet the petition for review was filed only on March 1, 2011, resulting in a lapse of 181 days. As such, the decision of the COA LSS has become final and executory:

> WHEREFORE, the instant Petition for Review of the Board of Regents of the Cebu Normal University is hereby DISMISSED for being filed out of time. Accordingly, COA Legal Services Sector

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[11] Id. at 69-70.

[12] Id. at 88-94.

[13] Supra note 2.

Decision No. 2010-011 dated February 3, 2010 is final and executory.[14]

Petitioners filed a Motion for Reconsideration, arguing that they filed the petition within 174 days or on February 22, 2011; and that they should not be held liable for the refund following the case of *Benguet State University v. Commission on Audit*,[15] wherein the members of the BOR, who granted rice subsidy and health allowances to school employees by virtue of a Board Resolution, were not required to refund the disallowed amounts on account of good faith.[16]

In the assailed Resolution[17] dated January 30, 2018, the Commission Proper clarified that the petition was filed within the reglementary period and confirmed that the filing was done on February 22, 2011. However, it ruled for the denial of the Motion as the members of the BOR acted beyond their powers in granting the quarterly rice subsidy and the *Kalampusan* Award. Likewise reliant on the case of *Benguet State University*, the COA maintained that the BOR is authorized to disburse the income generated by the CNU only for instruction, research, extension, or other programs/projects of similar nature under Section 4(d) of R.A. No. 8292. Thus, the act of granting the quarterly rice subsidy and the *Kalampusan* Award, which were not intended for academic programs, was outside the power of the BOR of CNU.

On this note, the COA sustained the solidary liability of petitioners to refund the disallowed amount on ground of bad faith.

Thus:

WHEREFORE, premises considered, the Motion for Reconsideration of the Board of Regents (BOR), Cebu Normal University, of Commission on Audit Decision No. 2015-10 dated January 28, 2015, is hereby

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[14] *Rollo*, p. 183.

[15] 551 Phil. 878 (2007).

[16] *Rollo*, p. 186.

[17] Supra note 3.

DENIED. Accordingly, Notice of Disallowance (ND) No. 2004-12-101[-](2003) dated September 2, 2005, on the grant of quarterly rice subsidy, in the amount of ₱1,277,240.00, and ND Nos. 2004-04-101[-](2003) to 2004-10-101[-](2003) of even date on the *Kalampusan* [A]ward given to the employees of CNU, amounting to ₱3,708,000.00, or in the total amount of ₱4,985,240.00, are AFFIRMED. However, the passive recipients need not refund the amounts they received on account of good faith.

The CNU BOR and the approving/certifying officials shall be jointly and severally liable for the disallowances.[18]

Seeking relief from the ruling of the COA, petitioners filed this instant petition.

Essentially, petitioners argue that the COA acted with grave abuse of discretion in affirming the NDs on the grant of the quarterly rice subsidy and the *Kalampusan* Award. Petitioners maintain that at the time of the issuance of the Board Resolutions in 2003 and 2004, there was no definitive ruling yet on the incentives and benefits that the governing board of government educational institutions may legally provide their employees. It was only when the *Benguet State University* case was promulgated in 2007 when an interpretation on the power of the BOR was clarified; thus, the application of such case must be prospective. Corollary, petitioners insist that they should not be held solidarily liable for the refund of the disallowed amounts on the basis of good faith.[19]

In their Comment,[20] the COA avers that the *Benguet State University* case should be retroactively applied as judicial interpretation of statutes constitutes a part of the law of the land as of the date they were passed; and that petitioners cannot be deemed to have acted in good faith as they are senior officials of the CNU who were expected to have knowledge of laws, rules or regulations.

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[18] *Rollo*, pp. 190-191.

[19] Id. at 165-167.

[20] Id. at 312-330.

The Issues

For consideration of the Court are the following issues: (1) did the COA correctly disallow the quarterly rice subsidy and the *Kalampusan* Award; and (2) are petitioners solidarily liable to refund the disallowed amounts?

The Court's Ruling

Jurisprudentially established is the doctrine that "a judicial interpretation of a statute constitutes part of that law as of the date of its original passage." This is so because such interpretation merely clarifies and defines a law in line with the intent of the legislature.[21] In construing a law, the Court essentially delves into its spirit when it was passed.

The effectivity of judicial interpretation, however, varies. As explained in the case of *Castro v. Deloria*:[22]

> Where a judicial interpretation declares a law unconstitutional or abandons a doctrinal interpretation of such law, the Court, recognizing that acts may have been performed under the impression of the constitutionality of the law or the validity of its interpretation, has consistently held that such operative fact cannot be undone by the mere subsequent declaration of the nullity of the law or its interpretation; thus, the declaration can only have a prospective application. But where no law is invalidated nor doctrine abandoned, a judicial interpretation of the law should be deemed incorporated at the moment of its legislation.

Alternatively put, the application of a judicial interpretation is retroactive, except when an old doctrine was overruled by a new one.

In this regard, petitioners' insistence on the prospective application of the Court's declaration in the *Benguet State University* case is hinged on the fact that such case was

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[21] *Castro v. Deloria*, 597 Phil. 18, 25-26 (2009), citing *Roos Industrial Corporation v. National Labor Relations Commission*, 567 Phil. 631, 640 (2008).

[22] Id. at 26.

promulgated only in 2007, after the approval of the Board Resolutions granting the quarterly rice subsidy and the *Kalampusan* Award in 2003 and 2004.

The authority of the BOR of CNU to disburse funds is found in Section 4(d) of Republic Act (R.A.) No. 8292:

> SEC. 4. *Powers and Duties of Governing Boards*. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines[:]
>
> x x x x
>
> d) to fix the tuition fees and other necessary school charges, such as but not limited [to] matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.
>
> Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: *Provided*, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.
>
> Any provision of existing laws, rules and regulations to the contrary notwithstanding, **any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college:** *Provided*, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.
>
> If, for reason of control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds

> for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.] (Emphasis supplied)

In the case of *Benguet State University*, the Court applied the statutory construction doctrine of *ejusdem generis* in construing that the power of the governing boards of government educational institutions are not plenary and absolute. Consequently, their power to defray their income is limited to disbursements for programs and projects intended for instruction, research, and extension. The Court interpreted "other programs or projects" as those programs/projects which are of similar nature to academic programs/projects for instruction, research, and extension.

Guided by the pronouncement of the Court in the case of *Castro*, it is clear that the judicial interpretation of Section 4(d) of R.A. No. 8292 in the case of *Benguet State University* must be applied retroactively. Such interpretation did not revisit nor overturn an existing doctrine. Contrary to petitioners' assertion, the ruling of the Court in the *Benguet State University* case retroacts as of the date that R.A. No. 8292 was enacted in 1997.

In fact, such construction was upheld in the 2019 case of *Rotoras v. Commission on Audit*.[23] Therein, the Court identified that the tuition fees and other necessary school charges collected by the government educational institution constitute as special trust fund, which shall be used solely for instruction, research, extension, or other programs or projects of similar nature.

With the retroactive application of the *Benguet State University* case, the grant of the quarterly rice subsidy and the incentives for the *Kalampusan* Award, which are apparently not in line with academic purposes, are beyond the powers of the BOR of CNU. Thus, the issuances of the NDs by the Commission Proper is correct.

However, the liability of the members of the BOR to refund the disallowed amounts must be re-examined.

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[23] G.R. No. 211999, August 20, 2019.

In the 1998 case of *Blaquera v. Alcala*,[24] the Court exonerated the recipients of the disallowed benefits from the liability of refunding the disallowed amounts in the absence of any showing that they acted in bad faith. The Court maintained that "[t]he officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits."[25]

In line with the ruling in *Blaquera*, the Court likewise applied good faith in releasing the public officers from liability of refunding the disallowed benefits in *De Jesus v. Commission on Audit*[26] and *Querubin v. The Regional Cluster Director*[27] promulgated in 2003 and 2004, respectively.

In both cases, incentives, other than *per diem*, were granted to members of the board of directors of local water districts pursuant to Resolution No. 313, Series of 1995 issued by the Local Water Utilities Administration. These incentives were disallowed by the COA Proper for being contrary to the letter of P.D. No. 198.

Before the resolution of these cases, the Court decided *Baybay Water District v. Commission on Audit*, [28] declaring the illegality of the grant of allowances under Resolution No. 313, Series of 1995 for violating the provisions of P.D. No. 198, which prohibits the receipt of compensation, other *per diems*, by members of the board of directors of local water districts.

In line with *Baybay Water District*, the Court likewise sustained the illegality of the grant of incentives in *De Jesus* and *Querubin*, but absolved the members of the board, who were also the beneficiaries of the same, from returning the amount

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[24] 356 Phil. 678 (1998).

[25] Id.

[26] 451 Phil. 812 (2003).

[27] 477 Phil. 919 (2004).

[28] 425 Phil. 326 (2002).

received. On this note, the Court observed that at the time of the receipt of these incentives, *Baybay Water District* was still unresolved. Hence, the public officers' honest belief that they were authorized to receive the same was interpreted by the Court as an indication of good faith.

In the 2020 case of *Madera v. Commission on Audit*,[29] the Court settled the rule on the liability of approving officers and recipients. For approving officers, their liability is solidary if they acted in bad faith, malice, or gross negligence under Sections 38, 39, and 43 of the Administrative Code. To be exonerated from liability therefor, such approving officers must demonstrate due diligence, as may be indicated: (1) by Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) by In-house or Department of Justice legal opinion, (3) that there is no precedent allowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[30]

On the other hand, recipients are liable to refund, regardless of good faith, on the basis of *solutio indebiti* and unjust enrichment. They, however, may be excused from liability if it is shown that they are entitled to the amount received by reason of services rendered or social justice or humanitarian considerations. They may likewise be excused if undue prejudice will result from requiring the return of the disallowed amount.

On the basis thereof, the Court laid down the Rules on Return in determining the liability of approving officers and recipients:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

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[29] G.R. No. 244128, September 8, 2020.

[30] Id., citing the Reflection of Associate Justice Marvic M.V.F. Leonen, pp. 8 and 13.

2. If a Notice of Disallowance is upheld, the Rules on Return are as follows:

    a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

    b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only for the net disallowed amount which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.

    c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

    d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a [case-to-case] basis. [31]

In this case, petitioners acted in good faith when they authorized the grant of rice subsidy allowance and the *Kalampusan* Award through the issuance of Board Resolutions in 2003 and 2004. Notably, it was only when the Court decided the case of *Benguet State University* in 2007 that the interpretation of the provisions of Section 4 (d) of R.A. No. 8292 on the authority of the governing board of a government educational institution to disburse its income was settled. Prior to the Court's pronouncement in 2007, petitioners were utterly convinced that the grant of such incentives, relating to the efficiency and productivity of CNU employees, was in accordance with law.

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[31] Id.

Neither can the payees of such incentives be held liable for the refund. Based on *Madera*, the Court resolves to excuse the return in this case. The disallowed rice subsidy is a reasonable amount of financial assistance which may be excused under No. 2 (d) of the aforementioned Rules on Return, while the *Kalampusan* Award which was granted in consideration of services rendered, and is, thus, likewise excused under No. 2 (d) of the same Rules only on the ground of undue prejudice to payees if the Court require the return of amounts they received 16 years earlier.

Following our pronouncement in *Madera*, the Court holds that the petitioners, as approving officers, and recipients of the rice subsidy allowance and the *Kalampusan* Award are not liable to refund the amount received.

WHEREFORE, the instant Petition is **PARTLY GRANTED**. The Decision dated January 28, 2015 and the Resolution dated January 30, 2018 of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that petitioners and recipients of the disallowed amounts subject of Notice of Disallowance No. 2004-12-101-(2003) dated September 2, 2005 on the grant of the quarterly rice subsidy allowance and ND Nos. 2004-04-101-(2003) to 2004-10-101-(2003) on the grant of the *Kalampusan* Award are not liable to refund the same.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Baltazar-Padilla, J., on sick leave.

EN BANC

[G.R. No. 246816. September 15, 2020]

ANGKLA: ANG PARTIDO NG MGA PILIPINONG MARINO, INC. (ANGKLA), and SERBISYO SA BAYAN PARTY (SBP), *Petitioners, v.* **COMMISSION ON ELECTIONS (sitting as the National Board of Canvassers), CHAIRMAN SHERIFF M. ABAS, COMMISSIONER AL A. PARREÑO, COMMISSIONER LUIE TITO F. GUIA, COMMISSIONER MA. ROWENA AMELIA V. GUANZON, COMMISSIONER SOCCORRO B. INTING, COMMISSIONER MARLON S. CASQUEJO, AND COMMISSIONER ANTONIO T. KHO, JR.,** *Respondents*. **AKSYON MAGSASAKA - PARTIDO TINIG NG MASA (AKMA-PTM),** *Petitioner-In-Intervention.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW. —** The power of judicial review is conferred on the judicial branch of government under Section 1, Article VIII of the *Constitution.* It sets to correct and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch of Government and may therefore be invoked to nullify actions of the legislative branch which have allegedly infringed the *Constitution.*

2. **ID.; ID.; ID.; ID.; REQUISITES OF JUDICIAL REVIEW. —** Although directly conferred by the *Constitution,* the power of judicial review is not without limitations. It requires compliance with the following requisites: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have legal standing to challenge; he or she or it must have a personal and substantial interest in the case such that he or she or it has sustained, or will sustain, direct injury as a result of the assailed measure's enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

3. ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY. — An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. A question is ripe for adjudication when there is an actual act that had been performed or accomplished that directly and adversely affected the party challenging the act.

4. ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI* OR LEGAL STANDING. — *Locus standi* or legal standing is the personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.

5. ID.; ID.; ID.; ID.; ID.; THE QUESTION OF CONSTITUTIONALITY MUST BE RAISED AT THE EARLIEST OPPORTUNITY. — Philippine jurisprudence has traditionally applied the "earliest opportunity" element of judicial review ***vertically,*** *i.e.*, the constitutional argument must have been raised very early in any of the pleadings or processes prior in time in the same case. But this does not preclude the Court from adopting the ***horizontal*** test of "earliest opportunity" observed in the United States, *i.e.*, constitutional questions must be preserved by raising them at the earliest opportunity **after the grounds for objection become apparent.** Otherwise stated, the threshold is not only whether the earliest opportunity was in the pleadings and processes prior in time in the same case, but also whether the grounds for the constitutional objection was already apparent when a prior case relating to the same issue and involving the same petitioner was being heard.

6. ID.; ID.; ID.; ID.; ID.; ID.; CIVIL LAW; ESTOPPEL; INACTION OR SILENCE; FAILURE TO PASS THE HORIZONTAL TEST OF "EARLIEST OPPORTUNITY" CALLS FOR THE APPLICATION OF ESTOPPEL. — Failure to pass the horizontal test of "earliest opportunity" certainly calls for the application of estoppel. In ***Philippine Bank of Communications v. Court of Appeals,*** the Court enunciated:

. . .

The principles of equitable estoppel, sometimes called **estoppel *in pais***, are made part of our law by Art. 1432 of the

Civil Code. Coming under this class is **estoppel by silence**, which obtains here and as to which it has been held that:

> ... an estoppel may arise from silence as well as from words. **"Estoppel by silence" arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent.
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> **Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel.** When the silence is of such a character and under such circumstances that **it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel.** This doctrine rests on the principle that **if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent**. He who remains silent when he ought to speak cannot be heard to speak when he should be silent.

7. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE PRINCIPLE OF EQUITY PROVIDES THAT "HE WHO COMES TO COURT MUST COME WITH CLEAN HANDS." — The well-known principle of equity that "he who comes to court must come with clean hands" further bars petitioners from being granted the remedy applied for. . . .

> Another. The judicial process is sacred and is meant to protect only those who are innocent. It would certainly leave an indelible mark in the conscience to allow a party to challenge a doctrine after it has ceased to be beneficial to it. . . .
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> . . .
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> . . . [T]he Court may deny redress despite the litigant establishing a clear right and availing of the proper remedy if it appears that said litigant acted unfairly or recklessly in respect to the matter in which redress is sought, or where the litigant has encouraged, invited, or contributed to the injury sustained.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE COURT MAY BRUSH ASIDE THE ABSENCE OF THE THIRD REQUISITE IN VIEW OF THE TRANSCENDENTAL IMPORTANCE OF THE ISSUES RAISED. — [T]he third requisite - - the question of constitutionality must be raised at the earliest possible opportunity - - is absent here.

. . .

But given the **transcendental importance** of the issues raised in this case, the discussion on **the third requisite** cannot end here. As we have held in ***Padilla v. Congress,*** "it is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance."

The constitutional challenge lodged here has the potential to alter the political landscape in the country and may steer State policy towards attaining the broadest possible party-list representation in the House of Representatives.

9. ID.; ID.; ID.; ID.; ID.; *LIS MOTA*; THE QUESTION OF CONSTITUTIONALITY IS THE VERY *LIS MOTA* OF THE CASE. — Quite anti-climactically, as regards the **fourth requisite** of judicial review, the Court finds that the question of constitutionality is the very ***lis mota*** here. ***Lis mota*** is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved." Under the rubric of ***lis mota***, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.

10. ID.; ID.; ID.; ID.; ID.; ID.; RESOLVING THE CONSTITUTIONALITY OF THE LAW (SECTION 11(b) OF RA NO. 7941) IS THE ONLY WAY IT CAN BE SETTLED. — Here, the threshold issue raised by petitioners and met head-on by respondents is the constitutionality of Section 11(b) of RA 7941. It is indeed the very *lis mota* of the case. Resolving the issue of constitutionality is the only way the case can be settled once and for all. Otherwise, every election will become a Lazarus Pit where the perennial question on the allocation of party-list seats gets resurrected without fail. In

fact, every three (3) years in the past and every (3) years thereafter, the Court had been and will be confronted with the all too familiar question on the applicability or inapplicability of *BANAT vis-á-vis* Section 11(b) of RA 7941.

11. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); JURISDICTION. — It bears emphasis that the jurisdiction of the HRET is limited under Section 17, Article VI of the *Constitution, viz.*:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of **all contests relating to the election, returns, and qualifications of their respective Members**. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

12. ID.; ID.; COMMISSION ON ELECTIONS (COMELEC); POWERS AND FUNCTIONS. — Meanwhile, the powers and functions of the COMELEC are circumscribed under Section 2, Article IX-C of the *Constitution*, thus:

> **Sec. 2.** The Commission on Elections shall exercise the following powers and functions:
>
> xxxx
>
> 2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Decisions, final orders, or rulings of the Commission on election contests involving elective municipal and barangay offices shall be final, executory, and not appealable.

3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

x x x x

13. ID.; ID.; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; THE CONSTITUTIONALITY OF SECTION 11(b), OF RA NO. 7941 IS WITHIN THE JURISDICTION OF THE COURT, TO THE EXCLUSION OF THE HRET AND THE COMELEC. — The present case illustrates much more than a power struggle between would-be members of the House of Representatives. Thus, the Court may properly exercise jurisdiction over the same pursuant to Sections 4(2) and 5 of Article VIII of the *Constitution*, to the exclusion of the COMELEC and the House of Representatives Electoral Tribunal (HRET).

. . .

Verily, neither the HRET nor the COMELEC has jurisdiction over the present petition which directly assails the constitutionality of the proviso in Section 11 (b), RA 7941, albeit the results may affect the current roster of Members in the House of Representatives. Petitioners, therefore, were correct in seeking redress before this Court.

14. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; PARTY-LIST SYSTEM; CONGRESS HAS THE DISCRETION TO DETERMINE HOW PARTY-LISTS COULD QUALIFY FOR A SEAT AND THE MANNER OF ALLOCATING SEATS TO THEM. — The *Constitution* mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives. But the matter on how party-lists could qualify for a seat is left to the wisdom of the legislature.

. . .

Pursuant to this constitutional directive, Congress enacted RA 7941 setting forth the parameters for electing party-lists and the manner of allocating seats to them:

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

x x x

x x x x

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

15. ID.; ID.; ID.; ID.; ID.; THE LANDMARK CASE OF *BANAT v. COMELEC* FINALLY SETTLED THE APPLICATION OF THE LAW. — As ***finally settled*** in the landmark case of *BANAT*, Section 11(b) of RA 7941 is to be applied, thus:

"Round 1:

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

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

Rationale: The statute references a two-percent (2%) threshold. The one-seat guarantee based on this arithmetical computation gives substance to this threshold.

Round 2, Part 1:

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

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

Rationale: This formula gives flesh to the proportionality rule in relation to the total number of votes obtained by each of the participating party, organization, or coalition.

c. A Party-list shall be awarded no more than two (2) additional seats. *Rationale: The three-seat cap in the statute is to be observed.*

Round 2, Part 2:

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

Rationale: This algorithm endeavors to complete the 20% composition for party-list representation in the House of Representatives.

16. ID.; ID.; ID.; ID.; ID.; PRINCIPLE OF ONE-PERSON, ONE VOTE; ALL VOTES ARE COUNTED ONCE, AND THE PERCEIVED DOUBLE-COUNTING OF VOTES DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE. — Petitioners are mistaken in claiming that the retention of the 2% votes in the second round of seat allocation is unconstitutional. **All votes, whether cast in favor of two-percenters and non-two-percenters, are counted once.** The perceived "double-counting of votes" does not offend the equal protection clause — ***it is an advantage given to two-percenters based on substantial distinction that the rule of law has long acknowledged and confirmed.***

. . .

Indeed, all voters are entitled to one vote. This truism is and remains inviolable. . . . Contrary to petitioners' claim, this principle is not diminished by the two (2) rounds of seat allocation under *BANAT* formula.

17. ID.; ID.; ID.; ID.; ID.; THE SYSTEM OF COUNTING PERTAINS TO TWO (2) DIFFERENT ROUNDS AND FOR TWO (2) DIFFERENT PURPOSES, BUT EACH VOTE IS COUNTED ONLY ONCE FOR BOTH ROUNDS. — As correctly argued by the OSG, the system of counting pertains to two (2) different rounds and for two (2) different purposes: the **first round** is for purposes of applying the **2% threshold** and

ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the **second round** is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system, thus, seats are computed **in proportion to a party-list's total number of votes.**

Such is the current state of the party-list system elections. Since the system does not have a defined constituency as in district representation, elections are won by hurdling thresholds, not by sheer plurality of votes. Congress deemed it wise to set two (2) thresholds for the two (2) rounds of seat allocation. Each party-list earns a seat each time they hurdle the threshold in each round. But to clarify, **each vote is counted only once** for both rounds.

18. ID.; ID.; ID.; ID.; ID.; ID.; IN THE FIRST ROUND, THE PARTY-LISTS RECEIVING AT LEAST 2% OF THE TOTAL VOTES CAST FOR THE PARTY-LIST SYSTEM ARE ENTITLED TO ONE SEAT. — In the first round, party-lists receiving at least 2% of the total votes cast for the party-list system are entitled to one seat. In determining whether a party-list has met the proportional threshold, its percentage number of votes is computed, as follows:

$$\frac{\text{Number of votes obtained by a Party-list}}{\textbf{Total number of votes cast under the party-list system}}$$

The **"total number of votes cast under the party-list system",** the very divisor of the formula, the very index of proportionality, requires that **all** votes cast under the party-list system be counted and considered in allocating seats in the first round, be it in favor of a two-percenter or a non-two-percenter. **This only goes to show that <u>all</u> votes were counted and considered in the first round.** Just because the non-two-percenters were not allocated a guaranteed seat does not mean that their votes were accorded lesser weight, let alone, disregarded. It simply means that they did not reach the proportional threshold in the first round.

19. ID.; ID.; ID.; ID.; ID.; THE NUMBER OF VOTES CAST FOR EACH PARTY IN THE FIRST ROUND IS PRESERVED TO ENSURE THAT ALL VOTES ARE

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

20. ID.; ID.; ID.; ID.; ID.; EQUAL PROTECTION CLAUSE; THE CONSTITUTION ALLOWS THE LEGISLATURE TO ESTABLISH CLASSES OF INDIVIDUALS UPON WHICH DIFFERENT RULES SHALL OPERATE SO LONG AS THE CLASSIFICATION IS NOT UNREASONABLE. — Section 1, Article III of the *Constitution* decrees that no person shall be denied equal protection of the laws. Although first among the fundamental guarantees enshrined in the Bill of Rights, the equal protection clause is not absolute. It does not prevent legislature from establishing classes of individuals or objects upon which different rules shall operate so long as the classification is not unreasonable.

21. ID.; ID.; ID.; ID.; ID.; DISTINCTION BETWEEN TWO-PERCENTERS AND NON-TWO-PERCENTERS; RATIONALE BEHIND THE 2% VOTING THRESHOLD. — The distinction between two-percenters and non-two-percenters has long been settled in ***Veterans Federation Party v. COMELEC*** *(Veterans)* where the Court affirmed the validity of the 2% voting threshold. *Veterans*, effectively segregates and distinguishes between the two (2) classes, two-percenters and non-two-percenters. It explains the rationale behind the voting threshold and differential treatment, *viz.*:

> The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. **But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people.**

> Otherwise, in a legislature that features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.
>
> . . .
>
> As held in *Veterans*, the voting threshold ensures that only those parties, organizations, and coalitions *having a sufficient number of constituents* deserving of representation are actually represented in the House of Representatives. This is the distinction between two-percenters and non-two-percenters. …
>
> . . .
>
> In light of the substantial distinctions held valid by the Court and the framers of the *Constitution vis-a-vis* RA 7941, the questioned provision, Section 11(b), RA 7941, as couched, allows "those garnering more than two percent (2%) of the votes x x x additional seats in proportion to their total number of votes," conveying the intention of Congress to give preference to the party-list seat allocation to two-percenters.

22. ID.; ID.; ID.; ID.; ID.; ID.; RULE OF PROPORTIONALITY; THE NULLIFICATION OF 2% THRESHOLD FOR THE SECOND ROUND DID NOT REMOVE THE DISTINCTION BETWEEN TWO-PERCENTERS AND NON-TWO PERCENTERS. — In *BANAT, as a result of the other parameters which have to be considered in determining ultimately the composition of party-list representation in the House of Representatives*, the Court declared the 2% threshold as unconstitutional **but only insofar as it makes the 2% threshold as exclusive basis for computing the grant of additional seats**. The Court maintained the 2% threshold for the first round of seat allocation to ensure a guaranteed seat for a qualifying party-list party, organization, or coalition. As the basis for the additional seats is proportionality to the total number votes obtained by each of the participating party, organization, or coalition, however, it was inevitable that the number of votes included, in computing the 2% threshold would have to be still factored in in allocating the party-list seats' among all the participating parties, organizations, or coalitions.

To stress, the nullification of the 2% threshold for the second round was not meant to remove the distinction between two-percenters and non-two-percenters. The nullification was not for any undue advantage extended to two-percenters. Rather, the rationale for the second round was to fulfill the constitutional mandate that the party-list system constitute 20% percent of the total membership in the House of Representatives, within the context of the rule of proportionality to the total number of votes obtained by the party, organization, or coalition.

23. ID.; ID.; ID.; ID.; ID.; CONGRESS IS GIVEN A WIDE LATITUDE OF DISCRETION IN SETTING THE PARAMETERS FOR DETERMINING THE ACTUAL VOLUME AND ALLOCATION OF PARTY-LIST REPRESENTATION IN THE HOUSE OF REPRESENTATIVES. — Section 11, Article VI of the *Constitution*, however, does not prescribe absolute proportionality in distributing seats to party-list parties, organizations or coalitions. Neither does it mandate the grant of one seat each according to their rank. On the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the actual volume and allocation of party-list representation in the House of Representatives.

24. ID.; ID.; ID.; ID.; ID.; THE THREE-SEAT LIMIT; THIS LIMIT ENSURES THE ENTRY OF VARIOUS INTERESTS INTO THE LEGISLATURE AND BARS ANY SINGLE PARTY-LIST FROM DOMINATING THE PARTY-LIST REPRESENTATION. — In the exercise of this prerogative, Congress modified the weight of votes cast under the party-list system with reason.

Consider the **three-seat limit.** This ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation. Otherwise, the rationale behind party-list representation in Congress would be defeated. But viewed from a different perspective, this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains.

25. ID.; ID.; ID.; ID.; ID.; ID.; THE TWO-TIERED SEAT ALLOCATION; THIS METHOD SERVES TO MAXIMIZE REPRESENTATION AND FULFILL THE 20% CONSTITUTIONAL REQUIREMENT. — Consider also the

two-tiered seat allocation. This serves to maximize representation and fulfil the 20% requirement under Section 5(1), Article VI of the *Constitution*. Seen in a different light, however, this arithmetical allocation in practice **inflates** the weight of each of the votes considered in the second round, *as far as the non-two percenters are concerned*, but **deflates** the weight of each of the votes considered in the second round, *as regards the two-percenters*. This is because the two-percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives **would definitely be more than the votes it would take to earn an additional seat**, whether we apply petitioners' proposal or the doctrine in *BANAT*.

If only to abide by the 20% requirement, there exist cogent reasons to accord varying weight to the votes each obtained by parties, organizations, or coalitions participating in the party-list election, in the two-round seat allocation. Not only does this method of seat allocation promote the broadest possible representation among the varied interests of party-list parties, organizations or coalitions in the House of Representatives, it also fulfils the constitutional fiat that 20% of the composition of the bigger house of Congress to be allotted for party-list representatives.

PERLAS-BERNABE, *J., separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; THE PARTY-LIST SYSTEM. — [I]t is imperative to understand that the party-list system is a peculiar innovation that goes beyond our traditional perceptions when it comes to the electoral process. In a republican, democratic system of government like ours, people traditionally vote for certain personalities to represent their interests **as part of a constituency based on geographical division** (which, in the case of Congressmen, are called legislative districts). Whether in a national or a local election, voting and consequently, winning an election **under ordinary tradition** is based on **who** the people believe will be able to effectively translate these interests into legislative or executive action.

2. ID.; ID.; ID.; ID.; ID.; THE TRADITIONAL ELECTORAL CONTEST IS A MATTER OF "PERSON-PREFERENCE" OVER ANOTHER WHERE CANDIDATES COMPETE IN

SIMPLE PLURALITY VOTING, OR A SYSTEM OF "FIRST-PAST-THE-POST". — Because the idea of a traditional electoral contest is a matter of "person-preference" over another, candidates compete in simple plurality voting, or a system of "first-past-the-post" (FPTP):

> In an FPTP system (sometimes known as a plurality single-member district system) the winner is the candidate with the most votes but not necessarily an absolute majority of the votes. x x x
>
> x x x x
>
> [FPTP], like other plurality/majority electoral systems, is defended primarily on the grounds of simplicity and its tendency to produce winners who are representatives beholden to defined geographic areas and governability.

3. ID.; ID.; ID.; ID.; ID.; PURPOSE OF THE PARTY-LIST SYSTEM. — [T]he Framers of the 1987 Constitution believed that our traditional electoral system did not truly fulfil the purpose of the legislative body, which was "supposed to implement or give flesh to the needs and aspirations of the Filipino people." Thus, the party-list system was introduced to ensure that weaker segments in society, whose constituencies go beyond the geographic lines drawn to define legislative districts, are properly represented in Congress.

4. ID.; ID.; ID.; ID.; ID.; A PARTY-LIST ELECTION IS "CAUSE-CENTRIC," AND NOT "PERSON-CENTRIC." — Being based on "functional" rather than "territorial" representation, a party-list election is, at its core, "cause-centric" and not "person-centric" as in a traditional election. Although a party, being a juridical entity, can only conduct its business through natural persons (called nominees), in a party-list election, people actually vote for a particular cause, which is then advocated by the party-list through its nominee in Congress. The "cause-centric" nature of a party-list election is amply reflected in the constitutional deliberations. . . .

5. ID.; ID.; ID.; ID.; ID.; THE PARTY-LIST SYSTEM WAS ESTABLISHED BASED ON THE PROPORTIONAL REPRESENTATION CONCEPT. — Due to the unique objectives of party-lists, it was then necessary to devise a system

to ensure — or at least, strive to ensure — the most meaningful way of translating the people's will in voting for causes, and not personalities. Accordingly, Congress established a party-list system based on the **proportional representation** concept.

6. ID.; ID.; ID.; ID.; ID.; THE POWER TO PRESCRIBE THE SPECIFIC MECHANICS OF THE PARTY-LIST SYSTEM WAS RESERVED FOR FUTURE LEGISLATION. — Aside from providing that twenty percent (20%) of the total House membership be comprised of those coming from the party-list, the 1987 Constitution did not provide for any other specific mechanic regarding the party-list system. Instead, as may be gleaned from the clause "as provided by law," the Framers intended to reserve these mechanics for future legislation: In *Veterans Federation Party v. Commission on Elections (Veterans),* the Court explained that "Congress was **vested with the broad power to define and prescribe the mechanics of the party-list system of representation.** The Constitution explicitly sets down only the percentage of the total membership in the House of Representatives reserved for party-list representatives."

7. ID.; ID.; ID.; ID.; ID.; THE "PARTY-LIST SYSTEM ACT" (RA NO. 7941); PROPORTIONAL REPRESENTATION; PROPORTIONAL REPRESENTATION ENSURES THE REPRESENTATION OF ALL CLASSES OF PEOPLE. — In line with the Framers' intent, Congress passed RA 7941, or the "Party-List System Act," and therein declared to promote "**proportional representation** in the election of representatives to the House of Representatives through a party-list system:"

. . .

In contrast to the traditional FPTP system, proportional representation "implies an election system, wherein the representation of all classes of people is ensured, as each party gets as **many numbers of seats as the proportion of votes the candidate polls in the election.** In this system, **any political party or interest group obtains its representation in proportion to its voting strength** x x x. In this way, parties with the small support base, also get their representation in the legislature."'

8. ID.; ID.; ID.; ID.; ID.; ID.; ID.; SPECIFIC PARAMETERS TO ACHIEVE PROPORTIONAL REPRESENTATION;

FILIPINO-STYLE PARTY-LIST ELECTIONS. — However, "[p]roportional representation is a generic term, and it does not refer to a precise method of implementing the philosophy it denotes." Thus, **in accord with its constitutional prerogative, Congress prescribed the specific parameters to achieve proportional representation insofar as Filipino-style party list elections are concerned.** These are contained in Section 11 of RA 7941[.]

9. ID.; ID.; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAW; SUBSTANTIAL DISTINCTION; CLASSES THAT ARE CHARACTERIZED BY SUBSTANTIAL DISTINCTIONS MAY BE TREATED DIFFERENTLY. — Case law states that "[t]he equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by **substantial distinctions** that make real differences, one class may be treated and regulated differently from the other."

10. ID.; ID.; ID.; ID.; ID.; THERE IS A SUBSTANTIAL DISTINCTION BETWEEN TWO-PERCENTERS AND NON-TWO PERCENTERS IN THE SEAT ALLOCATION FOR PARTY-LIST REPRESENTATIVES; RATIONALE BEHIND THE TWO-PERCENT THRESHOLD IN THE PARTY-LIST SYSTEM. — Indeed, there is a **substantial distinction** between two-percenters and non-two percenters in that the former enjoy the greater mandate of the people. In *Veterans*, the Court explained the rationale behind the two-percent threshold in the party-list system[.]

. . .

The distinct position of two percenters garnering the support of a greater number of people entitles them to *additional seats* based on the total number of votes, *even though these same votes have been factored in when they have qualified for one guaranteed seat in meeting the two percent threshold.*

11. ID.; ID.; ID.; ID.; ID.; CAUSE REPRESENTATION; THE ADVANTAGES BESTOWED UPON TWO PERCENTERS IS A WAY TO IMPLEMENT THE CONCEPT OF "CAUSE" REPRESENTATION "IN PROPORTION TO VOTING STRENGTH." — These advantages bestowed to two percenters constitute **Congress' way of implementing the concept of "cause" representation "in proportion to voting strength."**

Since the greater number of votes means that more people believe in a two percenter's cause and policy platform more than others, the party is therefore given an additional seat in Congress. In turn, this additional seat would theoretically give the party a "stronger voice" in Congress and hence, a better opportunity to advocate for legislation to advance the cause it represents.

12. ID.; ID.; ID.; ID.; IN PARTY-LIST ELECTIONS BASED ON PROPORTIONAL REPRESENTATION, THERE IS NO DOUBLE-COUNTING OF VOTES WHEN ALL THE VOTES ARE CONSIDERED IN ALLOCATING ADDITIONAL SEATS IN FAVOR OF TWO PERCENTERS. — Because party-list elections are based on proportional representation and not simple pluralities, there is really no double-counting of votes when all the votes are considered in allocating *additional* seats in favor of two percenters. **The electoral system of proportional representation inherently recognizes voting proportions relative to the total number of votes.** Petitioners' proposal to exclude the number of votes that have qualified two percenters for their guaranteed seat in the second round of additional seat allocation is tantamount to **altering the electoral landscape** by reducing the "voter strength" which they have rightfully obtained. **This effectively results in the diminution of the party's ability to better advocate for legislation to advance the cause it represents despite being supported by a larger portion of the electorate.**

13. ID.; ID.; ID.; ID.; PRINCIPLE OF "ONE PERSON, ONE VOTE"; A PERSON'S VOTE SHOULD NOT MEAN MORE THAN THE OTHERS. — The allocation of additional seats in proportion to the total number of votes in favor of the two percenters does not defy the principle of "one person, one vote." In its proper sense, the principle of "one person, one vote" hearkens to voter equality - that is, that all voters are entitled to one vote, and that each vote has equal weight with that of others. This principle is a knock against elitism and advances the egalitarian concept that all persons are equal before the eyes of the law. Regardless of social standing, lineage, age, race or gender, a person's vote should not mean more than others.

14. ID.; ID.; ID.; ID.; ID.; THE ALLOCATION OF GUARANTEED AND ADDITIONAL SEATS TO TWO PERCENTERS IS A METHOD OF DISTRIBUTION INHERENT TO THE ELECTORAL SYSTEM OF PROPORTIONAL REPRESENTATION. — Insofar as the mechanics under Section 11 of RA 7941 are concerned, there is no instance at all wherein a person will be entitled to more than one vote. Neither is any person's vote considered weightier than others. All persons voting in the party-list system are mandated to vote only once and each vote is also counted as one. Further, it must be highlighted that the allocation of guaranteed and additional seats to two percenters is not a matter of counting votes twice. Rather, this method of distribution is inherent to the electoral system of proportional representation, which is different from counting votes based on simple pluralities. Since these two electoral systems operate on distinct planes, there is no violation of the principle of "one person, one vote" in this case.

15. ID.; ID.; ID.; CONSTITUTIONAL PREROGATIVE OF THE CONGRESS TO DEVISE MECHANICS OF THE PARTY-LIST SYSTEM; THE INTENT OF THIS SYSTEM IS TO ALLOW FUNCTIONAL REPRESENTATION BY WEAKER SEGMENTS OF SOCIETY. — Congress was given the constitutional prerogative to devise the mechanics of the party-list system. The sole intent was to allow functional representation by weaker segments of society that goes beyond geographical boundaries of our traditional FPTP system. These mechanics are contained in Section 11 of RA 7941, which prescribes, among others, that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes**."

16. ID.; ID.; ID.; THE *BANAT* FORMULA MERELY MIRRORS THE TEXTUAL PROGRESSION OF SECTION 11 OF RA NO. 7941 AS WORDED. — [T]he *BANAT* formula which first allocates guaranteed seats to two percenters and then allocates additional seats also in favor of qualifying two percenters, **appears to merely mirror the textual progression of Section 11 of RA 7941 as worded**. The first round is based on the first sentence of Section 11 (b), while the second round is based on the first proviso that follows in sequence[.]

17. ID.; ID.; JUDICIAL REVIEW; ACTUAL AND JUSTICIABLE CONTROVERSY; *LOCUS STANDI*; THE CANDIDATE'S LOSS IN THE ELECTION IS NECESSARY TO SATISFY THE REQUISITES OF ACTUAL AND JUSTICIABLE CONTROVERSY AND *LOCUS STANDI*. — On this score, I deem it apt to point out that petitioners could not have previously questioned the constitutionality of Section 11 of RA 7941 (as they have presently done so) back in 2013 and 2016 since they have both won in the elections they respectively participated in and just recently lost in 2019. Their loss was necessary in order for them to satisfy the requisite of an actual and justiciable controversy, which connotes the existence of a "**conflict of legal rights,**" or "an assertion of **opposite legal claims,**" as well as to clothe them with locus standi, which is "a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, **some direct injury as a consequence of the enforcement of the challenged governmental act.**" Upon their loss in 2019, they were therefore prompted to immediately take the matter to Court at the earliest opportunity.

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; PARTY-LIST SYSTEM; THE ELECTION OF PARTY-LIST REPRESENTATIVES IS THROUGH A SYSTEM OF PROPORTIONAL REPRESENTATION. — [M]embers of the House of Representatives under the party-list system are elected through a system of proportional representation. In proportional representation, seats are allocated in accordance with the proportion of the electorate that supports a political party, organization, or coalition. Winning an election, therefore, does not hinge on outranking competing candidates, but on securing proportional thresholds instead.

2. ID.; ID.; ID.; ID.; ID.; APART FROM THOSE PROVIDED UNDER THE CONSTITUTION, THE ELECTION TO THE PARTY-LIST SYSTEM SHALL BE PROVIDED BY LAW. — As the unique, domestic iteration of a conceptual electoral mechanism shared with many jurisdictions, the Philippine party-list system is created by Article VI, Section 5 of the 1987

Constitution. The same provision, as well as Article VI, Section 6, spell out the party-list system's basic and immutable parameters:

. . .

Thus, the party-list system is open to "registered national, regional, and sectoral parties or organizations." Further, party-list representatives shall "constitute twenty *per centum* of the total number of representatives including those under the party list." A transitory manner of filling party-list seats "[f]or three consecutive terms after the ratification of th[e] Constitution" is also provided. Likewise, a party-list representative must be "a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, [and] able to read and write." Apart from these, Article VI, Section 5 stipulates that election to the party-list system shall be "provided by law."

3. ID.; ID.; ID.; ID.; ID.; PARTY-LIST SYSTEM ACT (RA NO. 7941); MANNER OF VOTING PARTY-LIST REPRESENTATIVES; ALLOCATION OF PARTY-LIST SEATS. — It is in keeping with Article VI, Section 5's injunction that Republic Act No. 7941 or the Party-List System Act, was passed in 1995.

Section 10 of the Party-List System Act provides for the manner of voting party-list representatives. Sections 11 and 12 concern the allocation of party-list seats:

. . .

Thus, according to Section 11, the initial threshold is two percent (2%) of the total votes cast for the system. Every party, organization, or coalition obtaining two percent (2%) of the total votes cast for the party-list system shall be entitled to one (1) seat each. Thereafter, "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the [sic] proportion to their total number of votes[.]" Regardless of potentially much larger proportions obtained by parties, organizations or coalitions, however, "each party, organization, or coalition shall be entitled to not more than three (3) seats."

While ranking is involved, winning seats in the party-list system does not ultimately or exclusively depend on an ordinal system as winning seats in first past the post elections does. Rather, it relies on the extent of proportionate shares *vis-a-vis*

a total figure that varies from one election to another, that is, the total number of votes cast for the party-list system in a given election.

4. ID.; ID.; ID.; ID.; ID.; NATURE OF THE PARTY-LIST SYSTEM. — The party-list system is fundamentally a mechanism of proportional representation where proportions are reckoned in relation to the total number of votes cast for the party-list system in a given election, and where groups that obtain larger proportions of votes are naturally and logically placed at an advantage over those who obtain less. This basic nature is expressed in Section 12 of the Party-List System Act: "The COMELEC shall tally all the votes ... on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained ... as against the total nationwide votes cast for the party-list system."

5. ID.; ID.; ID.; ID.; ID.; RULES FOR ALLOCATING PARTY-LIST SEATS. — Of particular note is *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections,* where this Court clarified the rules for allocating party-list seats:

> In determining the allocation of seats for party-list representatives under Section 11 of [Republic Act] No. 7941, the following procedure shall be observed:
>
> 1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> 2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.
>
> 3. Those garnering sufficient number of votes, according to the ranking in paragraph 1, shall be entitled to additional seats in proportion to their total number of votes until all the additional seats are allocated.

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

6. ID.; ID.; ID.; ID.; ID.; THE INITIAL TWO PERCENT (2%) THRESHOLD SERVES A VITAL INTEREST BY FILTERING PARTY-LIST REPRESENTATION TO THOSE GROUPS THAT HAVE SECURED THE SUPPORT OF A SUFFICIENTLY SIGNIFICANT PORTION OF THE ELECTORATE. — The Party-List System Act's stipulation of an initial two-percent (2%) threshold serves a vital interest by filtering party-list representation to those groups that have secured the support of a sufficiently significant portion of the electorate.

. . .

Accordingly, it has long been settled by this Court that the two percent (2%) threshold is a valid standard that furthers the interest of robust democratic representation. From this, it follows that the Party-List System Act validly distinguishes between those groups that meet the two percent (2%) threshold, and those that fail to do so . . . .

7. ID.; ID.; ID.; ID.; ID.; THE PARTY-LIST SYSTEM REMAINS AN ALTERNATIVE ELECTORAL SYSTEM. — As an alternative to the predominant electoral system, the party-list system is principally concerned with advancing democratic representation. It endeavors to make up for the shortcomings of traditional elections through simple plurality. This is a particularly acute concern in the experience of Philippine electoral politics. . . .

Even as it aims to challenge dominant ways in politics, the party-list system remains, at its core, an alternative electoral system. It is not a mechanism for affirmative action *per se* where predetermined underrepresented or marginalized groups are given exclusive access to seats in Congress. Thus, though enabling sectoral representation, the party-list system is also open to national and regional parties or organizations. It facilitates representation by drawing the focus away from personalities, popularity, and patronage; to programs, principles, and policies. It does not do so by extending extraordinary benefits to select sectors. It challenges voters to see beyond what the dominant electoral system sustains, as well as candidates and political parties to consolidate on considerations other than what may

suffice in personality-affirming races won by simple plurality. It allows the forging of organizations and coalitions, and facilitates representation on the basis of ideologies, causes, and ideals that go beyond strict sectoral lines: . . .

8. ID.; ID.; ID.; ID.; ID.; BENCHMARKS FOR PARTICIPATION IN THE PARTY-LIST SYSTEM. — I have articulated, and continue to maintain, that participation in the party-list system should be in keeping with the following benchmarks:

> First, the party list system includes national, regional and sectoral parties and organizations;
>
> Second, there is no need to show that they represent the "marginalized and underrepresented". However, they will have to clearly show how their plans will impact on the "marginalized and underrepresented". Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani* and *BANAT* will apply to them;
>
> Third, the parties or organizations that participate in the party list system must not also be a participant in the election of representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;
>
> Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;
>
> Fifth, the parties or organizations — not only the nominees — must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;
>
> Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;
>
> Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration.

Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

Ninth, a substantial number of these members must have participated in the political activities of the organization;

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process;

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.

Without these considerations, the party-list system will become a farce, an avenue that will be dominated by the moneyed elite; further marginalizing truly ideological, as opposed to merely personal, politics.

CAGUIOA, *J., separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES;

PARTY-LIST SYSTEM; STATUTORY CONSTRUCTION; THE ALLOCATION OF PARTY-LIST SEATS LAID DOWN IN *BANAT V. COMELEC* SHOULD BE ABANDONED, AS IT IS INCONSISTENT WITH THE CONSTITUTION AND THE PARTY-LIST SYSTEM ACT (RA NO. 7941). — I concur only insofar as the petitions are dismissed — but with a call that the allocation of party-list seats laid down in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections, (BANAT)* should be abandoned as it is inconsistent with, and fails to reflect, the spirit and intent of the Constitution and Republic Act No. (RA) 7941 or the Party-List System Act.

. . .

. . . I find merit in ANGKLA's position that the *BANAT* formula results in the "double counting" of votes in the computation of additional seats for the two percenters. Specifically, their first two percent already entitles them to a seat, and yet, in the allocation of the remaining seats, the said votes are still taken into consideration.

2. ID.; ID.; ID.; ID.; ID.; STRAIGHTFORWARD FORMULA; A STRAIGHTFORWARD FORMULA BETTER REFLECTS THE SPIRIT BEHIND THE PARTY-LIST SYSTEM. — I do not agree with petitioners' formula as it is not sanctioned by the plain text of Section 11(b) of RA 7941, which provides that the additional seats shall be computed **in proportion to the Party-List Organization's (PLO's) total number of votes**. Thus, I am submitting instead a different formula that would better reflect the intent behind the introduction of the party-list system in the Constitution, while remaining consistent with the letter of Section 11(b) of RA 7941.

. . .

. . . I find that the three-tier formula expressed in *BANAT* fails to reflect the intent behind the introduction of the party-list system. Section 2 of RA 7941 states that 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**."

It is my considered view that these objectives will be best achieved by a straightforward formula in which allotted seats are determined by simply multiplying the percentage of votes garnered by the PLO with the Available party-list seats before (APLS).

3. ID.; ID.; ID.; ID.; ID.; ID.; HOW PARTY-LIST SEATS ARE DETERMINED USING THE STRAIGHTFORWARD FORMULA. — Based on this formula, the party-list seats are determined as follows:

Step One. Ranking of PLOs. All PLOs that participated in the election shall be ranked from the highest to the lowest based on the number of votes they each received during the election.

Step Two. Determination of percentage of votes per PLO in proportion to Total Votes of all PLOs. After the ranking, the percentage of votes that each PLO garnered shall then be computed as follows:

$$\frac{\text{Total votes garnered by PLO}}{\text{Total votes cast for the party-list system}} = \text{Percentage of votes garnered}$$

Step Three. Allocation of seats two percenters. The seats allotted to each of the qualified PLOs (the two percenters) shall then be ascertained using the following formula:

$$\text{Percentage of votes Garnered} \times \text{APLS} = \text{Seat/s for the concerned qualified PLO}$$

Since the prevailing law and rules do not allow for fractional representation, the product obtained herein shall be rounded down to the nearest whole integer. The three (3) seat limit shall likewise be applied.

. . .

Step Four. Allocation of remaining seats. If the APLS have not be fully exhausted after allocating seats to the two percenters (but still enforcing the 3 seat limit) - as is what is expected to happen because, as mentioned the APLS will always be more than fifty seats — the remaining seats shall then be allocated (one (1) seat each) to the parties next in rank (*i.e.*, those who did not get at least two percent of the total number of votes cast), until all the APLS are completely distributed.

4. ID.; ID.; ID.; ID.; ID.; ID.; UNDER THE STRAIGHTFORWARD FORMULA, THE TWO PERCENTERS WILL NOT BE DIVESTED OF THEIR PREFERRED STATUS. — Under the straightforward formula, the two percenters will not be prejudiced or divested of their preferred status as they will still be entitled to a guaranteed seat as provided under the law. The additional seats, which are not guaranteed, will then be determined based on the proportion of their votes. As explained above, the first round of allocation of party-list seats for the two percenters is **not supported nor required by the letter of the law**. The law merely requires that PLOs which garnered 2% of the votes shall be entitled to one seat and that additional seats for those which garnered more than 2%, shall be computed in proportion to their number of votes.

5. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE STRAIGHTFORWARD FORMULA MAY BE APPLIED IN SUCCEEDING ELECTIONS. — I acknowledge that the straightforward formula may not be immediately applied in this case because of the requirements of due process. As the adoption of the straightforward formula will not only affect petitioners but also other qualified PLOs which have already been proclaimed by the COMELEC, and whose representatives have already assumed office, due process mandates that all qualified PLOs be heard on the matter. . . .

. . .

Thus, should the straightforward formula be adopted, it would have to be applied by the Court and the COMELEC in succeeding elections, and not the election subject of this case. This aligns with the general rule that when the Court adopts a new view or doctrine in its interpretation of the laws, it has to be applied prospectively so as not to prejudice those who have relied on the abandoned interpretation. In other words, "when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith." This is the rule because "[t]o hold otherwise would be to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication."

LOPEZ, *J., concurring and dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; PARTY-LIST SYSTEM; PRINCIPLE OF PROPORTIONALITY; THE NIEMEYER FORMULA; THE ALLOCATION OF SEATS SHOULD CONFORM TO THE PRINCIPLE OF PROPORTIONALITY. — I submit that the allocation of seats to parties receiving fractional seats (second round, second part) as illustrated in BANAT should be modified to conform with the principle of proportionality mandated by the law.

. . .

In determining proportionality for additional seats, *Veterans* introduced the First Party Rule or a form of proportionality in relation to the number of votes obtained by the party garnering the highest number of votes. Later, *BANAT v. COMELEC* revisited the determination of proportionality and adopted with modification the Niemeyer Formula earlier proposed by then Justice Mendoza in *Veterans*.

2. ID.; ID.; ID.; ID.; ID.; ID.; MATHEMATICAL EQUATION OF THE NIEMEYER FORMULA. — Applying the Niemeyer Formula in Section 11 (b) of RA No. 7941 as worded relating to the additional seats should have been mathematically reduced as follows:

$$\text{Additional Seats} = \left(\frac{\text{Total votes of the Party}}{\text{Total Votes of Parties } \textbf{\textit{receiving at least 2\%}}}\right) * \text{remaining seats}$$

If the formula is reduced into an analogy, it can be likened to a pie to be distributed only to the 2 percenters based on the number of votes they received. The number of seats to be allocated to the party is proportional to the number of votes it received. This is the clear import of the provision worded as follows: "*[p]rovided, [t]hat those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes*."

3. ID.; ID.; ID.; ID.; ID.; ID.; SECTION 11(B) SHOULD INCLUDE THE NON-TWO PERCENTERS IN THE EQUATION OF ALLOCATING "ADDITIONAL" SEATS TO FILL-UP THE CONSTITUTIONALLY REQUIRED 20% MEMBERSHIP. — *BANAT* held that Section 11 (b) should

include the non-two percenters in the equation of allocating "additional" seats otherwise it is mathematically impossible to fill-up the 20% membership. Mathematically, the modification is reflected as follows:

$$\textit{Additional Seats} = \left(\frac{\textit{Total votes of the Party}}{\textit{total Votes of } \textbf{\textit{all Parties}}} \right) * \textit{remaining seats}$$

Going back to the analogy of a pie and the illustration above, all parties may now share the remaining number of seats after the first round by adjusting the divisor. . . . The inclusion of the non-two percenters is not to put them on equal footing with the 2 percenters and not to remove the distinction that RA No. 7941 accorded to it but simply a way to fulfill the constitutional provision that the 20% membership should be filled-up.

4. ID.; ID.; ID.; ID.; ID.; ID.; THE FIRST AND SECOND ROUNDS OF SEAT ALLOCATIONS SERVE DIFFERENT PURPOSES AND INVOLVE DIFFERENT FORMULAS INVOLVING DIFFERENT LEVELS OF PROPORTIONS. — On this score, I submit that the equal protection clause is not violated because there is no double-counting of votes. The first and second rounds of allocation of seats serve different purposes and involve different formulas involving different levels of proportions. The petitioners' claim of "double counting" presupposes that there is singularity in the formula used in allocating seats.

The first round gives flesh to the threshold requirement and in consonance with Section 11 (b) — "*[t]he parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each,*" which is mathematically determined by dividing the total votes of a party and the total votes received by all of the parties without regard to the available seats. The second round is for fulfilling the constitutional provision of 20% membership determined proportionally and mathematically in the formula described above.

5. ID.; ID.; ID.; ID.; ID.; ID.; TREATMENT OF FRACTIONAL SEATS REPRESENTED BY DECIMAL VALUES; THE SECOND ROUND (SECOND PART) SHOULD STILL CONSIDER THE FRACTIONAL VALUE OF SEATS OBTAINED BY THE 2 PERCENTERS BY SIMPLY

REMOVING THE INTEGER REPRESENTING THE CREDITED SEATS. — *BANAT* correctly applied the Niemeyer Formula to determine proportionality in the remaining seats after the first round. However, it is silent on how fractional seats represented by decimal values are to be treated. . . .

. . .

. . . The second round (first part) used the Niemeyer Formula[;] while the second round (second part) used the formula used in the first round to rank the non-two percenters including parties, which did not receive a seat during the second round (first part). . . .

. . .

. . . The second round (second part) should still consider the fractional value of seats obtained by the 2 percenters by simply removing the integer representing the credited seats. . . .

. . .

I submit that the second round, second part of allocations of seats discussed in *BANAT* should be understood as the distribution of remaining seats to parties receiving seats with fractional value. In order to determine each of the parties' proportional share, the Niemeyer Formula should be uniformly applied to all parties in the second round. After the additional seats represented by whole integers have been distributed in the second round (first part), the parties should then be ranked again in a descending order based on their fractional seats to determine which of them will receive the remaining seats until they are exhausted. This is the more logical approach in treating fractional seats without resorting to rounding-off by recognizing the proportion of votes received by the parties.

6. ID.; ID.; ID.; HOUSE OF REPRESENTATIVES; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); JURISDICTION OF HRET; REQUISITES FOR MEMBERSHIP IN THE HOUSE OF REPRESENTATIVES. — Section 17, Article VI of the Constitution clearly provides that the House of Representatives shall have an electoral tribunal "which shall be the **sole judge** of all contests relating to the election, returns, and qualifications of their respective Members." The importance of observing the delineation of jurisdiction in election contests is recently highlighted in the case of *Reyes v. COMELEC, et al.* where the Court had to clarify when the

jurisdiction of the House of Representatives Electoral Tribunal (HRET) begins. According to *Reyes*, a candidate becomes a member of the house if the following requisites are met: (1) proclamation; (2) oath of office; and (3) assumption to office.

7. ID.; ID.; ID.; ID.; ID.; PETITION FOR *QUO WARRANTO* AGAINST A MEMBER OF THE HOUSE OF REPRESENTATIVES; IT IS THE HRET THAT SHOULD PASS UPON THE POSSIBLE DIVESTMENT OF SEATS OF MEMBERS OF THE HOUSE OF REPRESENTATIVES. — The HRET's jurisdiction was recognized in *Rivera, et al. v. Commission on Elections, et al.* relating to a petition for *quo warranto* against a Member of the House of Representatives:

. . .

In a long line of cases and more recently in Reyes v. COMELEC, et al., the Court has held that once a winning candidate has been proclaimed, taken his oath, and assumed office as Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Since the nominees of CIBAC National Council have already assumed their seats in Congress, the *quo warranto* petition should be dismissed for lack of jurisdiction.

. . .

. . . While the Court has jurisdiction to pass upon the constitutionality of Section 11(b) of RA No. 7941, it is the HRET that should pass upon the possible divestment of seats of Members of the House of Representatives.

GESMUNDO, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES THEREOF. — The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and

(d) the issue of constitutionality must be the very *lis mota* of the case.

2. ID.; ID.; ID.; ID.; ID.; THE QUESTION OF CONSTITUTIONALITY MUST BE RAISED AT THE EARLIEST OPPORTUNITY; RATIONALE THEREOF. — As early as 1937, the Court in *People v. Vera*, explained the requirement of "earliest opportunity", in constitutional litigation, . . .

Also, in *Arceta v. Judge Mangrobang*, the Court held that seeking judicial review at the earliest opportunity does not mean immediately elevating the matter to this Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised during proceedings in the court below.

. . . [T]he rationale behind this requirement is that it prevents a party litigant from changing or altering the theory of his case and catching the other party off-guard, thereby offending all sense of fairness in court litigations. However, this is not the case here. Respondents have been apprised of petitioners' contentions and arguments and were in fact controverted by the Office of the Solicitor General head-on. There is no violation of fair play or due process of law in this scenario.

Neither should we consider this Court as the "lower court" for purposes of the procedural requirement as the rationale behind the requirement is more focused on the protection of the adverse party from surprises and underhanded tactics of the petitioners that offend fairness. Since the reason behind the requirement is not applicable in this case, it would be unfair to still mandate the rule that would serve an empty purpose — *cessante ratione legis, cessat ipsa lex*, when the reason of the law ceases, the law itself ceases.

3. ID.; ID.; ID.; ID.; ID.; ID.; AS AN EXCEPTION, THE COURT SHALL PASS ON THE CONSTITUTIONAL QUESTION, THOUGH RAISED FOR THE FIRST TIME ON APPEAL, IF NECESSARY. — Even if we consider the strict application of this rule, I consider the case falling under the recognized exceptions. It has been held that in civil cases, it is the duty of the court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case.

Here, the argument of double counting raised by petitioners and petitioner-in-intervention was not addressed and resolved by the Court in *Veterans* and *BANAT*. . . . [T]he constitutional issue cannot be resolved on the strength of *BANAT* and previous jurisprudence as this issue is novel and is, in fact, the *lis mota* of the case.

4. CIVIL LAW; ESTOPPEL; REQUISITES THEREOF. –– Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. For a party to be bound by estoppel, the following requisites must be present: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.

5. ID.; ID.; CITIZENS WHO RELIED ON THE LAW CANNOT BE EXPECTED TO FOLLOW IT BLINDLY IF THE MATTER OF ITS CONSTITUTIONALITY ESCAPES THEIR IMMEDIATE ATTENTION. — [T]he elements of estoppel are wanting simply because petitioners and petitioner-in-intervention based their conduct on the prevailing law at the time. It cannot be said that they concealed or misrepresented facts when they were merely following the prevailing law. Citizens who relied on the law cannot be expected to follow it blindly if the matter of its constitutionality escapes their immediate attention. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.

6. ID.; ID.; A PARTY CANNOT BE ESTOPPED FROM RAISING ISSUES THAT RELATE TO DIFFICULT QUESTIONS OF LAW. — [T]he interpretation of the party-list- law by the organizations themselves who are allowed to participate in the proper allocation of seats ha[s] been subject to numerous litigations that produced different results . . . . It can even be conceded that the party-list law has become a difficult

point of law considering the changes in interpretation of its provisions. From the foregoing, it is my view that a party cannot be estopped from raising issues that relate to difficult questions of law. Otherwise, the development of jurisprudence would be halted indiscriminately simply because an earlier court interpretation has already been made regardless of its soundness and reasonability.

7. REMEDIAL LAW; PRINCIPLE OF *STARE DECISIS*; THIS PRINCIPLE MAY BE DISREGARDED WHEN THE PREVIOUS RULING NO LONGER APPEARS TO BE REASONABLE OR PROPER. — [R]eliance on the strength of *stare decisis* established by *BANAT* can be made as long as is passes constitutional muster. In the past, the Court has never been shy in disregarding *stare decisis* especially when the previous ruling no longer appears to be reasonable or proper.

. . .

Truly, the evolution of judicial philosophy and the entry of new justices of the Court bring new perspectives and paradigms that question issues thought to be long-settled. For sure, *stare decisis* cannot shackle the solemn duty of jurists to interpret the law on the basis of their own lenses.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION OF THE LAWS; PURPOSE THEREOF. — Article III, Section 1 of the 1987 Constitution mandates that all persons shall not be denied the equal protection of the laws. The equal protection clause requires that all persons be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.

9. ID.; ID.; ID.; ID.; THE EQUAL PROTECTION CLAUSE ENSURES THAT A PERSON IS ENTITLED TO ONE VOTE THAT CARRIES THE SAME WEIGHT AS OTHERS. — Article II, Sec. 1 provides that the Philippines is a democratic and republican State. Sovereignty resides in the people and all government, authority emanates from them.

For the Constitutional framers, the concept of republicanism was added to purposely declare that the country adopts a representative democratic system where leaders are chosen by the people to govern and lead them.

As a tool to determine the representatives of the people, elections are held and during such event, the people exercise their sovereign power to choose their leaders. In this regard, the equal protection clause ensures that a person is entitled to one vote and such vote carries the same weight as others. There are no privileged individuals whose vote is weightier than others simply because of gender, race or station in life.

10. ID.; ID.; ID.; ID.; "ONE PERSON, ONE VOTE" CONCEPT. — [T]he concept of "one person, one vote" is inherent in our system and need not be expressly stated because it is a necessary consequence of the republican and democratic nature of the Philippines state. Second, the concept of "one person, one vote" is protected under the mantle of equal protection since the weight of the vote of a person is the same as others and there is no substantial distinction per voter whether on the basis of race, gender, age, lineage, social standing or education.

11. ID.; ID.; ID.; ID.; ID.; THE *BANAT* FORMULA FOR DISTRIBUTING ADDITIONAL SEATS VIOLATES THE "ONE PERSON, ONE VOTE" PRINCIPLE. — I am convinced that the *BANAT* formula for distributing additional seats violates this principle.

As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one (1) guaranteed seat were already considered and used during the allocation of the guaranteed seats. To consider them again, this time for purposes of allocating additional seats, would give these votes more weight or more value than others in violation of the equal protection clause as it gives due preference to votes received by party-list organizations who got 2% of the votes from those who did not.

12. ID.; ID.; ID.; ID.; ID.; THE DOUBLE COUNTING OF VOTES CREATES A CLASSIFICATION THAT DOES NOT JUSTIFY THE REQUIREMENTS OF A VALID CLASSIFICATION. — [T]his double counting of votes creates a classification that does not justify the requirements of a valid

classification; particularly, the classification not being germane to the purposes of the law. There is no justification why there is a need to re-credit votes already credited. Further, there can be no conceivable explanation why the vote of one person should have more value compared to others. A contrary rule would be obnoxious to the democratic and republican nature of the country and the promise of equal protection under the Bill of Rights.

As such, since there is double counting of votes and the same violates the equal protection clause, particularly the "one person, one vote" mantra of democratic and republican states, the formula as to the allocation of additional seats must be fine-tuned to address this conundrum.

13. ID.; ID.; ID.; ID.; CONCEPT OF RELATIVE CONSTITUTIONALITY. — [T]he concept of relative constitutionality comes to play in this case which would further show the violation of the equal protection clause.

In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas,* the Court explained the concept of relative constitutionality in this regard, thus:

> The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.
>
> A statute valid at one time may become void at another time because of ***altered circumstances.*** Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of ***changed conditions*****.**

Here, because of the change brought about by *BANAT* to the allocation of additional seats, the double counting of votes, which was absent in the previous computation under *Veterans* is now allowed.

14. ID.; ID.; ID.; ID.; ID.; THE DOUBLE COUNTING OF VOTES, WHERE THE VOTES USED TO CLINCH THE GUARANTEED SEATS WERE ALSO USED TO

ALLOCATE ADDITIONAL SEATS, VIOLATES THE EQUAL PROTECTION CLAUSE. — With the advent of *BANAT*, however, the allocation of additional seats was changed and it allowed the distribution of additional seats in relation to the total number of votes received, including those already credited for the guaranteed seat. While the privilege of the organizations which garnered at least 2% of the votes remained as regards the grant of guaranteed seats as there was substantial distinction between them, the same cannot be said for the distribution of additional seats, *BANAT* allowed the double counting of votes because the same votes used to clinch the guaranteed seats were used to qualify for an additional seat. This violates the equal protection clause because of the inequality of the weight of votes per voter.

Hence, while the advantage given to a party-list organization which obtains at least 2% of the total votes cast remained for purposes of the guaranteed seat, the change in the manner of computation for additional seats results in the obnoxious unequal treatment of votes in favor of groups who failed to secure the 2% threshold that should not endure in our legal system.

15. ID.; ID.; THE PARTY-LIST SYSTEM ACT (RA NO. 7941); THE PHRASE "IN PROPORTION TO THEIR TOTAL NUMBER OF VOTES" IN SECTION 11(b) SHOULD BE STRUCK DOWN, FOR IT RESULTS TO THE DOUBLE COUNTING OF VOTES, WHICH IS REPUGNANT TO THE CONCEPT OF "ONE PERSON, ONE VOTE." — [T]he phrase "in proportion to their total number of votes" in Section 11 (b) of R.A. No. 7941 should be struck down for it results to the double counting of votes which is repugnant to the equal protection clause; particularly, the concept of "one person, one vote."

16. ID.; ID.; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; PARTY-LIST SYSTEM; THE PARTY-LIST SYSTEM IS INTENDED TO SERVE AS A TOOL TO ACCOMMODATE WEAKER PARTIES AND MAKE THEM PART OF THE LEGISLATIVE SYSTEM. — [T]he framers intended that the party-list system serve as a tool to accommodate weaker parties and make them part of the legislative system. This is the reason why there is a three (3)-

seat cap limit per party in the party- list system. This is an acknowledgement 'that in the same marginalized sectors of society, there are minorities that are more disenfranchised or marginalized. These parties, per the intentions of the framers, must be protected and accommodated.

17. ID.; ID.; ID.; ID.; ID.; DOUBLE OR TRIPLE COUNTING OF VOTES IS PROHIBITED. — [T]he party-list system should avoid problematic mechanisms that would lead to undesirable results, like multiple voting and unequal weight of votes. . . .

. . .

. . . [T]he system should avoid . . . the problem of unequal treatment of votes. Clearly, the framers intended to prohibit double counting or even triple counting, of votes as they cited it as a problem Congress should be wary about and should prevent.

18. ID.; ID.; ID.; ID.; ID.; PROPORTIONAL SYSTEM OF SEAT ALLOCATION; PROPORTIONALITY REQUIRES THE SUBTRACTION OF CREDITED VOTES ALREADY USED. — Congress also mandated that the system of seat-allocation be proportional.

Insofar as the second guideline is concerned, Congress thought it best to pattern the party-list system similar to the electoral system in Germany in order to assure the equal distribution of seats through proportionality and defeat the evils of unequal treatment of votes that concerned the framers.

When the *BANAT* Decision was promulgated, however, it resulted into an evil that the Constitutional Commission itself sought to avoid: the double counting of votes where the votes used to clinch the guaranteed seats were also used to allocate the additional seat. The adoption of petitioners' method actually adheres to the guidelines of the Constitutional Commission as it prevents the evil that *BANAT* allows. The only question that remains is whether or not the petitioners' method complies with the Congressional requirement of proportionality.

I believe it does.

When we look at existing proportional systems that use a quota threshold, proportionality requires the subtraction of credited votes already used just like what the petitioners propose.

19. ID.; ID.; ID.; ID.; ID.; PARTY-LIST SYSTEM ACT (RA NO. 7941); RA NO. 7941 IS NOT AN ELECTION LAW, BUT A LAW THAT CREATES AN ELECTORAL SYSTEM; ELECTORAL SYSTEM AND ELECTORAL LAW, DISTINGUISHED. — R.A. No. 7941 is not an election law; rather it creates what is referred to as an electoral system. The two concepts refer to two (2) different things. David Farrell, in his book, *Comparing Electoral Systems* explains —

> ***x x x. Electoral laws are the family of rules governing the process of elections: from the calling of the election, through the stages of candidate nomination, party campaigning and voting, and right up to the stage of counting votes and determining the actual election result.*** There can be any number of rules governing how to run an election. . . .
>
> Among this panoply of electoral laws there is one set of rules which deal with the process of election itself: how citizens vote, the style of the ballot paper, the method of counting, and the final determination of who is elected. . . . This is the electoral system, the mechanism of determining victors and losers, which clicks into action once the campaign has ended.
>
> . . . It is the function of the electoral system to work this transformation of votes into seats. To put this in the form of a definition: ***electoral systems determine the means by which votes are translated into seats in the process of electing politicians into office***.

20. ID.; ID.; ID.; ID.; ID.; THE GERMAN 2-VOTE SYSTEM; OUR PARTY-LIST SYSTEM RESEMBLES THE BASIC PRINCIPLES OF THE GERMAN 2-VOTE SYSTEM. — Germany actually patterns its electoral system after a generic system, referred to as the German two (2)-vote system. . . .

The basic form of this German 2-vote system is discussed by Farrell in this regard —

> The German voter has two votes for the two types of Members of Parliament (MP). . . . The first vote is for a candidate, while the second vote is for a party.

x x x x

> The election count proceeds in three stages. First, there are counts in each constituency to determine which candidate is elected and to work out the total number of constituency seats for each of the parties in each of the federal *Lander*. Just like in British elections, the candidates with most votes in each constituency are elected, regardless of whether or not they have an overall majority of the votes in the constituency. x x x
>
> The crucial factor which separates the two-vote system from FPTP is the second vote where smaller parties have a much greater chance of winning seats. x x x
>
> The first two stages in the counting process (i.e. the counting of first and second votes) are common to all existing two-vote systems. It is in the third and final stage that a very important distinction arises. . . . The basic point of the German system is that it should produce a proportional result. ***In order to achieve this, it is important that the larger parties should not be overly advantaged by the greater ease with which they win constituency seats. Therefore the operating principle of this third stage in the German count is that the total number of constituency seats won by the parties should be subtracted from the total number of lists seats they have been allocated (and remember that the list seats are allocated at the Land level). It is for this reason that the two-vote system is generally referred to as the 'additional member' system, because the result of this subtraction determines the number of additional members to which each party is entitled.*** . . .

. . . [O]ur party-list system resembles the basic principles of the German 2-vote system considering that Congress adopted, . . . the basic principles of the German 2-vote system in this jurisdiction. It is also worth noting that the first step of this electoral system is the election of two (2) representatives, one by district or land, and one by list or party-list organizations. It is also similar in the second step which requires a minimum threshold to garner seats. The third step is also similar as we deduct the obtained seat (guaranteed seat) from the total allowable seat (which is three).

21. ID.; ID.; ID.; ID.; ID.; PROPORTIONAL REPRESENTATION LIST SYSTEM; LARGEST REMAINDER SYSTEM; IN THE ALLOCATION OF ADDITIONAL SEATS, CONGRESS MANDATES A PROPORTIONATE DISTRIBUTION; THE PROPORTIONAL REPRESENTATION (PR) LIST SYSTEM THAT CLOSELY RESEMBLE OUR SYSTEM FOLLOW THE LARGEST REMAINDER SYSTEM. — Insofar as the allocation of additional seats, Congress mandates a proportionate distribution. To determine whether the petitioners' proposal meets the required proportionality of the law, we look at different models of proportional representation, generically referred to as the PR List system. PR list systems that closely resemble our system follow the largest remainder system. The central feature of this system (referred to in the USA as the Hamilton method) is an electoral quota. The counting process occurs in two rounds. In the first round, parties with votes exceeding the quota are awarded seats, and the quota is subtracted from their total vote. In the second round, those parties left with the greatest number of votes (the 'largest remainder') are awarded the remaining seats in order of vote size. This is the same system advocated by the petitioners.

22. ID.; ID.; ID.; ID.; ID.; ID.; THE PHILIPPINE PARTY-LIST SYSTEM IS CHARACTERIZED AS A HYBRID OF THE GERMAN 2-VOTE SYSTEM AND THE PR LIST SYSTEM THAT FOLLOWS THE LARGEST REMAINDER SYSTEM. — In adopting this system, proportionality is achieved while at the same time avoiding the 'double counting' dilemma brought about by the *BANAT* Decision. Thus, we characterize the Philippine party-list system as a hybrid of the German 2-vote system and the PR list system that follows the largest remainder system. Of course, our system becomes distinct from other systems because: (1) we limit the number of party-list representatives to 20% of the House of Representatives; and (2) we impose the 3-seat cap. These characteristics make the party-list system of the Philippines unique.

23. ID.; ID.; ID.; THE PROPOSAL WHICH INVALIDATES THE PHRASE "IN PROPORTION TO THEIR TOTAL NUMBER OF VOTES" IS CONSISTENT WITH CONSTITUTIONAL AND STATUTORY DIRECTIVES. — Petitioners' model which would be the necessary result of the Court's declaration of invalidity of the phrase "in proportion to their total number

of votes" is consistent with Constitutional and Statutory directives.

First, it opens up Congress to more groups, thereby ensuring that more interests are properly represented. This includes even those interests that the marginalized sector itself failed to recognize and represent.

Second, it prevents the evil of unequal weight of votes that the *BANAT Decision* perpetuates; and

Lastly, the proposal is still proportionate considering other similar systems around the world.

24. ID.; ID.; ID.; ID.; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; INCUMBENT MEMBERS OF THE HOUSE OF REPRESENTATIVES MAY BE REMOVED THROUGH PROCEDURES OTHER THAN THROUGH THE HRET. — It does not escape my attention that petitioners' formula and the Court's approval of the same would result in the ouster of incumbent members of the House of Representatives without due proceedings conducted by the House of Representatives Electoral Tribunal. However, removal of incumbent members through procedures other than through the HRET have been recognized in the past. In *Dimaporo v. Hon. Mitra*, the Court recognized several ways on how incumbent members of the Congress may be removed from their seat or their term considerably shortened. . . .

Be that as it may, as petitioners' formula would drastically change the membership of Congress and might derail Congressional agenda at the time of a global health pandemic, I am of the opinion that the application of this formula be made prospectively.

ZALAMEDA, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; LEGISLATIVE DEPARTMENT; HOUSE OF REPRESENTATIVES; PARTY-LIST SYSTEM; THE NON-EXCLUSION OF THE 2% GUARANTEED VOTES IN THE ALLOCATION OF ADDITIONAL SEATS RESULTS TO DOUBLE COUNTING OF VOTES. — To clarify, in the first step of the second round of seat allocation, the **allocation of additional**

seats to the two percenters is still in proportion to their total number of votes, without deducting the 2% votes already allotted for their guaranteed seats. It is only in the second step of the second round of seat allocation, wherein the preference in the distribution is in accordance with the higher percentage and higher rank without limiting the distribution of seats to the two percenters, that **the 2% guaranteed seat is deducted from the percentage of votes of the two percenters to compute its fractional seat in order to determine its ranking for additional seat allocation.**

It is therefore erroneous for petitioners to insist that the BANAT Resolution excluded the 2% votes counted in the first round from the total votes of the two percenters before proceeding to the second round of seat allocation. Nonetheless, I agree with petitioners that the non-exclusion of the 2% guaranteed votes in the allocation of additional seats results to double counting of votes, which violates the equal protection clause.

2. ID.; ID.; ID.; ID.; ID.; PARTY-LIST SYSTEMS ACT (RA NO. 7941); THE LAST PARAGRAPH OF SECTION 11 OF RA NO. 7941, WHICH ENTITLES PARTIES TO ADDITIONAL SEATS "IN PROPORTION TO THEIR TOTAL NUMBER OF VOTES," IS UNCONSTITUTIONAL, AS IT VIOLATES THE EQUAL PROTECTION CLAUSE FOR ALLOWING THE 2% ALREADY ALLOTED FOR A GUARANTEED SEAT TO BE RE-USED AND RECOUNTED IN THE ALLOCATION OF ADDITIONAL SEATS. — [T]he last paragraph of Section 11 of RA 7941, which entitles parties to additional seats "in proportion to their total number of votes," is unconstitutional. . . . This provision violates the equal protection clause for allowing the 2% already allotted for a guaranteed seat to be re-used and re-counted in the allocation of additional seats. I submit that this clause perpetuates the double counting of votes which is anathema to the "one person, one vote" rule rooted in the Equal Protection Clause.

. . .

Indeed, to consider the 2% votes representing the guaranteed seats again would logically grant these votes more weight and influence as compared to other votes in support of those party-list organizations that did not garner at least 2% (the non-two

percenters). This assigns undue preference to those party-list organizations who obtained at least 2% of the total number of votes (the two percenters); not only making it easier for the two percenters to get additional seats, but making it more difficult for the non-two percenters to obtain a single seat.

3. ID.; ID.; ID.; ID.; ID.; ID.; PRINCIPLE OF "ONE PERSON, ONE VOTE"; ALL VOTES MUST BE EQUAL AND CARRY THE SAME WEIGHT. — One of the basic tenets of democracy is that each person has one vote. The principle of "one person, one vote" or equality in voting power is the essence of our democracy and is inherent in proportional representation. All votes are equal and should carry the same weight. In every conduct of elections, the government must ensure that each and every vote cast should have equal voting power. Otherwise, the equal protection of laws, as guaranteed under our Constitution, finds no application.

. . . The principle of "one person, one vote" ensures that a voter's constitutional right to vote in elections is not wrongfully denied or diluted. The double counting of votes for the two percenters would effectively dilute the weight of the votes for the non-two percenters, and is inconsistent with the voters' constitutional right to an equally weighted vote.

4. ID.; ID.; ID.; ID.; ID.; THE COMELEC'S FORMULA MUST BE MODIFIED AS REGARDS LIMITING THE ALLOCATION OF SEATS ONLY TO THE TWO PERCENTERS. — I propose that the COMELEC's formula, as provided in the implementing rules and regulations of RA 7941 and explained further in the primer on the party-list system of representation, be utilized but with some modification.

The COMELEC's formula **adheres to the 3-seat cap and emphasizes the preference for the two percenters, which is consistent with RA 7941. However, the COMELEC's formula needs to be modified as regards limiting the allocation of seats only to the two percenters since this would negate the 20% allocation of party-list membership in the House of Representatives provided under Article VI, Section 5 of the Constitution.**

5. ID.; ID.; ID.; ID.; ID.; PROPOSED PROCEDURE IN ALLOCATION OF SEATS IN THE PARTY-LIST SYSTEM.

— I present the following procedure in the allocation of seats in the party-list system:

> 1. Rank the parties, organizations, and coalitions from the highest to the lowest based on the number of votes they garnered during the elections.
>
> 2. Compute the percentage of votes garnered by the parties, organizations, and coalitions over the total votes cast for the party-list system to distinguish the two percenters and the non-two percenters.
>
> . . .
>
> 3. Determine the number of seats allocated for the two percenters. That is, one seat shall be allotted for every 2% garnered, provided that the total seats allocated per parties, organizations and coalitions should not exceed 3 seats.
>
> . . .
>
> 4. Compute the percentage not consumed (variance) in the allocation of seats for the two percenters by subtracting the percentage consumed in allocating the seats (Step #3) from the percentage of votes (Step #2). Disregard those that have already obtained the maximum 3-seat allocation.
>
> . . .
>
> 5. **Re-rank** the parties, organizations, and coalitions from highest to lowest **based on the percentage not consumed for the two percenters** and on the **percentage of votes for the non-two percenters**. Again, disregard the two percenters that have already obtained the maximum 3-seat allocation.
>
> . . .
>
> In this **new ranking** for the allocation of the remaining seats, **the two percenters that have not attained the maximum 3 seats are still included.** However, **only** the percentage **not consumed** is considered (see Step #4). The percentage representing the seats already allocated (2% for 1 seat and 4% for 2 seats) is **deducted** from the original percentage of the two percenters so that **there will be no double counting of votes**.

6. The remaining party-list seats shall be distributed by assigning one party-list seat to the re-ranked parties, organizations, and coalitions, starting from the highest ranked until all available seats are completely distributed.

6. ID.; ID.; ID.; ID.; ID.; BASIS FOR ALLOCATING THE REMAINING SEATS; WITH THE SUGGESTED PROCEDURE, PROPORTIONALITY IS ACHIEVED WITHOUT THE UNCONSTITUTIONAL "DOUBLE VOTES." — This suggested procedure is similar to the COMELEC's formula as provided in the implementing rules and regulations and the primer on RA 7941. However, under the COMELEC's formula, only those parties which have received at least 2% of the total votes cast for the party-list system were entitled to party-list seats.

In my suggested formula, after the two percenters are allocated seats, *i.e.*, one seat per 2% of votes obtained, but not to exceed 3 seats, the variance in excess of 2% or 4% (equivalent to 1 or 2 seats that have already been obtained, respectively) shall be computed and accordingly ranked together with the percentage of the non-two percenters. This new ranking **based on the percentage not consumed for the two percenters** (percentage of votes **less** the percentage consumed on the allocated seats) and on the **percentage of votes for the non-two percenters** (since they were not yet allocated any seats for not having reached the 2% threshold) shall be the basis for allocating the remaining seats until all available seats are distributed.

. . .

In adopting the above procedure, I truly believe that proportionality is achieved without the unconstitutional "double votes," thus allowing the broadest possible representation of interests in the party-list system by enhancing their chances to compete for and win seats in the House of Representatives.

APPEARANCES OF COUNSEL

Manalo Perez Paco and Antonio Law Offices for petitioners.
The Solicitor General for respondents.
Homer A. Mabale for petitioner-in-intervention.

D E C I S I O N

LAZARO-JAVIER, *J.*:

THE CASES

These twin Petitions a) for *Certiorari* and Prohibition, and b) in-Intervention assail the constitutionality of Section 11 (b), Republic Act No. (RA) 7941[1] insofar as it provides that those garnering more than two percent (2%) of the votes cast for the party list system shall be entitled to additional seats **in proportion to their *total* number of votes,** *thus:*

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

x x x x x x x x x

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

Under the provision, party-lists garnering at least 2% of the votes cast for the party-list system (two-percenters) are guaranteed one seat each in the House of Representatives. Meanwhile, the challenged proviso allocates additional congressional seats to party-lists "in proportion to their total number of votes."

Petitioners ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc., (ANGKLA) and Serbisyo sa Bayan Party (SBP) and Petitioner-in-Intervention Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTN) essentially assert that the allocation of additional seats in proportion to a party-list's "total number of

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

votes" results in the double-counting of votes in favor of the two-percenters. For the same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The proviso purportedly violates the equal protection clause, hence, is unconstitutional.[2]

The aforenamed petitioners, therefore, pray that respondent Commission on Elections (COMELEC) be enjoined from double-counting the votes in favor of the two-percenters. Instead, the 2% votes counted in the first round should first be excluded before proceeding to the second round of seat allocation. Their proposed framework is, as follows:

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

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

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

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

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

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[2] *Rollo,* pp. 12-13.

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

This position is allegedly consistent with the Court's Resolution in ***Barangay Association For National Advancement And Transparency (BANAT) v. COMELEC*** *(BANAT)*[4] dated July 8, 2009:

xxx CIBAC's 2.81% (**from the percentage of 4.81% less the 2% for its guaranteed seat**) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03 xxx (Emphasis added)

On May 22, 2019, the National Board of Canvassers (NBOC) promulgated NBOC Resolution No. 004-19[5] declaring the winning party-list groups in the May 13, 2019 elections. Based on the National Canvass Report No. 8[6] and adhering to the Court's pronouncement in *BANAT*, respondent COMELEC distributed sixty-one (61) congressional seats among the following parties, organizations, and coalitions taking part in the May 13, 2019 party-list election, *viz*.:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES	SEATS
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	ACT CIS	2,651.987	9.51	3
2	BAYAN MUNA	BAYAN MUNA	1,117,403	4.01	3
3	AKO BICOL POLITICAL PARTY	AKO BICOL	1,049,040	3.76	2

[3] *Id*. at 23-24.

[4] 609 Phil. 751,767-768 (2009).

[5] *Rollo*, p. 143.

[6] *Id*. at 148.

4	CITIZENS BATTLE AGAINST CORRUPTION	CBAC	929,718	3.33	2
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	ANG PROBINSIYANO	770,344	2.76	2
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1PACMAN	713,969	2.56	2
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44	2
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26	2
9	COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILIPPINES, INC.	SENIOR CITIZENS	516,927	1.85	1
10	MAGKAKASAMA SA SAKAHAN, KAUNLARAN	MAGSASAKA	496,337	1.78	1
11	ASSOCIATION OF PHILIPPINE ELECTRIC COOPERATIVES	APEC	480,874	1.72	1
12	GABRIELA WOMEN'S PARTY	GABRIELA	449,440	1.61	1
13	AN WARAY	AN WARAY	442,090	1.59	1
14	COOPERATIVE NATCCO NETWORK	COOP-NATTCO	417,285	1.50	1
15	ACT TEACHERS	ACT TEACHERS	395,327	1.42	1
16	PHILIPPINE RURAL ELECTRIC COOPERATIVES ASSOCIATION, INC.	PHILRECA	394,966	1.42	1
17	AKO BISAYA, INC.	AKO BISAYA	394,304	1.41	1
18	TINGOG SINIRANGAN	TINGOG SINIRANGAN	391,211	1.40	1 1
19	ABONO	ABONO	378,204	1.36	1
20	BUHAY HAYAAN YUMABONG	BUHAY	361,493	1.30	1
21	DUTY TO ENERGIZE THE REPUBLIC THROUGH THE ENLIGHTENMENT OF THE YOUTH	DUTERTE YOUTH	354,629	1.27	1
22	KALINGA-ADVOCACY FOR SOCIAL EMPOWERMENT AND NATION BUILDING	KALINGA	339,655	1.22	1
23	PWERSA NG BAYANING ATLETA	PBA	326,258	1.17	1

24	ALLIANCE OF ORGANIZATIONS, NETWORKS, AND ASSOCIATIONS OF THE PHIIPPINES	ALONA	320,000	1.15	1
25	RURAL ELECTRIC CONSUMERS AND BENEFICIARIES OF DEVELOPMENT AND ADVANCEMENT, INC.	RECOBODA	318,511	1.14	1
26	BAGONG HENERASYON	BH (BAGONG HENERASYON)	288,752	1.04	1
27	BAHAY PARA SA PAMILYANG PILIPINO, INC.	BAHAY	281,793	1.01	1
28	CONSTRUCTION WORKERS SOLIDARITY	CWS	277,890	1.00	1
29	ABANG LINGKOD, INC.	ABANG LINGKOD	275,199	0.99	1
30	ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION COOPERATION HARMONY TOWARDS EDUCATIONAL REFORM	A TEACHER	274,460	0.98	1
31	BARANGAY HEALTH WELLNESS	BHW	269,518	0.97	1
32	SOCIAL AMELIORATION AND GENUINE INTERVENTION ON POVERTY	SAGIP	257,313	0.92	1
33	TRADE UNION CONGRESS PARTY	TUCP	256,059	0.92	1
34	MAGDALO PARA SA PILIPINO	MAGDALO	253,536	0.91	1
35	GALING SA PUSO PARTY	GP	249,484	0.89	1
36	MANILA TEACHERS SAVINGS AND LOAN ASSOCIATION, INC.	MANILA TEACHERS'	249,416	0.89	1
37	REBOLUSYONARONG ALYANSA MAKABANSA	RAM	238,150	0.85	1
38	ALAGAAN NATIN ATING KALUSUGAN	ANAKALUSUGAN	237,629	0.85	1
39	AKO PADAYON PILIPINO	AKO PADAYON	235,112	0.84	1
40	ANG ASOSASYON SANG MANGUNGUMA NGA BISAYA0OWA MANGUNGUMA, INC.	AAMBIS-OWA	234,552	0.84	1
41	KUSUG TAUSUG	KUSUG TAUSUG	228,224	0.82	1

42	DUMPER PHILIPPINES TAXI DRIVERS ASSOCIATION, INC.	DUMPER PTDA	223,199	0.80	1
43	TALINO AT GALING PILIPINO	TGP	217,525	0.78	1
44	PUBLIC SAFETY ALLIANCE FOR TRANSFORMATION AND RULE OF LAW	PATROL	216,653	0.78	1
45	ANAK MINDANAO	AMIN	212,323	0.76	1
46	AGRICULTURAL SECTOR ALLIANCE OF THE PHILIPPINES	AGAP	208,752	0.75	1
47	LPG MARKETERS ASSOCIATION, INC.	LPGMA	208,219	0.75	1
48	OFW FAMILY CLUB, INC.	OFW FAMILY	200,881	0.72	1
49	KABALIKAT NG MAMAMAYAN	KABAYAN	198,571	0.71	1
50	DEMOCRATIC INDEPENDENT WORKERS ASSOCIATION	DIWA	196,385	0.70	1
51	KABATAAN PARTY LIST	KABATAAN	195,837	0.70	1

Additionally, the National Canvass Report No. 8 revealed that the four (4) parties, organizations, and coalitions taking part in the May 13,2019 party-list election with the next highest votes were:

RANK	PARTY-LIST	ACRONYM	VOTES GARNERED	% OF TOTAL VOTES
52	AKSYON MAGSASAKA — PARTIDO TINIG NG MASA	AKMA-PTM	191,804	0.69
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65
54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC.	ANGKLA	179,909	0.65
55	AKBAYAN CITIZENS ACTION PARTY	AKBAYAN	173,356	0.62

In view of this development, the aforenamed petitioners amended their petition to additionally seek the annulment of NBOC Resolution No. 004-19 on ground that it supposedly violated the Court's Resolution dated July 8, 2009 in *BANAT*. They also pray that the COMELEC be directed to proclaim that they are entitled to at least a seat each in the May 13, 2019

party-list election. This claim is based on their proposed framework for seat distribution, whereby AKMA-PTM, SBP, ANGKLA and AKBAYAN would allegedly be entitled to one (1) seat each to be taken from, or at the expense of, the seats' allocated to BAYAN MUNA, 1PACMAN, MARINO, and PROBINSYANO AKO.[7]

On June 13, 2019, AKMA-PTM filed the petition-in-intervention[8] echoing the arguments raised in the main petition pertaining to the alleged unconstitutionality of the double-counting of votes. It points out that the total votes cast under the party-list system during the May 13, 2019 elections numbered 27,884,790. Thus, a party, organization or coalition taking part in the party-list election must have obtained 2% thereof, or at least 557,695.80 votes, to secure a guaranteed seat. It argues that each time a party, organization, or coalition taking part in the party-list election earns a guaranteed seat, 557,695.80 of its votes should then be deducted from the total number of votes obtained by that party-list, thus:[9]

Party-List	**VOTES GARNERED**	**% OF TOTAL VOTES**	**Guaranteed Seat**	**RemainingVotes**
1PACMAN	713,969	2.56	1	156,273.20
MARINO	681,448	2.44	1	123,752.20
PROBINSYANO AKO	630,435	2.26	1	72,739.20

Since the remaining votes of 1 PACMAN, MARINO and PROBINSYANO AKO, on the one hand, are fewer than those garnered by petitioners AKMA-PTM (191,804), SBP (180,535) and ANGKLA (179,909), on the other, the latter should be prioritized in the second round of seat distribution. Accordingly, 1 PACMAN, MARINO and PROBINSYANO AKO should not

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[7] *Id.* at 133.

[8] *Id.* at 159.

[9] *Id.* at 163.

have been allocated a second seat on top of the first guaranteed; their supposed second seats should have been awarded to petitioners. Applying the same formula, the third seat allocated to BAYAN MUNA must also be forfeited, allowing AKBAYAN representation in the House of Representatives.

The Office of the Solicitor General (OSG), through Solicitor General Jose C. Calida, Assistant Solicitor General Thomas M. Laragan and State Solicitor Isar O. Pepito, defends the position of public respondent COMELEC. It ripostes, in the main:

First. There is no double-counting of votes since the system of counting, pertains to two (2) different rounds and for two (2) different purposes: the first round is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the second round is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system.[10]

Second. The challenged provision does not violate the equal protection clause. The two-percenters have a clearer mandate of the people than the non-two-percenters. This substantial distinction between the two (2) justifies the grant of additional rights and benefits to the former over the latter.[11]

Third. Petitioners mislead the Court in claiming that its Resolution in *BANAT* dated July 8, 2009 supports their proposed framework, when the latter's proposal in fact is contrary thereto.[12]

Finally. RA 7941 does not defeat the rationale behind the party-list system. It is erroneous for petitioners to hint that the system is reserved for the marginalized and underrepresented. On the contrary, skewed in favor of minimally-representative and unpopular party, organization or coalition taking part in the party-list election, petitioners' proposed formula is repugnant

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[10] *Id*. at 188.

[11] *Id*. at 192.

[12] *Id*. at 198.

to the aim of the party-list system to ensure the broadest representation possible.[13]

Issue

Is Section 11(b), RA 7941 allocating additional seats to party-lists in proportion to their ***total*** number of votes unconstitutional?

Ruling

The petitions are devoid of merit.

Petitioners fail to meet the third requisite for judicial review

The power of judicial review is conferred on the judicial branch of government under Section 1, Article VIII of the *Constitution.*[14] It sets to correct and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch of Government[15] and may therefore be invoked to nullify actions of the legislative branch which have allegedly infringed the *Constitution.*[16]

Although directly conferred by the *Constitution*, the power of judicial review is not without limitations. It requires compliance with the following requisites: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have legal standing to challenge; he or she or it must have a personal and substantial interest in the case such that he or she or it has sustained, or will sustain,

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[13] *Id.* at 199-202.

[14] SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

[15] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1087 (2017).

[16] *Tañada v. Angara*, 338 Phil. 546(1997).

direct injury as a result of the assailed measure's enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[17]

There is no dispute that the first and the second requisites are present in this case:

First. An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.[18] A question is ripe for adjudication when there is an actual act that had been performed or accomplished that directly and adversely affected the party challenging the act.[19]

Here, the COMELEC already applied the assailed Section ll(b), RA 7941 when it promulgated Resolution No. 004-19, proclaimed the winning party-list parties, organizations, or coalitions in the May 13, 2019 party-list election and allocated to each of them seats in the House of Representatives.

Second. *Locus standi* or legal standing is the personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[20] Petitioners assert that the nullification of the contested proviso would entitle them to one (1) seat each in Congress under the party-list system.

But the third requisite - - the question of constitutionality must be raised at the earliest possible opportunity - - is absent here.

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[17] *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 892 (2003).

[18] *Imbong v. Ochoa*, G.R. No. 204819, April 8, 2014, citing *Republic Telecommunications Holding, Inc. v. Santiago*, 556 Phil. 83, 91-92 (2007).

[19] *Imbong*, citing *The Province Of North Cotabato v. The Government of the Republic of the Philippines*, 589 Phil. 387, 481 (2008).

[20] *Francisco*, supra note 17, citing *IBP v. Zamora*, 392 Phil. 618, 632 (2000); *Joya v. PCGG*, 296-A Phil. 595, 603 (1993); *House International*

RA 7941 was enacted in 1995. In 2009, the Court settled the interpretation of Section 11(b) in *BANAT*. The Court takes judicial notice of the fact that, thereafter, petitioner ANGKLA was proclaimed as a winning party-list organization in the 2013 and 2016 party-list elections. On the other hand, SBP garnered enough votes to secure a congressional seat in 2016.

Petitioners ANGKLA and SBP had therefore benefited from the *BANAT* doctrine in the previous elections. In fact, SBP itself, being among the winning party-list groups in the 2016 elections impleaded as respondent in ***An Waray v. COMELEC,***[21] even defended the application of the *BANAT* formula., *viz.*:

There was no grave abuse of discretion

13. It is indisputable that the COMELEC was merely performing its duties when it adhered to the formula set forth by the Honorable Court. It is fundamental that judicial decisions applying or interpreting the law become part of the legal system of the Philippines. It becomes law of the land. The COMELEC was therefore not only right, it was duty bound to implement the formula from the *Banat Decision.*

14. Contrary to the assertions of the Petitioners, the COMELEC would have instead committed grave abuse of discretion *if it had* implemented the formula which the Petitioners advanced, for to do so would be in direct contravention of the edict of this Honorable Court, as set forth in the *Banat Decision,* xxx

x x x x x x x x x

15. xxx It bears emphasis that the Petitioners have not claimed, for indeed they cannot, that the COMELEC failed to properly apply the formula set forth in the *Banat Decision.* They only claim that their formula is better. As has been shown, this is not the case. The Petitioners' formula, far from being better, is susceptible to violations of the law.

Building Tenants Association, Inc. v. Intermediate Appellate Court, 235 Phil. 703(1987).

[21] Entitled *"An Waray, Agricultural Sector Alliance of the Philippines (ACAP), and Citizen's Battle Against Corruption (CIBAC) v. COMELEC, Ating Agapay Sentrong Samahan ng mga Obrero, Inc.* (*AASENSO*), *Serbisyo sa Bayan Party (SBP), et al."*, G.R. No. 224846, February 4, 2020.

x x x x x x x x x

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

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

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

As for AKMA-PTM, way back in 2013, it initiated the petition in G.R. No. 207134 entitled ***AKMA-PTM v. COMELEC***[23] Far from questioning the constitutionality of the proviso in Section ll(b) of RA 7941 therein, AKMA-PTM even vigorously asserted, nay, invoked the application of this law in its favor as among those who purportedly won a party-list congressional seat during the 2013 National and Local Elections. It also invoked the application of *BANAT* for this same purpose.

Indeed, for ANGKLA, SBP, and AKMA-PTM now to question the constitutionality of the assailed proviso in Section 11(b) of RA 7941 not only came too late in the day, but also reeks of inconsistent positions and double standard which negate the presence of the third requisite of judicial review.

Justice Mario Victor "Marvic" F. Leonen shared his enlightening thoughts during the deliberation, *viz.:*

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[22] *Id., Rollo,* pp. 318-321.

[23] *Aksyon Magsasaka-Partido Tinig Ng Masa (AKMA-PTM) v. Commission on Elections,* G.R. No. 207134, June 16, 2015.

It does not help petitioner's position x x x that petitioners asserted an alternative method of allocating party-list seats only in the wake of their defeat in the 2019 elections, and that they never objected to the method currently in place when they benefitted from and, on the basis of it, proclaimed winners in previous elections. An electoral system is meant to be an objective and dispassionate means for determining winners in an election. For it to be upheld at one instance and assailed at another based on how one fares is to undermine an electoral system's requisite neutrality and to subvert meaningful democratic representation.

Philippine jurisprudence has traditionally applied the "earliest opportunity" element of judicial review ***vertically,*** *i.e.*, the constitutional argument must have been raised very early in any of the pleadings or processes prior in time in the same case. But this does not preclude the Court from adopting the ***horizontal*** test of "earliest opportunity" observed in the United States,[24] *i.e.*, constitutional questions must be preserved by raising them at the earliest opportunity **after the grounds for objection become apparent.** Otherwise stated, the threshold is not only whether the earliest opportunity was in the pleadings and processes prior in time in the same case, but also whether the grounds for the constitutional objection was already apparent when a prior case relating to the same issue and involving the same petitioner was being heard.

In ***Schneider v. Jergens,***[25] petitioner was faulted, for not raising the constitutional argument at the earliest opportunity in the prior petition for certiorari as he raised it only in the later petition for federal habeas corpus. Schneider identified the earliest opportunity as the earlier petition for certiorari though it was not a continuation of the later petition for federal habeas corpus, or in other words, though the prior petition was not a vertical opportunity wherein to raise the constitutional argument, but a horizontal case being a mere related case.

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[24] In *Schneider v. Jergens*, 268 F. Supp. 2d 1075 (2003).

[25] *Id.*

There is really no reason to distinguish between the vertical and the horizontal as to when the earliest opportunity to raise the constitutional argument should be made. The threshold is not whether the earliest opportunity was in the pleadings and processes prior in time in the same case, but whether the grounds for the constitutional objection was already apparent when the prior case was being heard, regardless of the vertical or horizontal nature of the case in which it could have been raised.

Failure to pass the horizontal test of "earliest opportunity" certainly calls for the application of estoppel. In ***Philippine Bank of Communications v. Court of Appeals,***[26] the Court enunciated:

> At the very least, private respondent is **now estopped from claiming** that property in question belongs to the conjugal partnership. She **cannot now take an inconsistent stance after an adverse decision** in G.R. No. 92067. In *Santiago Syjuco, Inc. v. Castro,* we had the occasion to reiterate that:
>
> The principles of equitable estoppel, sometimes called estoppel ***in pais***, are made part of our law by Art. 1432 of the Civil Code. Coming under this class is **estoppel by silence**, which obtains here and as to which it has been held that:
>
> > ... an estoppel may arise from silence as well as from words. **"Estoppel by silence" arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in reliance on which he acts to his prejudice.** Silence may support an estoppel whether the failure to speak is intentional or negligent.
> >
> > **Inaction or silence may under some circumstances amount to a misrepresentation and concealment of facts, so as to raise an equitable estoppel.** When the silence is of such a character and under such circumstances that **it would become a fraud on the other party to permit the party who has kept silent to deny what his silence has induced the other to believe and act on, it will operate as an estoppel.** This doctrine rests

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[26] 344 Phil. 90, 99 (1997).

> on the principle that **if one maintains silence, when in conscience he ought to speak, equity will debar him from speaking when in conscience he ought to remain silent.** He who remains silent when he ought to speak cannot be heard to speak when he should be silent, (*emphasis added*)

But this is not all. The well-known principle of equity that "he who comes to court must come with clean hands" further bars petitioners from being granted the remedy applied for. As elucidated in ***North Negros Sugar Co. v. Hidalgo:***[27]

> xxx [T]he general principle that he who comes into equity must come with clean hands applies only to plaintiffs conduct relation to the very matter in litigation. The want of equity that will bar a right to equitable relief for coming into court with unclean hands must be so directly connected with the matter in litigation that it has affected the equitable relations of the parties arising out of the transaction in question.

Another. The judicial process is sacred and is meant to protect only those who are innocent. It would certainly leave an indelible mark in the conscience to allow a party to challenge a doctrine after it has ceased to be beneficial to it. For emphasis, petitioners stayed silent when *BANAT* was beneficial to them. They concealed in *An Waray* and *AKMA-PTM* the fact that the votes of the two-percenters, borrowing their words now, are being "double-counted." They led every two-percenter to expect or believe that they would continue to abide by the *BANAT* rule. This is the reasonable inference that every reasonable two-percenter would hold.

Petitioners knew and still know how they had ended up to obtain party-list seats — through the *BANAT* formula. They knew and still know the *BANAT* rule, by heart. They knew and still know what this rule entails. Petitioners consist of knowledgeable individuals, not ones who accidentally or luckily became legislators, but ones who through tactics and strategies became party-list representatives in Congress.

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[27] 63 Phil. 665, 681-682(1936).

In any event, had petitioners believed in good faith that the *BANAT* formula was and still is inapplicable and invalid, they should have early on refused their seats as a result of this formula and contested its constitutionality, if only to show that this issue is essential to a resolution of their claims.

To repeat, the Court may deny redress despite the litigant establishing a clear right and availing of the proper remedy if it appears that said litigant acted unfairly or recklessly in respect to the matter in which redress is sought, or where the litigant has encouraged, invited, or contributed to the injury sustained.[28]

But given the **transcendental importance** of the issues raised in this case, the discussion on **the third requisite** cannot end here. As we have held in ***Padilla v. Congress,***[29] "it is an accepted doctrine that the Court may brush aside procedural technicalities and, nonetheless, exercise its power of judicial review in cases of transcendental importance."

The constitutional challenge lodged here has the potential to alter the political landscape in the country and may steer State policy towards attaining the broadest possible party-list representation in the House of Representatives.

Quite anti-climactically, as regards the **fourth requisite** of judicial review, the Court finds that the question of constitutionality is the very ***lis mota*** here. ***Lis mota*** is a Latin term meaning the cause or motivation of a legal action or lawsuit. The literal translation is "litigation moved."[30] Under the rubric of ***lis mota***, in the context of judicial review, the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The

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[28] *Id*.

[29] 814 Phil. 344, 377(2017).

[30] https://definitions.uslegal.com/l/lis-mota/#:~: text= Lis % 20 mota % 20is%20a%20Latin,translation%20is 20%221itigation%20moved%22. Last accessed July 25, 2020, 11:25AM.

petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined.[31]

Here, the threshold issue raised by petitioners and met head-on by respondents is the constitutionality of Section ll(b) of RA 7941. It is indeed the very *lis mota* of the case. Resolving the issue of constitutionality is the only way the case can be settled once and for all. Otherwise, every election will become a Lazarus Pit where the perennial question on the allocation of party-list seats gets resurrected without fail. In fact, every three (3) years in the past and every (3) years thereafter, the Court had been and will be confronted with the all too familiar question on the applicability or inapplicability of *BANAT vis-a-vis* Section 11(b) of RA 7941.

The present case illustrates much more than a power struggle between would-be members of the House of Representatives. Thus, the Court may properly exercise jurisdiction over the same pursuant to Sections 4(2) and 5 of Article VIII of the *Constitution*, to the exclusion of the COMELEC and the House of Representatives Electoral Tribunal (HRET).

It bears emphasis that the jurisdiction of the HRET is limited under Section 17, Article VI of the *Constitution, viz.*:

> Sec. 17. The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of **all contests relating to the election, returns, and qualifications of their respective Members.** Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman. (emphasis added)

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[31] *Garcia v. Executive Secretary,* 602 Phil. 64, 82 (2009).

Meanwhile, the powers and functions of the COMELEC are circumscribed under Section 2, Article IX-C of the *Constitution*, thus:

Sec. 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. Decisions, final orders, or rulings of the Commission on election contests involving elective 'municipal and barangay offices shall be final, executory, and not appealable.

3. Decide, except those involving the right to vote, all questions affecting elections, including determination of the number and location of polling places, appointment of election officials and inspectors, and registration of voters.

x x x x

Verily, neither the HRET nor the COMELEC has jurisdiction over the present petition which directly assails the constitutionality of the proviso in Section ll(b), RA 7941, albeit the results may affect the current roster of Members in the House of Representatives. Petitioners, therefore, were correct in seeking redress before this Court.

The *Constitution* gives Congress the discretion to formulate the manner of allocating congressional seats to qualified parties, groups, and coalitions.

The *Constitution* mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives.[32] But the matter on how party-lists

[32] Section 5(2), Article VI of the 1987 Constitution.

could qualify for a seat is left to the wisdom of the legislature.[33] Section 5(1), Article VI of the *Constitution* ordains:

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

Pursuant to this constitutional directive, Congress enacted RA 7941 setting forth the parameters for electing party-lists and the manner of allocating seats to them:

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

Alliance for Rural and Agrarian Reconstruction v. Commission on Elections[34] outlines the Court's series of rulings interpreting this provision, thus:

> In *Veterans Federation Party v. Commission on Elections,* we reversed the Commission on Elections' ruling that the respondent parties, coalitions, and organizations were each entitled to a party-list seat despite their failure to reach the 2% threshold in the 1998

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[33] *BANAT v. COMELEC,* 604 Phil. 131,151 (2009).

[34] 723 Phil. 160, 187-193(2013).

party-list election. Veterans also stated that the 20% requirement in the Constitution is merely a ceiling.

Veterans laid down the "four inviolable parameters" in determining the winners in a Philippine-style party-list election based on a reading of the Constitution and Republic Act No. 7941:

First, the twenty percent allocation — the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, the two percent threshold — only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives.

Third, the three-seat limit — each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, proportional representation — the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."

In Partido ng Manggagawa (PM) and Butil Farmers Party (Butil) *v.* COMELEC, the petitioning party-list groups sought the immediate proclamation by the Commission on Elections of their respective second nominee, claiming that they were entitled to one (1) additional seat each in the House of Representatives. We held that the correct formula to be used is the one used in Veterans and reiterated it in Ang Bagong Bayani — OFW Labor Party *v.* COMELEC. This Court in CIBAC *v.* COMELEC differentiates the formula used in Ang Bagong Bayani but upholds the validity of the Veterans formula.

In *BANAT v. COMELEC,* we **declared the 2% threshold *in relation to the distribution of the additional seats as void.*** We said in that case that:

> . . . The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5(2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives." (Republic Act No. 7941, Section 2)

x x x x x x x x x

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

The most recent *Atong Paglaum v. COMELEC* does not in any way modify the formula set in Veterans. It only corrects the definition of valid party-list groups. We affirmed that party-list groups may be national, regional, and sectoral parties or organizations. We abandoned the requirement introduced in Ang Bagong Bayani that all party-list groups should prove that they represent a "marginalized" or "under-represented" sector.

Proportional representation is provided in Section 2 of Republic Act No. 7941. **BANAT** overturned Veterans' interpretation of the phrase in proportion to their total number of votes. We **clarified** that the **interpretation** that *only those that obtained at least 2% of the votes may get additional seats* **will not result in proportional representation** *because* it will make it *impossible for the parly-list seats to be filled completely.* As demonstrated in **BANAT,** the **20% share may never be filled if the 2% threshold is maintained.**

The **divisor,** thus, **helps to determine the correct percentage of representation of party-list groups** as intended by the law. This is **part of the index of proportionality of the representation of a party-list to the House of Representatives. It measures the relation between the share of the total seats and the share of the total votes of the party-list.** In Veterans, **where the 20% requirement in the Constitution was treated only as a ceiling, the mandate for proportional representation was not achieved,** and thus, was held void by this Court.

x x x x

We qualify that the divisor to be used in interpreting the formula used in BANAT is the total votes cast for the party-list system. This should not include the invalid votes. However, so as not to disenfranchise a substantial portion of the electorate, total votes cast for the party-list system should mean all the votes validly cast for all the candidates listed in the ballot. The voter relies on the ballot when making his or her choices.

To the voter, the listing of candidates in the official ballot represents the extent of his or her choices for an electoral exercise. He or she is entitled to the expectation that these names have properly been vetted by the Commission on Elections. Therefore, he or she is also by right entitled to the expectation that his or her choice based on the listed names in the ballot will be counted, (citations omitted, emphasis added)

The Court was not just changing formulas simply to accommodate the political aspirations of some party-list candidates. Its decisions were based on the original intent as well as the textual and contextual dynamics of RA 7941 *vis-a-vis* Section 5 (2) of Article VI of the Constitution. As ***finally settled*** in the landmark case of *BANAT*, Section ll(b) of RA 7941 is to be applied, thus:[35]

Round 1:

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

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

Rationale: The statute references a two-percent (2%) threshold. The one-seat guarantee based on this arithmetical computation gives substance to this threshold.

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[35] Supra note 4.

Round 2, Part 1:

a. The percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining available seats after Round 1. All party-list participants shall participate in this round *regardless of the percentage of votes they garnered*[36]

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

Rationale: This formula gives flesh to the proportionality rule in relation to the total number of votes obtained by each of the participating party, organization, or coalition.

c. A Party-list shall be awarded no more than two (2) additional seats. *Rationale: The three-seat cap in the statute is to be observed.*

Round 2, Part 2:

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

Rationale: This algorithm endeavors to complete the 20% composition for party-list representation in the House of Representatives.

During the deliberation, Senior Associate Justice Estela M. Perlas-Bernabe keenly noted that the *BANAT* formula mirrors the textual progression of Section 1 l(b) of RA 7941, as worded, thus:

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

x x x x

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[36] *Id*.

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

The first round of seat allocation is based on the first sentence of Section ll(b) while the second round is based on the first proviso. To prescribe a method of seat allocation contrary to the unequivocal language of RA 7941 would be nothing short of judicial legislation, if not usurpation of legislative powers, as it would allow us to substitute the wisdom of Congress with ours.

The advantage given to the two-percenters does not violate the equal protection clause.

Petitioners do not challenge the first round of seat allocation. They maintain, however, that the second round of seat allocation results in the double-counting of votes. According to them, each vote after the 2% threshold (to which has been allotted a guaranteed one seat) should already carry equal weight. They assert violation of the "one person, one vote" principle as well as the equal protection clause.

Petitioners are mistaken in claiming that the retention of the 2% votes in the second round of seat allocation is unconstitutional. **All votes, whether cast in favor of two-percenters and non-two-percenters, are counted once.** The perceived "double-counting of votes" does not offend the equal protection clause — ***it is an advantage given to two-percenters based on substantial distinction that the rule of law has long acknowledged and confirmed.***

a. One person, one vote

Petitioners' claim, which Justices Alexander G. Gesmundo and Rodil V. Zalameda echo, is hinged on the principle of "one person, one vote". Justice Gesmundo even cites the discussion of retired Senior Associate Justice Antonio T. Carpio of this

principle in his dissenting opinion in ***Aquino III v. COMELEC,***[37] thus:

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

Notably though, Justice Carpio was the *ponente* in *BANAT*. Surely, Justice Carpio would not have crafted the *BANAT* formula in 2009 only to deem it a violation of the principle of "one person, one vote" a year later in *Aquino*. At any rate, there appears to be no inconsistency between Justice Carpio's *BANAT* Formula, on the one hand, and his edict in *Aquino*, on the other.

Indeed, all voters are entitled to one vote. This truism is and remains inviolable. Senior Associate Justice Perlas-Bernabe

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[37] 631 Phil. 595, 637-638 (2010).

opined that this great equalizer "is a knock against elitism and advances the egalitarian concept that all persons are equal before the eyes of the law." Contrary to petitioners' claim, this principle is not diminished by the two (2) rounds of seat allocation under the *BANAT* formula.

Petitioners foist the idea that **only the votes of the two-percenters were counted and considered in the first round.** Justice Gesmundo seems to agree with them and states:

> As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one guaranteed seat were considered and used during the allocation of the guaranteed seats. To consider them again, this time for purposes of allocating additional seats would give these voters more weight or more value than others in violation of the equal protection clause as it gives due preference to votes received by party-list organizations who got 2% of the vote from those who do not.

Nothing is farthest from the truth. **All votes were counted, considered and used during the first round of seat allocation, not just those of the two-percenters.** But in the end, the non-two-percenters simply did not meet the requisite voting threshold to be allocated a guaranteed seat.

As correctly argued by the OSG, the system of counting pertains to two (2) different rounds and for two (2) different purposes: the **first round** is for purposes of applying the **2% threshold** and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the **second round** is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected *via* a party-list system, thus, seats are computed **in proportion to a party-list's total number of votes.**

Such is the current state of the party-list system elections. Since the system does not have a defined constituency as in district representation, elections are won by hurdling thresholds, not by sheer plurality of votes. Congress deemed it wise to set two (2) thresholds for the two (2) rounds of seat allocation.

Each party-list earns a seat each time they hurdle the threshold in each round. But to clarify, **each vote is counted only once** for both rounds.

In the first round, party-lists receiving at least 2% of the total votes cast for the party-list system are entitled to one seat. In determining whether a party-list has met the proportional threshold, its percentage number of votes is computed, as follows:

$$\frac{\text{Number of votes obtained by a Party-list}}{\textbf{Total number of votes cast under the party-list system}}$$

The **"total number of votes cast under the party-list system",** the very divisor of the formula, the very index of proportionality, requires that **all** votes cast under the party-list system be counted and considered in allocating seats in the first round, be it in favor of a two-percenter or a non-two-percenter. **This only goes to show that <u>all</u> votes were counted and considered in the first round.** Just because the non-two-percenters were not allocated a guaranteed seat does not mean that their votes were accorded lesser weight, let alone, disregarded. It simply means that they did not reach the proportional threshold in the first round.

Take for example a senatorial race where only twelve (12) seats are vacant. When the 15th placer is not awarded a seat, this does not mean that the votes cast in his or her favor were not counted and his or her constituents, disenfranchised. This simply means that the candidate's total votes were not enough to warrant a seat in the Senate; the candidate simply lost.

Another. In a district election for a representative in the House, a mere plurality winner takes it all. No matter how many votes the first placer has over the second placer, whether just one vote or a million votes, the outcome is the same — the second placer's votes are not equal to the first placer's votes in the sense that the former and his or her votes do not get to be actually represented in the House, though theoretically the first placer represents all his or her constituency including those who did

not vote for him or her. **Yet, there is no violation of the "one person, one vote" doctrine because the overall effect of the votes is that their representative (whether they voted for said candidate) gets to vote in the House and his or her vote has the same or equal weight as the vote of any other Representative.**

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

In her scholarly treatise, Senior Associate Justice Perlas-Bernabe elucidated:

> Because party-list elections are based on proportional representation and not simple pluralities, there is really no double-counting of votes when all the votes are considered in allocating additional seats in favor of two percenters. **The electoral system of proportional representation inherently recognizes voting proportions relative to the total number of votes.** Petitioners' proposal to exclude the number of votes that have qualified two percenters for their guaranteed seat in the second round of additional eat allocation is tantamount to **altering the electoral landscape** by reducing the "voter strength" which they have rightfully obtained. **This effectively results in the diminution of the party's ability to better advocate for legislation to further advance the cause it represents despite being supported by a larger portion of the electorate.**

It is petitioners' proposal — the imposition of a deduction against the two-percenters at the start of the second round, which would actually result in a violation of the "one person, one vote" principle. They propose that all votes in favor of non-two-percenters would be counted and considered in both the first and second rounds, albeit whether they would be awarded

a seat in Congress is a different matter altogether. Meanwhile, the 2% votes for two-percenters would be counted and considered in the first round, **but not in the second round.** This clearly puts the two-percenters at a glaring disadvantage even though they fared significantly better in the elections. Surely, this is not what the Legislature, nay, the framers of the Constitution intended. On the contrary, as will be discussed below, it is the two-percenters who have an established right to an advantage in the form of a guaranteed seat.

b. The rule of law has already acknowledged and confirmed the substantial distinction between two-percenters and non-two- percenters.

Section 1, Article III of the *Constitution* decrees that no person shall be denied equal protection of the laws. Although first among the fundamental guarantees enshrined in the Bill of Rights, the equal protection clause is not absolute. It does not prevent legislature from establishing classes of individuals or objects upon which different rules shall operate so long as the classification is not unreasonable.[38]

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[38] *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 559 (2004), citing *Victoriano v. Elizalde Rope Workers' Union*, No. L-25246, 59 SCRA 54, 77-78 (September 12, 1974): "The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary."

The distinction between two-percenters and non-two-percenters has long been settled in ***Veterans Federation Party v. COMELEC*** *(Veterans)*[39] where the Court affirmed the validity of the 2% voting threshold. *Veterans*, effectively segregates and distinguishes between the two (2) classes, two-percenters and non-two-percenters. It explains the rationale behind the voting threshold and differential treatment, *viz*.:

> The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. **But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people.** Otherwise, in a legislature that features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.[40] *(Emphasis added)*

The differential treatment arising from the recognition of the 2% voting threshold goes all the way to the legislative deliberations cited in *Veterans*. As borne by the Senate records on RA 7941:

> SENATOR GONZALES: For purposes of continuity, I would want to follow up a point that was raised by, I think, Senator Osmena when he said that **a political party must have obtained at least a minimum percentage to be provided in this law in order to qualify for a seat under the party-list system.**
>
> They do that in many other countries. A party must obtain at least 2 percent of the votes cast, 5 percent or 10 percent of the votes cast. **Otherwise, as I have said, this will actually proliferate political party groups and those who have not really been given by the**

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[39] 396 Phil. 419 (2000).

[40] *Id*. at 441.

people sufficient basis for them to represent their constituents and, in turn, they will be able to get to the Parliament through the backdoor under the name of the party-list system, Mr. President.[41] (emphasis added)

The basis for the differential treatment was not lost even upon the framers of our *Constitution* who had a minimum-vote requirement in mind. The Constitutional Commission did not envision that every constituency or every valid vote cast for a party-list organization shall be represented in the House. Commissioner Christian Monsod, who Justice Gesmundo extensively quoted, saw the need to impose a threshold on the number of valid votes cast for a party-list organization. Stated differently, Commissioner Monsod wanted a party-list system that qualifies only those party-list organizations that meet some pre-determined constituency. In Commissioner Monsod's example, he pegged a party-list organization's legitimate constituency at 2.5% of the total valid votes cast for the party-list elections. Thus:

When such parties register with the COMELEC, we are assuming that 50 of the 250 seats will be for the party list system. So, we have a **limit of 30 percent** of 50. That means' that **the maximum that any party can get out of** these 50 seats is 15. When the parties register they then submit a list of 15 names. They have to submit these names because these nominees have to meet the minimum qualifications of a Member of the National Assembly. At the end of the day, when the votes are tabulated, **one gets the percentages.** Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2 ½ percent and anybody who has at least 2 ½ percent of the vote qualifies and the 50 **seats are apportioned among all of these parties who get at least 2 ½ percent of the vote.**

What does that mean? It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has

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[41] II Record of the Senate 145, Second Regular Session, Ninth Congress.

a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. **It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly.** Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that **those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly.** These sectors or these groups **may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.**

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. **But this way, they would have five or six representatives in the Assembly even if they would not win individually** in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.

x x x x

MR. MONSOD. xxx We are amenable to modifications in the minimum percentage of votes. Our proposal is that anybody who has two-and-a-half percent of the votes gets a seat. There are about 20 million who cast their votes in the last elections. Two-and-a-half percent would mean 500,000 votes. Anybody who has a constituency of 500,000 votes nationwide deserves a seat in the Assembly. If we bring that down to two percent, we are talking about 400,000 votes. The average vote per family is three. So, here we are talking about 134,000 families. We believe that there are many sectors who will be able to get seats in the Assembly because many of them have memberships of over 10,000. In effect, that is the operational

implication of our proposal. What we are trying to avoid is this selection of sectors, the reserve seat system. We believe that it is our job to open up the system and that we should not have within that system a reserve seat. We think that people should organize, should work hard, and should earn their seats within that system.[42]

As held in *Veterans*, the voting threshold ensures that only those parties, organizations, and coalitions *having a sufficient number of constituents* deserving of representation are actually represented in the House of Representatives.[43] This is the distinction between two-percenters and non-two-percenters. Of course, there are other parameters in determining ultimately party-list representation in the bigger chamber of Congress.

Justice Leonen drew us to the comparison of our country's party-list system to German elections, thus:

> The Party-List System Act's stipulation of an initial two-percent (2%) threshold serves a vital interest by filtering party-list representation to those groups that have secured the support of a sufficiently significant portion of the electorate.
>
> Our elections for the House of Representatives is akin to elections for the German Bundestag (federal parliament) where voters similarly cast a first vote or "Erststimme" for district representative (which follows a first-past-the-post system), and a second vote or "Zweitstimme" for a political party. For a party to occupy seats, it must secure a five percent (5%) threshold (n.b., more than doubly higher than our standard). This threshold "excludes very small parties from parliamentary participation." This exclusionary effect is deliberate and far from an inadvertent consequence: "[t]his system was put in place to prevent smaller splinter parties — like those that booged down the Weimar Republic in the 1920s — from entering parliament." (citations omitted)

In light of the substantial distinctions held valid by the Court and the framers of the *Constitution vis-a-vis* RA 7941, the questioned provision, Section 1 l(b), RA 7941, as couched, allows

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[42] II Record of the Constitutional Commission 256.

[43] Supra note 39, at 439.

"those garnering more than two percent (2%) of the votes x x x additional seats in proportion to their total number of votes," conveying the intention of Congress to give preference to the party-list seat allocation to two-percenters. Consequently, in *Veterans,* only the thirteen (13) party-lists which obtained at least 2% of the total votes cast in the party-list system were allowed to participate in the distribution of additional seats.

The *Veterans* formula which excluded non-two-percenters in the allocation of additional seats was sustained in ***Ang Bagong Bayani-OFW Labor Party v. Commission on Elections***[44] in relation to the 2001 elections, and in ***Partido Ng Manggagawa v. Commission on Elections***[45] and ***Citizens' Battle Against Corruption v. Commission on Elections***[46] both in relation to the 2004 elections.

c. The ruling in *BANAT* did not remove the distinction between two-percenters and non-two percenters.

In *BANAT, as a result of the other parameters which have to be considered in determining ultimately the composition of party-list representation in the House of Representatives,* the Court declared the 2% threshold as unconstitutional **but only insofar as it makes the 2% threshold as exclusive basis for computing the grant of additional seats.** The Court maintained the 2% threshold for the first round of seat allocation to ensure a guaranteed seat for a qualifying party-list party, organization, or coalition. As the basis for the additional seats is proportionality to the total number votes obtained by each of the participating party, organization, or coalition, however, it was inevitable that the number of votes included in computing the 2% threshold would have to be still factored in in allocating the party-list seats among all the participating parties, organizations, or coalitions.

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[44] G.R. Nos. 147589 & 147613 (Resolution), [February 18, 2003]).

[45] 519 Phil. 644(2006).

[46] 549 Phil. 767 (2007).

To stress, the nullification of the 2% threshold for the second round was not meant to remove the distinction between two-percenters and non-two-percenters. The nullification was not for any undue advantage extended to two-percenters. Rather, the rationale for the second round was to fulfill the constitutional mandate that the party-list system constitute 20% percent of the total membership in the House of Representatives, within the context of the rule of proportionality to the total number of votes obtained by the party, organization, or coalition.

Indeed, completing the 20% party-list composition in the bigger house of Congress would have been extremely difficult to achieve, nay, mathematically impossible, if ***only*** the 2% threshold and the three-seat cap were the considerations in place for determining a party-list seat in Congress.[47] As a result, in compliance with the 20% constitutional number, the Court in *BANAT* opened the allocation of additional seats even to non-two-percenters. The Court, nevertheless, recognized that the 2% votes should still form part of the computation for the seats in addition to the guaranteed seat.

For better appreciation, assume that party-list X garnered exactly 2% of the votes cast for the party-list system. Indubitably, it is guaranteed a seat in the first round of allocation. For the second round, its 2% vote will still be intact and will serve as the multiplier to the remaining number of seats after the first round of distribution.

In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round.[48] This is **contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes**

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[47] In *Veterans,* only fourteen (14) of the fifty-one (51) party-list seats were awarded.

[48] It will not be entitled to a factional seat since any number multiplied by zero is zero.

received by a party, organization or coalition in the party-list election, and the **intention** behind the law **to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.**

Justice Leonen has a keen analysis of the adverse effect of imposing a two percent (2%) deduction on the two-percenters:

> Ignoring votes in the reckoning of proportions runs afoul of a party-list election as a race contested by the entire roster of candidates and won in consideration of all the votes cast by the electorate. Reckoning on the basis of a "recomputed number of votes" artificially redraws the electoral terrain. It results in the distribution of remaining party-list seats based on an altered field of contestants and diminished number of votes. This undoes the logical advantage earned by those that hurdled the two-percent-threshold and enables the election of groups even if their performance was manifestly worst off than those who have hurdled the basic threshold. To concede petitioners' plea would be to negate the valid and sensible distinction between those that hurdled the threshold and those that did not. Ultimately, it violates the party-list system's fundamental objective of enabling "meaningful representation [secured through] the mandate of a sufficient number of people." (citations omitted)

In concrete terms, 1PACMAN, MARINO and PROBINSYANO AKO were ranked 6th, 7th, and 8th, respectively, based on the number of votes they garnered in the 2019 elections, thus:

Rank	Party-list	Acronym	Votes	% Votes
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	1 PACMAN	713,969	2.56
7	MARINO SAMAHAN NG MGA SEAMAN, INC.	MARINO	681,448	2.44
8	PROBINSYANO AKO	PROBINSYANO AKO	630,435	2.26

Meanwhile, petitioners were ranked 52-54, *viz.*:

52	AKSYON MAGSASAKA - PARTIDO TINIG NG MASA	AKMA-PTM	191,804	0.69
53	SERBISYO SA BAYAN PARTY	SBP	180,535	0.65
54	ANGKLA: ANG PARTIDO NG MGA MARINONG PILIPINO, INC,	ANGKLA	179,909	0.65

But with petitioners' proposed imposition of a 2% penalty, 1PACMAN, MARINO and PROBINSYANO AKO would drop to ranks 59, 71 and 89:

Rank after penalty	Party-list	Acronym	% Votes after penalty
58	APPEND, INC.	APPEND	0.57
59	**ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS**	**1PACMAN**	**0.56**
60	ANAKPAWIS	ANAKPAWIS	0.53

x x x x

70	MURANG KURYENTE PARTYLIST	MURANG KURYENTE	0.46
71	**MARINO SAMAHAN NG MGA SEAMAN, INC.**	**MARINO**	**0.44**
72	UNA ANG EDUKASYON	1-ANG EDUKASYON	0.43

x x x x

88	1 ALLIANCE ADVOCATING AUTONOMY PARTY	1AAAP	0.27
89	**PROBINSYANO AKO**	**PROBINSYANO AKO**	**0.26**
90	AGBIAG!TIMPUYOG ILOCANO, INC.	AGBIAG!	0.25

x x x x

Otherwise stated, petitioners would have themselves prioritized in the seat distribution at the expense of 1PACMAN, MARINO and PROBINSYANO AKO though the latter had obtained almost **quadruple**, the number of votes petitioners acquired.

For perspective though, a total of 134 party-lists participated in the 2019 elections. Only eight (8) of them, however, were able to hurdle the 2% threshold and were consequently awarded a guaranteed seat each. Collectively, these two-percenters were awarded a total of 18 out of the 61 seats reserved for the party-list system. Meanwhile, 43 seats were given to the non-two-percenters.

Under *Veterans,* only the eight (8) two percenters would have been entitled to participate in the second round of seat allocation. But this is no longer the case since *BANAT* lent a hand to non-two-percenters, allowing them to earn congressional seats in the second round of allocation. Yet, dissatisfied with just the hand, *i.e.* the 43 seats ultimately allocated to non-two-percenters, petitioners want more. They seek to impose a 2% deduction against the two-percenters and reduce the latter's chances of getting an additional seat though it was established in *Veterans* and the cases in affirmance thereof that the **second round of seat allocation was intended to be exclusive to two-percenters and the two-percenters were meant to participate therein with their votes intact.** Were it not for the Court's ruling in *BANAT,* the tail-end of seat allocation would not have been opened to non-two-percenters.

The learned Justice Henri Jean Paul B. Inting aptly opined:

> The reason why the two-percenters are still entitled to additional seats based on the total number of votes even though the same number of votes were already included in the computation in the first round is not difficult to discern. The treatment accorded to the two-percenters in BANAT formula is a way of expressing the Congress' intent to implement cause/interest or functional representation based on the mandate of greater number of individuals. It should be stressed that the party-list system is a means of granting representation to major political interest groups "in as direct a proportion as possible to the

votes they obtained" such that "the composition of the legislature closely reflects or mirrors the actual composition of the larger society". In other words, since more people believe in the cause, advocacy, and platforms of the two-percenters, they are given additional seats in Congress.

If the proposition of the petitioners to exclude the number of votes that have qualified the two-percenters their guaranteed seat in the second round of seat allocation will be followed, there will be diminution of the party's ability to advance its cause, advocacy, and platforms despite being supported by greater number of people. This will effectively defeat the intent of the legislators for a party-list organization to be meaningfully represented by a sufficient number of people with common cause and advocacy. Petitioner's proposition will likewise result in a proliferation of small political party groups who have not really been given by the people sufficient basis for them to represent their constituents in Congress and in turn, will be able to get to the legislative body through the backdoor under the name of the party-list system.

Consequently, the two-percenters and non-two-percenters will practically obtain the same number of seats, disregarding the substantial distinction between them and defeating the purpose of the party-list system as a means of granting representation to major political interest groups in such a way that the composition of the legislature reflects the actual composition of the larger society. Also, the proposition will diminish the votes garnered by the two-percenters resulting in a weaker voice in Congress despite the fact that they were supported by greater number of people.

Petitioners nevertheless propose to the Court a different reading of *BANAT* to support their theory. But this is not possible. *BANAT* is clear. A reproduction of the full paragraph from the *Resolution* dated July 8, 2009 is *apropos:*

In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for

distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. **The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.** Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC. (emphasis added)

Surely, *BANAT* instructs that 2% shall be deducted from the percentage votes of party-lists that obtained a guaranteed seat. *This deduction, however, is done in the* **second step of the second round** *of seat allocation,* **not in the first step of the second round** as petitioners would have the Court believe. Hence, the application of *BANAT* to party-list seat allocation, **as earlier outlined in this Decision** stands.

Equal weight for each vote can only be achieved through absolute proportionality which the Constitution does not require.

Petitioners' own proposal fails to meet their demand of equality. The fact that petitioners have agreed to the distribution of party-list seats in two (2) rounds using two (2) different formulae is a tacit recognition that the votes will not after all be given equal weight.

The only way to achieve equal weight for each vote is if the seats are to be distributed based on *absolute* proportionality *from the beginning,* that is:

$$\frac{\text{Number of votes obtained by a Party-list}}{\text{Total number of votes cast under the party-list system}} \times \text{Number of seats for the party-list system} = \text{Seat allocation}$$

Section 11, Article VI of the *Constitution,* however, does not prescribe absolute proportionality in distributing seats to party-list parties, organizations or coalitions. Neither does it mandate the grant of one seat each according to their rank. On the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the actual volume and allocation of party-list representation in the House of Representatives. *BANAT* elucidates:

xxx The allocation of seats under the party-list system is governed by the last phrase of Section 5(1), which states that the party-list representatives shall be "those who, as provided by law, shall be elected through a party-list system," **giving the Legislature wide discretion in formulating the allocation of party-list seats.** Clearly, **there is no constitutional requirement for absolute proportional representation in the allocation of party-list seats in the House of Representatives.**[49] (*Emphasis added*)

In the exercise of this prerogative, Congress modified the weight of votes cast under the party-list system with reason.

Consider the **three-seat limit.** This ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation.[50] Otherwise, the rationale behind party-list representation in Congress would be defeated. But viewed from a different perspective, this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains.

To illustrate, ACT-CIS garnered 2,651,987 votes or 9.51% of the votes cast under the party-list system in the recently concluded elections which would have yielded it six (6) seats in Congress.[51] Otherwise stated, ACT-CIS had votes in excess of what was necessary for it to be awarded three (3) seats in Congress. Yet instead of considering these votes as wastes or a form of disenfranchisement against its voters, the Court does not consider this as a deviation from the "one person, one vote" principle.

Consider also the **two-tiered seat allocation.** This serves to maximize representation and fulfil the 20% requirement under Section 5(1), Article VI of the *Constitution.* Seen in a different light, however, this arithmetical allocation in practice **inflates** the weight of each of the votes considered in the second round,

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[49] Supra note 33.

[50] Supra note 39.

[51] One guaranteed seat plus five additional seats [(61 party-list seats available — 8 seats allocated in the first round) x 9.51% = 5.04].

as far as the non-two percenters are concerned, but **deflates** the weight of each of the votes considered in the second round, *as regards the two-percenters.* This is because the two-percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives **would definitely be more than the votes it would take to earn an additional seat**, whether we apply petitioners' proposal or the doctrine in *BANAT.*

If only to abide by the 20% requirement, there exist cogent reasons to accord varying weight to the votes each obtained by parties, organizations, or coalitions participating in the party-list election, in the two-round seat allocation. Not only does this method of seat allocation promote the broadest possible representation among the varied interests of party-list parties, organizations or coalitions in the House of Representatives, it also fulfils the constitutional fiat that 20% of the composition of the bigger house of Congress to be allotted for party-list representatives.

As demonstrated, **the three-seat cap and the two-tiered seat allocation are disadvantageous to the two-percenters and beneficial to non-two-percenters.** These serve to balance the advantage acquired by the two-percenters in the form of a guaranteed seat. Yet, petitioners remain dissatisfied.

Although petitioners' proposed formula may result in a *formal equality* between two percenters and non-two percenters, it is **actually an equality that violates the equal protection of the laws** because **the formula disregards the long-held valid distinction between two-percenters and non-two percenters.** It would be an equality, unjustified by any rationale, between what the Constitution has actually envisioned to favor, those who possess the constituency threshold, and those who do not possess this threshold.

Summary

The only instance every vote obtained in a party-list election can be given equal weight is when the allocation of party-list seats in the House of Representatives is based on absolute proportionality. But this is not required under, nor the system

envisioned in, Section 5(1), Article VI of the *Constitution.* Instead, the manner of determining the volume and allocation of party-list representation in the House of Representatives is left to the wisdom of Congress.

Heeding the call of duty, Congress enacted RA 7941. Its features preclude the allocation of seats based solely on absolute proportionality (1) to bar any single party-list party, organization or coalition from dominating the party-list system, and (2) to ensure maximization of the allotment of 20% of seats in the House of Representatives to party-list representatives.

Too, RA 7941 ordains a two-tiered seat allocation wherein those who reach the 2% threshold are guaranteed seat in the first round and get to keep their votes intact for the first stage of the second round. To recall, the original application of RA 7941 in *Veterans* limited the allocation of guaranteed and additional seats to two-percenters alone. Though the Court opened the system to non-two percenters, this was *only* to abide by the 20% composition decreed by the Constitution. Given the reasonable distinction between two-percenters and non-two-percenters, we see no cogent reason to nullify their advantage.

But this is not to say that there is a double counting of votes in favor of the two-percenters. Ultimately, **each vote is counted only once.** All votes are tallied at the beginning of the *BANAT* formula.

Just because a party-list was allocated a guaranteed seat and an additional seat does not mean that its votes were counted twice. It just means that the party-list concerned surpassed the proportional thresholds prescribed under the law in both rounds of seat allocation. Similarly, just because a party-list is not awarded a guaranteed seat or an additional does not mean that its votes were not counted. Failure of a party-list to obtain a seat only means one thing — it lost the elections. It was outvoted or outperformed by other party-lists. It was simply left without a seat in the game of musical chairs. Under these circumstances, their remedy is not to wrest others of their allocated seats by changing the rules of the game, but by doing better in the subsequent elections.

The rules of the game are laid down in RA 7941. As stated, the *BANAT* formula mirrors the textual progression of Section ll(b) of the law. The *BANAT* formula withstood the test of time and the Court is offered no cogent reason to depart therefrom.

Notably though, the Members of the Court voted 7-3-3-1. This *ponencia*, therefore, could hardly be considered a clear victory in favor of respondents. Seven (7) Members of the Court voted to dismiss the petition while seven (7) opined that Section l(b) of RA 7941 vis-a-vis *BANAT* ought to be partly nullified. Three (3) of these dissenters adopted petitioners' proposed formula, three others adopted a different formula, and one (1) adopted still another formula. In fine, the dissenters are also dissenting among themselves on the "correct" formula to be adopted should the Court grant the petition.

Surely, it is not for the Court to recalibrate the formula for the party-list system to obtain the "broadest representation possible" and make it seemingly less confusing and more straightforward. This is definitely a question of wisdom which the legislature alone may determine for itself. Perhaps, after twenty-five (25) years following the enactment of RA 7941, it is high time for Congress to take a second hard look at Section ll(b) for the purpose of addressing once and for all the never-ending issue of seat allocation for the party list system. We do not write policies, simply this is not our task. Our forebears have said it once and several times over, we say it again:

> We do not sit in judgment as a supra-legislature to decide, after a law is passed by Congress, which state interest is superior over another, or which method is better suited to achieve one, some or all of the state's interests, or what these interests should be in the first place. This policy-determining power, by constitutional fiat, belongs to Congress as it is its function to determine and balance these interests or choose which ones to pursue. Time and again we have ruled that the judiciary does not settle policy issues. The Court can only declare what the law is and not what the law should be. Under our system of government, policy issues are within the domain of the political

branches of government and of the people themselves as the repository of all state power....[52]

ACCORDINGLY, the Amended Petition and Petition-in-Intervention are **DENIED** for lack of merit. The Court **declares as NOT UNCONSTITUTIONAL** Section ll(b), RA 7941 pertaining to the allocation of additional seats to party-list parties, organizations, or coalitions in proportion to their respective total number of votes. Consequently, National Board of Canvassers Resolution No. 004-19 declaring the winning party-list groups in the May 13, 2019 elections is upheld.

Let copy of this Decision be furnished to the House of Representatives and the Senate of the Philippines as reference for a possible review of RA 7941, specifically Section ll(b), pertaining to the seat allocation for the party-list system.

SO ORDERED.

Reyes, Jr., Carandang, and *Inting, JJ.,* concur.

Perlas-Bernabe and *Leonen, JJ.,* see separate concurring opinions.

Caguioa, J., see separate opinion.

Lopez, J., see concurring and dissenting opinion.

Peralta, C.J. and *Hernando, J.,* join the dissenting opinion of *J. Gesmundo.*

Gesmundo, J., with separate dissenting opinion.

Zalameda, J., see dissenting opinion.

De los Santos and *Gaerlan, JJ.,* join the dissent of *J. Zalameda.*

Baltazar-Padilla, J., on leave.

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[52] *British American Tobacco v. Camacho*, 584 Phil. 489, 547-548 (2008).

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur in the result. Contrary to petitioners' assertions, the allocation of **additional seats** in favor of those party-lists receiving at least two percent (2%) of the total votes cast for the party-list system ("two percenters") in proportion to their **"total number of votes,"** as provided for under Section 11 (b) of Republic Act No. (RA) 7941,[1] does **not** offend the equal protection clause and hence, remains constitutional.

At the onset, it is imperative to understand that the party-list system is a peculiar innovation that goes beyond our traditional perceptions when it comes to the electoral process. In a republican, democratic system of government like ours, people traditionally vote for certain personalities to represent their interests **as part of a constituency based on geographical division** (which, in the case of Congressmen, are called legislative districts). Whether in a national or a local election, voting and consequently, winning an election **under ordinary tradition** is based on **who** the people believe will be able to effectively translate these interests into legislative or executive action. Because the idea of a traditional electoral contest is a matter, of "person-preference" over another, candidates compete in simple plurality voting, or a system of "first-past-the-post" (FPTP):

> In an FPTP system (sometimes known as a plurality single-member district system) the winner is the candidate with the most votes but not necessarily an absolute majority of the votes, x x x
>
> x x x x
>
> [FPTP], like other plurality/majority electoral systems, is defended primarily on the grounds of simplicity and its tendency to produce

[1] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR, "also known as the "PARTY-LIST SYSTEM ACT." approved on March 3, 1995

winners who are representatives beholden to defined geographic areas and governability.[2]

However, the Framers of the 1987 Constitution believed that our traditional electoral system did not truly fulfill the purpose of the legislative body,[3] which was "supposed to implement or give flesh to the needs and aspirations of the Filipino people."[4] Thus, the party-list system was introduced to ensure that weaker segments in society, whose constituencies go beyond the geographic lines drawn to define legislative districts, are properly represented in Congress. As explained during the constitutional deliberations:

MR. OPLE: x x x

x x x x

There are two kinds of representation: the territorial representation, which is based on representative government, and which started taking root at the beginning of the 19th century in many of the Western countries which we now call the Western democracies. **It became evident later on that territorial representation has its limitations, that functional representation might be necessary in order to round off the excellence of a representative system**. And that was how the theory of party list representation or the reservation of some seats in a legislature for sectors came about.

I think the whole idea is based on countervailing methods with the **aim of perfecting representation in a legislative body combining the territorial as well as the functional modes of representation.** The ideal manner of securing functional representation is through a party list system through popular suffrage so that when sectoral representatives get into a legislative body on this basis, rather than direct regional or district representation, they can rise to the same majesty as that of the elected representatives in the legislative body, rather than owing to some degree their seats in the legislative body

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[2] <http.//aceproject.org/ace-en/topics/es/esd/esd01/esd01a/esd0la01/>/ visited (last vtsited July 23, 2020).

[3] Records of the Constitutional Commission (R.C.C.) No. 39, July 25, 1986.

[4] R.C.C. No. 45, August 1, 1986.

either to an outright constitutional gift or to an appointment by the President of the Philippines, x x x[5] (Emphases supplied)

MR. MONSOD: x x x

x x x x

x x x It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.[6] (Emphasis supplied)

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[5] Id.

[6] R.C.C. No. 36, July 22, 1986.

Being based on "functional" rather than "territorial" representation, a party-list election is, at its core, "cause-centric" and not "person-centric" as in a traditional election. Although a party, being a juridical entity, can only conduct its business through natural persons (called nominees),[7] in a party-list election, people actually vote for a particular cause, which is then advocated by the party-list through its nominee in Congress. The "cause-centric" nature of a party-list election is amply reflected in the constitutional deliberations as follows:

> MR. MONSOD: **What the voters will vote on is the party,** whether it is UNIDO, Christian Democrats, BAYAN, KMU or Federation of Free Farmers, not the individuals. When these parties register with the COMELEC, they would simultaneously submit a list of the people who would sit in case they win the required number of votes in the order in which they place them. Let us say that this Commission decides that of those 50 seats allocated under the party list system, the maximum for any party is 10 seats. At the time of registration of the parties or organizations, each of them submits 10 names. Some may submit five, but they can submit up to 10 names who must meet the qualifications of candidates under the Constitution and the Omnibus Election Code. If they win the required number of votes, let us say they win 400,000 votes, then they will have one seat. If they win 2 million votes, then they will have five seats. In the latter case, the party will nominate the first five in its list; and in case there is one seat, the party will nominate the number one on the list.
>
> **But as far as the voters are concerned, they would be voting for party list or organizations, not for individuals.**
>
> MR. LERUM: Madam President, in view of the explanation, I am objecting to this amendment because it is possible that the labor sector will not be represented considering that those who will vote are all the voters of the Philippines. In other words, the representative of labor will be chosen by all the electors of the Philippines, and that is not correct. My contention is that the sectoral representative must be selected by his own constituents, and for that reason, I am objecting to this amendment.

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[7] See *Alcantara v. Commission on Elections*, 709 Phil. 523 (2013).

MR. TADEO: Madam President, this is only for clarification.

THE PRESIDENT: Commissioner Tadeo is recognized.

MR. TADEO: Para sa marginalized sector, *kung saan kaisa ang magbubukid, ang* Sections 5 at 31 *ang pinakamahalaga dito. Sinasabi namin na hindi na mahalaga kung ang porma ng pamahalaan ay* presidential *o* parliamentary; *ang pinakamahalaga ay ang* "substance."

Sinasabi naming nasa amin ang people, ***pero wala sa amin ang*** power. *At sinasabi nga ni* Commissioner Bacani, *noong tayo ay nagsisimula pa lamang, 70 porsiyento ang mga dukha at limangporsiyento lamang ang naghaharing uri. Ngunit ang iniwan niyang tanong ay ito: Sino ang may hawak ng* political power? *Ang limang porsiyento lamang.*

Kaya para sa amin, ito ang pinakamahalaga. Sa nakita ko kasi sa party list *ay ganito: Sa bawat* 200,000 *tao ay magkakaroon tayo ng isang* legislative district, *at ang kabuuang upuan ay* 198. *Ang ibig sabihin, ito iyong nakareserba sa mga* political parties *tulad ng* UNIDO, NP, PNP; LP, PDP-Laban, *at iba pa, ngunit puwede rin itong pumasok sa* party list; *pinvede ring madominahan ang lehislatura at mawala ang* sectoral.

Iyon lamang ang pinupunto ko. Sa panig namin, dapat itong ibigay sa marginalized sector *sapagkat ito ang katugunan sa tinatawag naming* people's power *o kapangyarihang pampulitika. Ang ibig lamang naming sabihin ay ganito: Mula doon sa isang* political system *na nagpapalawig ng* feudal or elite structure *nagtungo tayo sa isang* grass-roots and participatory democracy. *Ibig naming mula doon sa* politics of personality *ay pumunta tayo sa* politics of issue. *Ano ang ibig naming sabihin? Kaming* marginalized sector *pag bumoboto, ang pinagpipilian lang namin sa* two-party system *ay ang lesser evil. Ngunit pag pumasok na kami dito, ang Section 5 ang pinakamahalaga sa amin.* ***Ang bobotohan namin ay ang katangian ng aming organisasyon. Ang bobotohan namin ay ang issue at ang*** platform ***naming dinadala at hindi na iyang lesser evil o ang tinatawag nating*** "personality." ***Para sa amin ito ay napakahalaga.***[8] (Emphases, italics, and underscoring supplied)

Due to the unique objectives of party-lists, it was then necessary to devise a system to ensure — or at least, strive to

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[8] R.C.C. No. 39, July 25, 1986.

ensure — the most meaningful way of translating the people's will in voting for causes, and not personalities. Accordingly, Congress established a party-list system based on the **proportional representation** concept.

To recount, Section 5 (1) and (2), Article VI of the 1987 Constitution provide that:

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

Aside from providing that twenty percent (20%) of the total House membership be comprised of those coming from the party-list, the 1987 Constitution did not provide for any other specific mechanic regarding the party-list system. Instead, as may be gleaned from the clause "as provided by law," the Framers intended to reserve these mechanics for future legislation. *In Veterans Federation Party v. Commission on Elections (Veterans)*,[9] the Court explained that "Congress was **vested with the broad power to define and prescribe the mechanics of the party-list system of representation.** The Constitution explicitly sets down only the percentage of the total membership

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[9] 396 Phil. 419 (2000).

in the House of Representatives reserved for party-list representatives."[10]

In line with the Framers' intent, Congress passed RA 7941, or the "Party-List System Act," and therein declared to promote "**proportional representation** in the election of representatives to the House of Representatives through a party-list system:"

> Section 2. Declaration of policy. The State shall promote **proportional representation in the election of representatives to the House of Representatives through a party-list system** of registered national, regional and sectoral parties or organizations or coalitions thereof, which will enable Filipino citizens belonging to marginalized and 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, x x x (Emphasis and underscoring supplied)

In contrast to the traditional FPTP system, proportional representation "implies an election system, wherein the representation of all classes of people is ensured, as each party gets as **many numbers of seats as the proportion of votes the candidate polls in the election.** In this system, **any political party or interest group obtains its representation in proportion to its voting strength** x x x. In this way, parties with the small support base, also get their representation in the legislature."[11]

However, "[p]roportional representation is a generic term, and it does not refer to a precise method of implementing the philosophy it denotes."[12] Thus, **in accord with its constitutional prerogative, Congress prescribed the specific parameters to achieve proportional representation insofar as Filipino-**

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[10] Id. at 438; emphasis supplied.

[11] <https://keydifferences.com/difference-between-past-first-post-the-post-and-proportional-representation.html/>(last visited July 23, 2020); emphases supplied.

[12] <http://prsa.org.au/municipl.htm> (last visited July 23, 2020).

style party list elections are concerned. These are contained in Section 11 of RA 7941 as follows:

> Section 11. *Number of Party-List Representatives.* — The party-list representatives shall constitute twenty per centum (20%) of the total number of the members of the House of Representatives including those under the party-list.
>
> For purposes of the May 1998 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.
>
> In determining the allocation of seats for the second vote, the following procedure shall be observed:
>
> (a) The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.
>
> **(b) The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each: Provided, That those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes: Provided, finally, That each party, organization, or coalition shall be entitled to not more than three (3) seats.** (Emphasis and underscoring supplied)

In *Barangay Association for National Advancement and Transparency v. Commission on Elections (BANAT)*,[13] the procedure in allocating seats for party-list representatives pursuant to Section 11 of RA 7941 was laid down by the Court:

> In determining the allocation of seats for party-list representatives under Section 11 of [RA] 7941, the following procedure shall be observed:
>
> 1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

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[13] 604 Phil. 131 (2009).

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

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

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

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.[14]

In *BANAT*, the procedure for seat allocation was primarily divided into two rounds: the first round involved the allocation of the one guaranteed seat to the two-percenters, while the second round referred to the allocation of additional seats in proportion to the total number of votes. In *Gabriela Women's Party v. COMELEC*,[15] I summarized the complete guidelines for seat allocation as per the prevailing rulings on the matter:

The guidelines in allocating the seats available to party-list representatives were laid down in *Veterans Federation Party v. COMELEC (Veterans)*, which were further refined in *Barangay Association for National Advancement and Transparency v. COMELEC (BANAT)*. Based on these guidelines, the process for computation is as follows:

1. The **maximum number of available party list seats (APLS),** which under Section 5 (2), Article VI of the 1987 Constitution "shall constitute **twenty per centum of the total number of representatives**

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[14] Id. at 162.

[15] See my Separate Concurring Opinion in the Unsigned Resolution in G.R. No. 225198, February 7, 2017.

including those under the party list," shall be first determined. This is arrived at by using the following formula:

$$\frac{\text{Number of Seats available to legislative districts}}{0.80} \times 0.20 = \text{Number of Seats Available to Party List Representatives (or APLS)}$$

2. Once the APLS is determined, the party-list candidates shall be **ranked from the highest to the lowest** based on the number of votes they garnered during the elections.

3. The **percentage of votes that each party-list candidate** garnered shall then be ascertained by using the following formula:

$$\frac{\text{Number of votes garnered}}{\text{Total votes cast}} = \text{Percentage of votes garnered}$$

Upon this determination, all party-list candidates that garnered **at least two percent (2%) of the total votes cast (in other words, "the two percenters") shall each be automatically entitled to one (1) seat.** This constitutes the **first round of allocation** of the available party-list seats. The total number of seats allotted to the "two percenters" (TP) shall then be noted for the next step.

4. Any of the "two percenters" may then qualify for **additional seats** by using the following formula:

$$\text{Percentage of total votes garnered} \times (\text{APLS} - \text{TP}) = \text{Additional Seat for Party-List Candidate}$$

It should be noted, however, that should the foregoing application yield a product constituting fractional values (*e.g.*, 0.66, 1.87, 2.39), said product shall be **ROUNDED-DOWN** to the nearest whole integer as the prevailing laws and rules do not allow for fractional seats.

Also, it should be noted that no party-list candidate shall be awarded more than two (2) additional seats, **since a party may only hold a maximum of three (3) seats.**

5. If the APLS has not been fully exhausted by the first allocation of seats to the two percenters, including the allocation of additional seats under Step 4 above, then the **remaining seats shall then be**

allocated (one [1] seat each) to the parties next in rank, *i.e.,* those "two percenters" that did not qualify for an additional seat pursuant to Step 4, and thereafter, those who did not get at least two percent (2%) of the total number of votes cast, until all the available seats are completely distributed.[16]

The petitioners question the constitutionality of the prevailing formula in determining additional seats in favor of "two percenters." As it stands, Section 11 of RA 7941 prescribes that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes."** According to petitioners, "the allocation of additional seats in proportion to a party's total number of votes results in the **double-counting** of votes in favor of the two-percenters x x x [f]or the same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The provision purportedly violates the equal protection clause, hence, is unconstitutional."[17]

I disagree.

Case law states that "[t]he equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by **substantial distinctions** that make real differences, one class may be treated and regulated differently from the other."[18]

Indeed, there is a **substantial distinction** between two-percenters and non-two percenters in that the former enjoy the greater mandate of the people. In *Veterans,* the Court explained the rationale behind the two-percent threshold in the party-list system:

The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very

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[16] Id.; citations omitted.

[17] *Ponencia,* p. 2, citing *rollo,* pp. 12-13.

[18] *Quinto v. COMELEC,* G.R. No. 189698, February 22, 2010; emphasis supplied.

essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people. Otherwise, in a legislature that features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.[19]

The distinct position of two percenters garnering the support of a greater number of people entitles them to *additional seats* based on the total number of votes, *even though these same votes have been factored in when they have qualified for one guaranteed seat in meeting the two percent threshold*. These advantages bestowed to two percenters constitute **Congress' way of implementing the concept of "cause" representation "in proportion to voting strength.**" Since the greater number of votes means that more people believe in a two percenter's cause and policy platform more than others, the party is therefore given an additional seat in Congress. In turn, this additional seat would theoretically give the party a "stronger voice" in Congress and hence, a better opportunity to advocate for legislation to advance the cause it represents.

Because party-list elections are based on proportional representation and not simple pluralities, there is really no double-counting of votes when all the votes are considered in allocating *additional* seats in favor of two percenters. **The electoral system of proportional representation inherently recognizes voting proportions relative to the total number of votes.** Petitioners' proposal to exclude the number of votes that have qualified two percenters for their guaranteed seat in the second round of additional seat allocation is tantamount to **altering the electoral landscape** by reducing the "voter strength" which they have rightfully obtained. **This effectively results in the diminution**

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[19] Supra note 10.

of the party's ability to better advocate for legislation to advance the cause it represents despite being supported by a larger portion of the electorate.

Moreover, as the *ponencia* aptly demonstrated, petitioner's proposal would result into lessening, if not removing the chances of a two percenter to qualify for an additional seat. In consequence, two percenters and non-two percenters will practically obtain the same number of seats and hence, disregard the substantial distinction between them:

> In petitioners' proposal, however, a 2% deduction will be imposed against party-list X before proceeding to the second round. This would result in X falling to the bottom of the ranking with zero percent (0%) vote, dimming its chances, if not disqualifying it altogether, for the second round. This is **contrary to the language of the statute which points to proportionality in relation to the TOTAL number of votes received** by a party, organization or coalition in the party-list election, and the **intention** behind the law **to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats**.[20]

At this juncture, it is opportune to clarify that the allocation of additional seats in proportion to the total number of votes in favor of the two percenters does not defy the principle of "one person, one vote." In its proper sense, the principle of "one person, one vote" hearkens to voter equality — that is, that all voters are entitled to one vote, and that each vote has equal weight with that of others. This principle is a knock against elitism and advances the egalitarian concept that all persons are equal before the eyes of the law. Regardless of social standing, lineage, age, race or gender, a person's vote should not mean more than others.

Insofar as the mechanics under Section 11 of RA 7941 are concerned, there is no instance at all wherein a person will be entitled to more than one vote. Neither is any person's vote considered weightier than others. All persons voting in the party-

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[20] *Ponencia*, pp. 27-28; emphases in the original.

list system are mandated to vote only once and each vote is also counted as one. Further, it must be highlighted that the allocation of guaranteed and additional seats to two percenters is not a matter of counting votes twice. Rather, this method of distribution is inherent to the electoral system of proportional representation, which is different from counting votes based on simple pluralities. Since these two electoral systems operate on distinct planes, there is no violation of the principle of "one person, one vote" in this case.

Finally, it must be reiterated that Congress was given the constitutional prerogative to devise the mechanics of the party-list system. The sole intent was to allow functional representation by weaker segments of society that goes beyond geographical boundaries of our traditional FPTP system. These mechanics are contained in Section 11 of RA 7941, which prescribes, among others, that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats **in proportion to their total number of votes."** As the only issue raised by petitioners is on the unconstitutionality of this specific mechanic based on equal protection grounds, the Court should refrain from going beyond the same.

In this regard, I thus maintain my reservations regarding the proposed formula of my esteemed colleague, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), who disagrees with the *BANAT* formula insofar as it prescribes for two (2) rounds of seat allocation when the first clause of Section 11(b) of RA 7941 does not require the same.[21] According to Justice Caguioa:

A straightforward formula better reflects the spirit behind the party-list system

Proceeding from the above discussion, I find that the three-tier formula expressed in *BANAT* fails to reflect the intent behind the introduction of the party- list system. Section 2 of RA 7941 states that the "State shall develop and guarantee a full, free and open party

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[21] See Separate Opinion of Justice Caguioa, p. 7.

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."**

It is my considered view that these objectives will be best achieved by a straightforward formula in which allotted seats are determined by simply multiplying the percentage of votes garnered by the [party-list Organization (PLO)] with the [available party-list seats (APLS)].

Based on this formula, the party-list seats are determined as follows:

Step One. Ranking of PLOs. All PLOs that participated in the election shall be ranked from the highest to the lowest based on the number of votes they each received during the election.

Step Two. Determination of percentage of votes per PLO in proportion to Total Votes of all PLOs. After the ranking, the percentage of votes that each PLO garnered shall then be computed as follows:

$$\frac{\text{Total votes garnered by PLO}}{\text{Total votes cast for the party-list system}} = \text{Percentage of votes garnered}$$

Step Three. Allocation of seats two percenters. The seats allotted to each of the qualified PLOs (the two percenters) shall then be ascertained using the following formula:

$$\text{Percentage of votes garnered} \times \text{APLS} = \text{Seat/s for the concerned qualified PLO}$$

Since the prevailing law and rules do not allow for fractional representation, the product obtained herein shall be rounded down to the nearest whole integer. The three (3) seat limit shall likewise be applied.

This step does away with the three-tier allocation in *BANAT*. In particular, it does away with the first round of allocation. In *BANAT*, the Court created two rounds of allocation because of its interpretation that "[t]he first clause of Section 11 (b) of R.A. No. 7941 [which] states that "parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each"... guarantees a seat to the two

percenters." Thus, it created a first of two rounds of allocation where the two percenters would be given one (1) seat each.

However, this separate round of allocation for the two percenters is not supported nor required by the letter of the law. **There is nothing in the text of the law which requires separate rounds of seat allocation.** All that the law requires is that those who garner 2% of the votes be guaranteed one (1) seat each. To illustrate, the straightforward formula still satisfies the requirements of Section 11 (b), even without the "first round of allocation," because the APLS will always be more than fifty (50) seats in light of the current number of congressional districts. Thus, all PLOs who obtained at least two percent (2%) of the total votes cast in the party-list system are, in reality, guaranteed one (1) seat each — **even in the absence of a separate round "ensuring" them one (1) seat.**

Meanwhile, the second requirement of Section ll(b) — that the "additional seats" for those who obtained more than two percent of the total votes cast in the party-list system shall be in proportion to the total number of votes it obtained — is also complied with because the computation of additional seats for each of the two percenters is in direct proportion to the total number of votes they actually garnered.

Step Four. Allocation of remaining seats. If the APLS has not been fully exhausted after allocating seats to the two percenters (but still enforcing the 3 seat limit) — as is what is expected to happen because, as mentioned, APLS will always be more than fifty seats — the remaining seats shall then be allocated (one (1) seat each) to the parties next in rank (*i.e*. those who did not get at least two percent of the total number of votes cast), until all the APLS are completely distributed.[22]

However, since this particular formula has not been raised by any of the petitioners or any affected party-list for that matter, nor has the Office of the Solicitor General been given an opportunity to comment on the same, I submit that this is not the appropriate case to tackle the formula's merit.

In any event, the *BANAT* formula which first allocates guaranteed seats to two percenters and then allocates additional

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[22] Separate Opinion of Justice Caguioa, pp. 14-15.

seats also in favor of qualifying two percenters, **appears to merely mirror the textual progression of Section 11 of RA 7941 as worded.** The first round is based on the first sentence of Section 11 (b), while the second round is based on the first proviso that follows in sequence:

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

Further, should the Court adopt Justice Caguioa's formula, then it would **be practically fusing together the character of guaranteed seats and additional seats.** In effect, the voter strength garnered by two percenters would be diminished, resulting in weaker voice in Congress; in addition, the separate provisions on guaranteed and additional seating would also be rendered redundant.

While the more straightforward formulation would mathematically increase the probability of more party-lists qualifying for a seat in Congress, such formulation seems to go against the prerogative of legislature to recognize the advantageous position gained by two percenters. Indeed, Congress intended to attain "the broadest representation possible" but it is currently **unclear** if this general objective was meant to remove the advantages rightfully gained by two percenters. Thus, **recognizing the potential ripple effects of adopting this "unraised" proposed formula in the composition of legislature,** the Court should thresh out this matter in the appropriate case. As Justice Caguioa himself recognizes, "the straightforward formula may not be immediately applied in this case because of the requirements of due process. As the adoption of the straightforward formula will not only affect petitioners but also other qualified PLOs which have already been

proclaimed by the COMELEC, and whose representatives have already assumed office, due process mandates that all qualified PLOs be heard on the matter."[23]

For all these reasons, I therefore vote to dismiss the petition for failure of the petitioners to properly make out their case. I qualify, however, that the petition ought to be dismissed on the merits rather than on procedural grounds as discussed in the *ponencia*. On the procedural aspects, I share the views of my other esteemed colleague, Associate Justice Alexander G. Gesmundo, that petitioners have indeed raised the issue at the earliest opportunity, that *estoppel* would not apply, and that the issue is the very *lis mota* of the case.[24]

On this score, I deem it apt to point out that petitioners could not have previously questioned the constitutionality of Section 11 of RA 7941 (as they have presently done so) back in 2013 and 2016 since they have both won in the elections they respectively participated in[25] and just recently lost in 2019. Their loss was necessary in order for them to satisfy the requisite of an actual and justiciable controversy, which connotes the existence of a "**conflict of legal rights,**" or "an assertion of **opposite legal claims,**"[26] as well as to clothe them with *locus standi*, which is "a personal and substantial interest in the case, such that they have sustained or are in immediate danger of sustaining, **some direct injury as a consequence of the enforcement of the challenged governmental act.**"[27] Upon

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[23] See id. at 18.

[24] See Separate Opinion of Justice Gesmundo, pp. 7-12.

[25] ANGKLA garnered one seat in the 2013 elections (<https://news.abs-cbn.com/nation/05/28/13/comelcec-proclaims-24-more-party-list-winners> [last visited July 23, 2020]) while ANGKLA and SBP won one seat each in the 2016 election (<https://newsinfo.inquirer.net/786644/winners-of-59-seats-in-party-list-race-announced> [last visited July 23, 2020]). [while ANGKLA and SBP won one seat each in the 2016 elections ([last visited July 23, 2020]).]

[26] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1090 (2017); emphasis supplied.

[27] Id. at 1091; emphasis supplied.

their loss in 2019, they were therefore prompted to immediately take the matter to Court at the earliest opportunity.

ACCORDINGLY, I vote that the petition be dismissed due to lack of merit in its substantive arguments.

CONCURRING OPINION

LEONEN, *J.*:

I concur with Associate Justice Amy C. Lazaro Javier's (Justice Lazaro-Javier) *ponencia* denying the Petition for Certiorari and Prohibition filed by petitioners Ang Partido ng Marinong Pilipino. Inc. (ANGKLA) and Serbisyo sa Bayan Party (SBP), and sustaining National Board of Canvassers Resolution No. 004-19, which declared the winning party-list groups in the May 13, 2019 elections.

In addition, I invite attention to prevailing parameters that operationaiize the party-list system. I reiterate a position that I initially articulated in *Atong Paglaum, Inc. v. Commission on Elections*,[1] that this Court's effort at shaping understanding of how the party-list system should be operationalized to carry out the Constitution's objectives should not be limited to calibrating numerical formulation to identify winners.

I

The party-list system, as provided for in Article VI, Section 5 of the 1987 Constitution,[2] is the domestic iteration of proportional

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[1] 707 Phil. 454(2013) [Per J. Carpio, En Banc].

[2] CONST., Art. VI, Sec. 5 provides:

SECTION 5. (I) 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.

representation, an electoral system that has long existed in other jurisdictions and which currently exists in a multiplicity of jurisdictions.[3]

Our election of party-list representatives stands out in domestic elections dominated by the "first past the post"[4] system. In a first past the post system, candidates win or are elected on the basis of a simple plurality. "The winning candidate is simply the person who wins the most votes; in theory he or she could be elected with two votes, if every other candidate only secured a single vote."[5] This applies to our elections for President, Vice President, provincial governors and vice governors, city or municipal mayors and vice mayors, as well as barangay chairpersons. For these positions, winning candidates are simply candidates who outvote all other candidates. The same is true for the election of members of the House of Representatives representing legislative districts. The first past the post system similarly governs the election of senators and members of the *sangguniang panlalawigan, sangguniang panglungsod, sangguniang bayan,* and *sangguniang barangay*. In these collegial bodies however, multiple vacancies are simultaneously

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(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.

(3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of af least two hundred fifty thousand, or each province, shall have at least one representative.

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

[3] *See Electoral Systems*, THE ELECTORAL. KNOWLEDGE NETWORK, <http://aceproject.org/epic-en/CD Table? question = ES005 & view =country &set_language=en> (last accessed on September 15, 2020).

[4] *See Electoral Systems*, THE ELECTORAL KNOWLEDGE NETWORK, <http://aceproject.org/age-en/topics/es/esd/esd01/esd01a/default> (last accessed on September 15 2020).

[5] *Id*.

contested. Therefore, several individuals—as many as there are vacancies to be filled are simultaneously elected, i.e., the highest ranking candidates corresponding to the number of vacancies.

Unlike the winning candidates for other elective public positions, members of the House of Representatives under the party-list system are elected through a system of proportional representation. In proportional representation, seats are allocated in accordance with the proportion of the electorate that supports a political party, organization, or coalition. Winning an election, therefore, does not hinge on outranking competing candidates, but on securing proportional thresholds instead.

As the unique, domestic iteration of a conceptual electoral mechanism shared with many jurisdictions, the Philippine party-list system is created by Article VI, Section 5 of the 1987 Constitution. The same provision, as well as Article VI, Section 6, spell out the party-list system's basic and immutable parameters:

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

(4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

SECTION 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 than one year immediately preceding the day of the election. (Emphasis supplied)

Thus, the party-list system is open to "registered national, regional, and sectoral parties or organizations." Further, party-list representatives shall "constitute twenty *per centum* of the total number of representatives including those under the party list." A transitory manner of filling party-list seats "[f]or three, consecutive terms after the ratification of th[e] Constitution" is also provided. Likewise, a party-list representative must be "a natural-born citizen of the Philippines and, on the day of the election, is at least twenty-five years of age, [and] able to read and write." Apart from these, Article VI, Section 5 stipulates that election to the party-list system shall be "provided by law."

It is in keeping with Article Vl, Section 5's injunction that Republic Act No. 7941 or the Party-List System Act, was passed in 1995.

Section 10 of the Party-List System Act provides for the manner of voting party-list representatives. Sections 11 and 12 concern the allocation of party-list seats:

SECTION 10. *Manner of Voting.* — Every voter shall be entitled to two (2) votes: the first is a vote for candidate for member of the House of Representatives in his legislative district, and the second, a vote for the party, organization, or coalition he wants represented in the house of Representatives: Provided, That a vote cast for a party, sectoral organization, or coalition not entitled to be voted for shall not be counted: Provided, finally. That the first election under the party-list system shall be held in May 1998.

The COMELEC shall undertake the necessary information campaign for purposes of educating the electorate on the matter of the party-list system.

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

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

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

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

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

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

Thus, according to Section 11, the initial threshold is two percent (2%) of the total votes cast for the system. Every party, organization, or coalition obtaining two percent (2%) of the total votes cast for the party-list system shall be entitled to one (1) seat each. Thereafter, "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in the

[sic] proportion to their total number of votes[.]" Regardless of potentially much larger proportions obtained by parties, organizations or coalitions, however, "each party, organization, or coalition shall be entitled to not more than three (3) seats."

While ranking is involved, winning seats in the party-list system does not ultimately or exclusively depend on an ordinal system as winning seats in first past the post elections does. Rather, it relies on the extent of proportionate shares *vis-á-vis* a total figure that varies from one election to another, that is, the total number of votes cast for the party-list system in a given election.

II

The party-list system is fundamentally a mechanism of proportional representation where proportions are reckoned in relation to the total number of votes cast for the party-list system in a given election, and where groups that obtain larger proportions of votes are naturally and logically placed at an advantage over those who obtain less. This basic nature is expressed in Section 12 of the Party-List System Act: "The COMELEC shall tally all the votes... on a nationwide basis, rank them according to the number of votes received and allocate party-list representatives proportionately according to the percentage of votes obtained... as against the total nationwide votes cast for the party-list system."

This same basic nature renders absurd and unacceptable petitioners' contention that, after seats are allotted to those groups that hurdled the two-percent-threshold, "[v]otes amounting to two percent (2%)... obtained by each of the participating parties... should then be deducted from the total votes of each of these party-list groups that have been entitled to and given guaranteed seats[,]"[6] and that, "[t]he remaining party-list seats... sh[ould] then be distributed in proportion to the recomputed number of votes[.]"[7]

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[6] *Ponencia,* p, 3.

[7] Id.

Ignoring votes in the reckoning of proportions runs afoul of a party- list election as a race contested by the entire roster of candidates and won in consideration of all the votes cast by the electorate. Reckoning on the basis of a "recomputed number of votes"[8] artificially redraws the electoral terrain. It results in the distribution of remaining party-list seats based on an altered field of contestants and diminished number of votes. This undoes the logical advantage properly earned by those that hurdled the two-percent-threshold and enables the election of groups, even if their performance was manifestly worse off than those who have hurdled the basic threshold.

To concede petitioners' plea would be to negate the valid and sensible distinction between those that hurdled the threshold and those that did not. Ultimately, it violates the party-list system's fundamental objective of enabling "meaningful representation [secured through]... the mandate of a sufficient number of people."[9]

Justice Lazaro-Javier's illustration of the sheer absurdity, not to mention, injustice and mockery of the totality of the electoral exercise which shall be induced by favorable action on petitioners' plea is well-taken:

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

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[8] Id.

[9] *Veterans Federation Parly v. Commission on Elections*, 396 Phil. 419, 441 (2000) [Per J. Panganiban, En Banc].

election, and the intention behind the law to acknowledge the two-percenters' right to participate in the second round of seat allocation for the additional seats.[10]

It does not help petitioners' position, as the *ponencia* points out,[11] that petitioners asserted an alternative method of allocating party-list seats only in the wake of their defeat in the 2019 elections. They found nothing wrong with the method that is currently in place when they were benefitting from and, on the basis of it, proclaimed winners in previous elections. An electoral system is meant to be an objective and dispassionate means for determining winners in an election. For it to be upheld at one instance and assailed at another based on how one fares is to undermine an electoral system's requisite neutrality and to subvert meaningful democratic representation.

III

To facilitate the objectives of proportional representation as a supplement to the dominant electoral system, the Constitution and the Party-List System Act prescribe parameters that operationalize our unique, domestic mode of proportional representation.

Jurisprudence has, in turn, interpreted relevant constitutional and statutory provisions in a manner that will give effect to the party-list system's lofty objectives. Of particular note is *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*,[12] where this Court clarified the rules for allocating party-list seats:

> In determining the allocation of seats for party-list representatives under Section 11 of [Republic Act] No. 7941, the following procedure shall be observed:
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> 1. The parties, organizations, and coalitions shall be ranked from the highest to the lowest based on the number of votes they garnered during the elections.

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[10] *Ponencia,* pp. 27-28.

[11] Id. at 10-11.

[12] 604 Phil. 131 (2009). [Per J. Carpio, En Banc]

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

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

4. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[13]

The Party-List System Act's stipulation of an initial two-percent (2%) threshold serves a vital interest by filtering party-list representation to those groups that have secured the support of a sufficiently significant portion of the electorate.

Our elections for the House of Representatives is akin to elections for the German *Bundestag* (federal parliament) where voters similarly cast a first vote or *"Erststimme"* for district representative (which follows a first past the post system), and a second vote or *"Zweitstimme"* for a political party.[14] For a party to occupy seats, it must secure a five percent (5%) threshold (n.b., more than doubly higher than our standard). This threshold "excludes very small parties from parliamentary representation[.][15] This exclusionary effect is deliberate and far from an inadvertent consequence: "[t]his system was put in place to prevent smaller splinter parties — like those that bogged down the Weimar Republic in the 1920s — from entering parliament."[16]

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[13] *Id.* at 162.

[14] *See* Michael Krennerich, *Germany*: *The Original Mixed Member Proportional System*, THE ELECTORAL KNOWLEDGE NETWORK, <http://aceproject.org/regions-en/countries-and-territories/DE/case-studies/germany-the-original-mixed-member-proportional-system> (last accessed on September 15, 2020).

[15] Id.

[16] *How does the German general election work?*, DW, <https://www.dw.com/en/how-does-the-german-general-election-work/a-37805756> (last accessed on September 15, 2020).

Accordingly, it has long been settled by this Court that the two percent (2%) threshold is a valid standard that furthers the interest of robust democratic representation. From this, it follows that the Party-List System Act validly distinguishes between those groups that meet the two percent (2%) threshold, and those that fail to do so:

> The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation." Under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them. But to have meaningful representation, the elected persons must have the mandate of a sufficient number of people. Otherwise, in a legislature features the party-list system, the result might be the proliferation of small groups which are incapable of contributing significant legislation, and which might even pose a threat to the stability of Congress. Thus, even legislative districts are apportioned according to "the number of their respective inhabitants, and on the basis of a uniform and progressive ratio" to ensure meaningful local representation.[17]

IV

As an alternative to the predominant electoral system, the party-list system is principally concerned with advancing democratic representation. It endeavors to make up for the shortcomings of traditional elections through simple plurality. This is a particularly acute concern in the experience of Philippine electoral politics. As I have previously explained in my Separate Opinion in *Atong Paglaum, Inc. v. Commission on Elections*:[18]

> The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state". A democratic and republican state is founded on effective representation. It is also founded on the idea that it is the electorate's choices that must be given full consideration.

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[17] *Veterans Federation Party v. Commission on Elections*, 396 Phil. 419, 441 (2000) [Per J. Panganiban, En Banc].

[18] 707 Phil. 454 (2013) [Per J. Carpio, En Banc].

. . . .

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves".

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation[s] of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshall the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the *status quo*. It could not have been intended to enhance and further entrench the same system. It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists genuine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state".[19] (Citations omitted)

Even as it aims to challenge dominant ways in politics, the party-list system remains, at its core, an alternative electoral

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[19] Id. at 738-741.

system. It is not a mechanism for affirmative action *per se* where predetermined underrepresented or marginalized groups are given exclusive access to seats in Congress. Thus, though enabling sectoral representation, the party-list system is also open to national and regional parties or organizations. It facilitates representation by drawing the focus away from personalities, popularity, and patronage; to programs, principles, and policies. It does not do so by extending extraordinary benefits to select sectors. It challenges voters to see beyond what the dominant electoral system sustains, as well as candidates and political parties to consolidate on considerations other than what may suffice in personality-affirming races won by simple plurality. It allows the forging of organizations and coalitions, and facilitates representation on the basis of ideologies, causes, and ideals that go beyond strict sectoral lines:

> In a sense, challenging the politics of personality by constitutionally entrenching the ability of political parties and organizations to instill party discipline can redound to the benefit of those who have been marginalized and underrepresented in the past. It makes it possible for nominees to be chosen on the basis of their loyalty to principle and platform rather than their family affiliation. It encourages more collective action by the membership of the party and hence will reduce the possibility that the party be controlled only by a select few.
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> Thus, it is not only "for the marginalized and underrepresented in our midst . . . who wallow in poverty, destitution and infirmity" that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.
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> But, based on our recent experiences, requiring "national, regional and sectoral parties and organizations" that participate in the party list system to be representatives of the "marginalized and underrepresented sector" and be "marginalized and underrepresented themselves" is to engage in an ambiguous and dangerous fiction that undermines the possibility for vibrant party politics in our country. This requirement, in fact, was the very requirement that "gut the substance of the party list system".
>
> Worse, contrary to the text of the constitution, it fails to appreciate the true context of the party list system.

. . . .

It is inconceivable that the party list system framed in our Constitution make it impossible to accommodate green or ecological parties of various political persuasions.

Environmental causes do not have as their constituency only those who are marginalized or underrepresented. Neither do they only have for their constituency those "who wallow in poverty, destitution and infirmity". In truth, all of us, regardless of economic class, are constituents of ecological advocacies.

Also, political parties organized along ideological lines — the socialist or even right wing political parties — are groups motivated by a their own narratives of pur history, a vision of what society can be and how it can get there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions — whether true or false — should make the choices of our representatives richer. It will make the choices of our representatives more democratic.

Ideologically oriented parties work for the benefit of those who are marginalized and underrepresented, but they do not necessarily come mainly from that economic class. Just a glance at the history of strong political parties in different jurisdictions will show that it will be the public intellectuals within these parties who will provide their rationale and continually guide their membership in the interpretation of events and, thus, inform their movement forward.

Political ideologies have people with kindred ideas as their constituents. They may care for the marginalized and underrepresented, but they are not themselves — nor for their effectivity in the House of Representatives should we require that they can only come from that class.[20] (Citations omitted)

In keeping with these, I have articulated, and continue to maintain, that participation in the party-list system should be in keeping with the following benchmarks:

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[20] Id. at 741-744.

First, the party list system includes national, regional and sectoral parties and organizations;

Second, there is no need to show that they represent the "marginalized and underrepresented". However, they will have to clearly show how their plans will impact on the "marginalized and underrepresented". Should the party list group prefer to represent a sector, then our rulings in *Ang Bagong Bayani* and *BANAT* will apply to them;

Third, the parties or organizations that participate in the party list system must not also be a participant in the election of representatives for the legislative districts. In other words, political parties that field candidates for legislative districts cannot also participate in the party list system;

Fourth, the parties or organizations must have political platforms guided by a vision of society, an understanding of history, a statement of their philosophies and how this translates into realistic political platforms;

Fifth, the parties or organizations — not only the nominees — must have concrete and verifiable track record of political participation showing their translation of their political platforms into action;

Sixth, the parties or organizations that apply for registration must be organized solely for the purpose of participating in electoral exercises;

Seventh, they must have existed for a considerable period, such as three (3) years, prior to their registration. Within that period they should be able to show concrete activities that are in line with their political platforms;

Eighth, they must have such numbers in their actual active membership roster so as to be able to mount a credible campaign for purpose of enticing their audience (national, regional or sectoral) for their election;

Ninth, a substantial number of these members must have participated in the political activities of the organization;

Tenth, the party list group must have a governing structure that is not only democratically elected but also one which is not dominated by the nominees themselves;

Eleventh, the nominees of the political party must be selected through a transparent and democratic process:

Twelfth, the source of the funding and other resources used by the party or organization must be clear and should not point to a few dominant contributors specifically of individuals with families that are or have participated in the elections for representatives of legislative districts;

Thirteenth, the political party or party list organization must be able to win within the two elections subsequent to their registration;

Fourteenth, they must not espouse violence; and

Fifteenth, the party list group is not a religious organization.[21] (Citations omitted)

Without these considerations, the party-list system will become a farce, an avenue that will be dominated by the moneyed elite; further marginalizing truly ideological, as opposed to merely personal, politics.

ACCORDINGLY, I vote that the present Petition for Certiorari and Prohibition and Petition-in-Intervention be **DISMISSED.**

SEPARATE OPINION

CAGUIOA, *J.:*

I concur only insofar as the petitions are dismissed — but with a call that the allocation of party-list seats laid down in *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*,[1] *(BANAT)* should be abandoned as it is inconsistent with, and fails to reflect, the spirit and intent of the Constitution and Republic Act No. (RA) 7941 or the Party-List System Act.[2]

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[21] Id. at 751-753.

[1] G.R. Nos. 179271 & 179295, April 21, 2009, 586 SCRA 210.

[2] Approved on March 3, 1995.

The present Petition and the BANAT formula

The party-list system was an innovation introduced by the drafters of the Constitution to diversify representation in the House of Representatives (HOR). It was meant to "open the system," in recognition of the real need to provide an effective platform to those who belong to marginalized sectors of society, such as labor, peasant, urban poor, indigenous cultural communities, women, and youth,[3] and also to provide an avenue to those who had been unable to gain seats in the legislature because of the dominance of the traditional and well-established political parties. Since the first national elections involving the party-list system in 1998, the election, qualifications, and allocation of seats to party-list organizations (PLO) and their nominees have been the subject of petitions before the Court.

This time, petitioners Ang Partido ng Mga Pilipinong Marino, Inc. (ANGKLA) and Serbisyo sa Bayan Party (SBP) and petitioner-intervenor Aksyon Magsasaka-Partido Tinig ng Masa (AKMA-PTM) (petitioners) propose a new formula in computing the allotted seats for PLOs in the HOR after failing to obtain a congressional seat in the May 2019 National and Local Elections (2019 Elections).

The procedure for allocation of seats in the party-list system is provided in RA 7941, which states:

> SEC. 11. *Number of Party-List Representatives.* — The party-list representatives shall constitute twenty *per centum* (20%) of the total number of the members of the House of Representatives including those under the party-list.
>
> For purposes of the May 1988 elections, the first five (5) major political parties on the basis of party representation in the House of Representatives at the start of the Tenth Congress of the Philippines shall not be entitled to participate in the party-list system.
>
> In determining the allocation of seats for the second vote, the following procedure shall be observed:

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[3] 1987 CONSTITUTION, Art. VI, Sec. 5 (2).

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

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

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

In interpreting Section 11, the Court in *Veterans Federation Party v. Commission on Elections (Veterans)*,[4] formulated the following parameters:

First, the twenty percent allocation—the combined number of all party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, the two percent threshold—only those parties garnering a minimum of two percent of the total valid votes cast for the party-list system are "qualified" to have a seat in the House of Representatives;

Third, the three-seat limit—each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, proportional representation—the additional seats which a qualified party is entitled to shall be computed "in proportion to their total number of votes."[5]

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[4] G.R. Nos. 136781, 136786 & 136795, October 6, 2000, 342 SCRA 244.

[5] Id. at 276-277.

Veterans also produced the "First Party Rule," which gave preference to the PLO that obtained the highest number of votes and used the number of votes garnered by the party obtaining the highest number of votes as a benchmark in determining the seats to be allocated to the rest of the PLOs.

The above parameters were revised in *BANAT*, where the Court declared unconstitutional the two percent threshold for the distribution of "additional seats" in the second proviso of Section 11(b)[6] of RA 7941 as it made it mathematically impossible to achieve the maximum number of available party-list seats (APLS) when the APLS exceeded 50.[7] The Court also

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[6] SEC. 11. xxx

x x x x

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

x x x x

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

[7] *Barangay Association for National Advancement and Transparency (BANAT) v. Commission on Elections*, supra note 1, at 242-243. The Court in *BANAT*, explained the mathematical impossibility in this wise:

We rule that, in computing the allocation of **additional seats,** the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941 is **unconstitutional.** This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.

To illustrate: There are 55 available party-list seats. Suppose there are 50 million votes cast for the 100 participants in the party list elections. A party that has two percent of the votes cast, or one million votes, gets a guaranteed seat. Let us further assume that the first 50 parties all get one

abandoned the First Party Rule, devising instead a three-tier approach which allowed more party-list participation in the legislature as party-list seats were to be allocated even to those parties who did not obtain at least two percent of the total party-list votes. The following procedure was thus adopted:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

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

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

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.

In declaring the two percent threshold unconstitutional, we do not limit our allocation of additional seats in Table 3 below to the two-percenters. The percentage of votes garnered by each party-list candidate is arrived at by dividing the number of votes garnered by each party by 15,950,900, the total number of votes cast for party-

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million votes. Only 50 parties get a seat despite the availability of 55 seats. Because of the operation of the two percent threshold, this situation will repeat itself even if we increase the available party-list seats to 60 seats and even if we increase the votes cast to 100 million. Thus, even if the maximum number of parties get two percent of the votes for every party, it is always impossible for the number of occupied party-list seats to exceed 50 seats as long as the two percent threshold is present.

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

Simplified, the above formula for distribution is as follows:

1. The PLOs shall be ranked from highest to lowest according to their respective votes;

2. The votes garnered by each party shall be divided by the total party-list votes to determine the percentage of votes per PLO;

3. *Allocation of guaranteed seats for the two percenters* — Those PLOs which garnered at least two percent of the total party-list votes shall be entitled to a "guaranteed seat;"

4. The guaranteed seats already distributed to the two percenters shall be deducted from the APLS to determine the remaining available seats;

5. *Allocation of additional seats for two percenters* — The additional seats for the two percenters shall be determined by multiplying the percentage of votes garnered by the two percenters to the remaining available seats; the whole integer of the product shall determine the additional seat, if any (subject to the three-seat cap);

6. *Allocation of the remaining available seats for the non-two percenters* — The remaining available seats after distributing the guaranteed seats and additional seats to the two percenters

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[8] Id. at 243-244.

shall be distributed one seat each to the non-two percenters until all remaining available seats have been allocated.

Using the above formula, the Commission on Elections (COMELEC), acting as the National Board of Canvassers (NBC), issued Resolution No. 004-19 declaring the winners in the party-list system for the 2019 Elections. Petitioners failed to obtain any seats. Thus, they present a new formula which will enable them to obtain seats.

Petitioners propose that in the determination of additional seats for the two percenters in Step 5, the percentage of their votes should be deducted by two percent — since the two percent has "already been counted" in Step 3. According to petitioners, the non-deduction of two percent in the allocation of additional seats for two percenters results in "double counting" of votes. Petitioners also pray that the Court declare unconstitutional the following underscored phrase in the sentence in Section 11(b) of RA 7941: "[T]hose garnering more than two percent (2%) of the votes shall be entitled to additional seats in the proportion to their **total** number of votes."[9] Petitioners assert that this results in discrimination against the non-two percenters, depriving them of rightful seats in the HOR.[10]

Cited by petitioners is the Court's Resolution in *BANAT* promulgated on July 8, 2009, which resolved the Motion for Clarification of then HOR Speaker Prospero C. Nograles and a separate Motion for Leave for Partial Reconsideration of PLO Citizen's Battle Against Corruption (CIBAC). A revision of the list of winning PLOs was necessary due to the reduction in the number of legislative districts pending resolution of the case (when the Court invalidated the creation of the province of Shariff Kabunsuan) and after the Court received updated data from a more recent Party-List Canvass Report which had not been submitted by the parties earlier.[11] Petitioners bring

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[9] Underscoring supplied.

[10] Amended Petition, *rollo*, pp. 107-142.

[11] 592 SCRA 294.

the Court's attention to the following portion in the July 8, 2009 Resolution:

> In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. **CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat)** has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties. Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC.[12] (Emphasis supplied)

Petitioners invoke the above disquisition to support their position which appears to mandate that two percent be deducted from a two percenter's total votes in determining their additional seat.

The formula forwarded by petitioners will result in a smaller multiplier and smaller product: thereby allocating fewer seats to the two percenters, which would then result in an increase in the number of remaining available seats for PLOs that would not have been able to qualify for one seat.

The COMELEC, through the Office of the Solicitor General (OSG), filed its Comment, maintaining that there is no "double counting" of votes as the votes are counted in two separate rounds of seat allocation. The first round is the allocation of the guaranteed seats for two percenters and the second round is the allocation of the additional seats.[13] There would only be double counting if the same votes were counted twice for the same round. The OSG also asserts that there is no violation of

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[12] Id. at 310-311.

[13] *Rollo*, p. 192.

the equal protection clause against the non-two percenters because there is substantial distinction between the former and the two percenters, who obtained the "clearer mandate of the people" by receiving more votes.[14]

The *ponencia* dismisses the petitions. On the procedural issue, the *ponencia* holds that petitioners failed to satisfy all the requirements of judicial review in failing to raise the issue of constitutionality in the first instance and that the issue on constitutionality is not the very *lis mota* of the case.[15] On the substantive issue, the *ponencia* holds that Section 11 (b) of RA 7941 is constitutional and maintains the formula developed by the Court in *BANAT*.

With the foregoing considerations, and without belaboring the issues on judicial review and constitutionality, I find merit in ANGKLA's position that the *BANAT* formula results in the "double counting" of votes in the computation of additional seats for the two percenters. Specifically, their first two percent already entitles them to a seat, and yet, in the allocation of the remaining seats, the said votes are still taken into consideration.

As will be shown herein, the *BANAT* formula suffers from a misinterpretation of the first part of Section 11(b) of RA 7941 that led it to have two rounds of allocation of seats, even when the law clearly does not require the same. More importantly, the *BANAT* formula fails to reflect the State policies embodied in RA 7941 and in the Constitution.

That said, I do not agree with petitioners' formula as it is not sanctioned by the plain text of Section 11(b) of RA 7941, which provides that the additional seats shall be computed **in proportion to the PLO's total number of votes.** Thus, I am submitting instead a different formula that, would better reflect the intent behind the introduction of the party-list system in the Constitution, while remaining consistent with the letter of Section 11(b) of RA 7941.

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[14] Id. at 193.

[15] *Ponencia,* pp. 8-15.

The spirit and intent behind the party-list system

As mentioned, the party-list system is an innovation in the 1987 Constitution meant to "open the system" that has long been dominated by the large political parties. Commissioner Christian S. Monsod (Commissioner Monsod), the main proponent of the party-list system, explained the objectives of the party-list system in the following exchange:

BISHOP BACANI. I thank the Honorable Villacorta for the very beautiful defense of the idea of a sectoral representation, but I am already in basic sympathy with that. I want that myself. Only, I want to ask what sectors will be included. Will it be the farmers, teachers, et cetera? What will be the criteria or the bases for the creation of recognition of the sectors that will be represented in the Assembly?

MR. DAVIDE. Madam President, on the matter of the sectoral representation and the mechanics for the implementation thereof, the Committee had left it to a law to implement the same. That is why the provision here reads: "and those who, as provided by law, shall be elected from the sectors and party list." The law itself implementing this will provide which sectors to be represented.

BISHOP BACANI. How will we determine these sectors?

MR. DAVIDE. Madam President, since this is also on the matter of the party list, may we seek the recognition of Commissioner Monsod for the question of Commissioner Bacani.

THE PRESIDENT. Commissioner Monsod is recognized.

MR. MONSOD. Thank you, Madam President.

I would like to make a distinction from the beginning that **the proposal for the party list system is not synonymous with that of the sectoral representation. Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the sectors.** In making the proposal on the party list system, we were made aware of the problems precisely cited by Commissioner Bacani of which sectors will have reserved seats. In effect, a sectoral representation in the Assembly would mean that certain sectors would have reserved seats; that they will choose among themselves who would sit in those reserved seats. And then, we have the problem of which sector because as we will notice in Proclamation

No. 9, the sectors cited were the farmers, fishermen, workers, students, professionals, business, military, academic, ethnic and other similar groups. So these are the nine sectors that were identified here as "sectoral representatives" to be represented in this Commission. The problem we had in trying to approach sectoral representation in the Assembly was whether to stop at these nine sectors or include other sectors. And we went through the exercise in a caucus of which sector should be included which went up to 14 sectors. And as we all know, the longer we make our enumeration, the more limiting the law becomes because when we make an enumeration we exclude those who are not in the enumeration. Second, we had the problem of who comprise the farmers. Let us just say the farmers and the laborers. These days, there are many citizens who are called "hyphenated citizens." A doctor may be a farmer; a lawyer may also be a farmer. And so, it is up to the discretion of the person to say "I am a farmer" so he would be included in that sector.

The third problem is that when we go into a reserved seat system of sectoral representation in the Assembly, we are, in effect, giving some people two votes and other people one vote. We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao. One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.

When such parties register with the COMELEC, we are assuming that 50 of the 250 seats will be for the party list system. So, we have a limit of 30 percent of 50. That means that the maximum that any party can get out of these 50 seats is 15. When the parties register they then submit a list of 15 names. They have to submit these names because these nominees have to meet the minimum qualifications of a Member of the National Assembly. At the end of the day, when the votes are tabulated, one gets the percentages. Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2½ percent and anybody who has at least 2½ percent of the vote qualifies and the 50 seats are apportioned among all of these parties who get at least 2½ percent of the vote.

What does that mean? It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. **There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly.** It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts.

So, that is essentially the mechanics, the purpose and objectives of the party list system.

BISHOP BACANI. Madam President, am I right in interpreting that when we speak now of party list system though we refer to sectors, we would be referring to sectoral party list rather than sectors and party list?

MR. MONSOD. As a matter of fact, if this body accepts the party list system, we do not even have to mention sectors because the sectors would be included in the party list system. They can be sectoral parties within the party list system.

BISHOP BACANI. Thank you very much.[16] (Emphasis and underscoring supplied)

The party-list system envisioned by Commissioner Monsod — one where even major political parties may participate as long as they organize along sectoral lines — was met with opposition. Some of the framers of the Constitution, namely Commissioners Joaquin G. Bernas and Jaime S.L. Tadeo, advocated for a party-list system that is reserved for the *marginalized* sectors of society.[17] To the opposition, the party-list system should complement the constitutional provisions on social justice, in that it would equalize political power by distributing power from those who traditionally have it to the underprivileged.[18] It was even argued that half of the seats in the party-list system should be permanently reserved to certain sectors to achieve the objective.[19]

While Commissioner Monsod was not opposed to the idea, he had difficulty operationalizing a purely sector-based party-list system:

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[16] II RECORD, CONSTITUTIONAL COMMISSION 85-86 (July 22, 1986).

[17] See RECORD, CONSTITUTIONAL COMMISSION 551-598 (August 1, 1986).

[18] Id.

[19] Id.

MR. OPLE: It appears that the Commission, for historical reasons, suffers from a lack of knowledge about the party list system. I suppose that we are not really reinventing the wheel here when we incorporate a party list system as among the modes of selecting representatives of the people. Since Commissioner Monsod, for the reason that he has taken a keen interest in electoral science, if we might call it that way, seems to be the sole authority on the party list system as far as we can see this in the Commission, can he share with the Members of the Commission his knowledge of how the party list system works in its country of origin like Germany and Switzerland? As a general principle, does it contemplate making up through a party list for the general weakness of what Commissioner Villacorta calls the "marginalized" sectors, so that the preponderance of traditional parties is overcome and that the less-privileged sectors in society could have their own access to Congress?

In the case of Germany, I understand that the Greens, who otherwise would understand their chance at the beginning, had gotten there through a party list system.

Will Commissioner Monsod oblige by answering this question?

MR. MONSOD. Madam President, I do not presume to be an expert on the party list system. We are using the party list system in a generic sense. However, I believe Commissioner Ople himself is an expert on this. It is true that the party list system can specify those who may sit in it. In fact, if I remember right, in the case of Belgium, it was quite detailed. But if we take a look at that list, it seems that almost 90 or over 90 percent of the country's population would be qualified to be in the party list system because one of the general qualifications is that the member must be a holder of a secondary degree. **So, what I am saving is that the party list system can be designed in order to allow for an opening up of the system. My reservation with respect to what I would call a reserve seat system where we automatically exclude some sectors is the difficulty to make it operational.** At this point in time in our country, this is already a novel idea as it is. I believe that all of us really are not yet experts on this and we are still learning through the process. Thus, for us to introduce complications at this time might bring difficulty in implementation.

We can put a cap on the number of seats that a party or organization can have in the system consistent with pur objective of opening it up. But to put the complication by saying, for instance,

that UNIDO can register provided that 10 or 15 of its candidates must be farmers, laborers, urban poor and so on, I think would be very difficult to implement.

MR. OPLE. **So, Commissioner Monsod grants that the basic principle for a party list system is that it is a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties, but he is concerned that the mechanics might be inadequate at this time.**

MR. MONSOD. Not only that; talking about labor, for example — I think Commissioner Tadeo said there are 10 to 12 million laborers and I understand that organized labor is about 4.8 million or 4.5 million — if the laborers get together, they can have seats. With 4 million votes, they would have 10 seats under the party list system.

MR. OPLE. So, the Commissioner would favor a party list system that is open to all and would not agree to a party list system which seeks to accommodate, in particular, the so-called sectoral groups that are predominantly workers and peasants?

MR. MONSOD. If one puts a ceiling on the number that each party can put within the 50, and I am assuming that maybe there are just two major parties or three at the most, then it is already a form of opening it up for other groups to come in. All we are asking is that they produce 400,000 votes nationwide. **The whole purpose of the system is precisely to give room for those who have a national constituency who may never be able to win a seat on a legislative district basis. But they must have a constituency of at least 400,000 in order to claim a voice in the National Assembly.**[20] (Emphasis and underscoring supplied)

After much deliberation, however, a compromise was reached which was reflected in the wording of Section 5(2), Article VI of the Constitution.[21] The compromise was that half of the seats

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[20] II RECORD, CONSTITUTIONAL COMMISSION 258-259 (July 25, 1986).

[21] (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

in the party-list system would be reserved for the marginalized sectors, but the "reserved system" persisted only for three consecutive terms after the ratification of the Constitution. In the wisdom of the framers, permanently reserving seats for the representatives of the marginalized sector would make it seem that the seats are being handed to the sectors on a silver platter.[22] Thus, to place the representatives of the marginalized sectors on equal footing with district representatives, the framers thought it would be best to not permanently reserve seats for them, and require them to participate in the elections side by side with other parties.[23] In recognition, however, of their relative disadvantage in terms of political power, the Constitution reserved seats for them for three consecutive terms to allow them, in the interregnum, "to become more self-reliant, to be able to forge horizontal links and coalitions with other sectors who are in search of new political values and a new political culture x x x that will provide countervailing force against elite party politics."[24]

While the proposal to perpetually limit the party-list system to the marginalized sectors was not adopted, what remains clear is that the objective of the system was to encourage **diversity of representation** in the HOR by allowing parties who may not be able to garner enough votes in a district, but may be able to get enough votes on a nationwide scale.

Thus, in enacting RA 7941 or the Party-List Act, Congress had in mind the very same objectives of the Constitution. In fact, the Explanatory Note of House Bill No. 3043, the progenitor bill of RA 7941, states:

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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.

[22] II RECORD, CONSTITUTIONAL COMMISSION 551-598 (August 1, 1986).

[23] Id.

[24] Id. at 577.

The above-quoted provision of the constitution [referring to Article VI, Section 5(1) and (2) of the Constitution] defines the basic aim of a representative government — **to attain the broadest possible representation of all interests in the country's law-making body. The introduction of the party-list system under the 1987 Constitution is geared towards the achievement of this goal.**

Under the party-list system, each voter has two separate votes. The first vote which is cast for one of the candidates of a legislative district. The second vote is for one of the party-lists put up by the duly accredited parties by the Commission on Elections. The distribution of party-list seats is computed according to the Niemeyer method to determine the number of seats established for each accredited party.

The party-list system is intended to democratize representation in the House of Representatives by enabling parties, organizations or coalitions which are not strong enough to get a seat under the legislative district system to acquire proportional representation depending on the number of votes garnered. The under- or over-representation of certain sectors is minimized because unlike the plurality system which tend to be dominated by major political parties on account of its majority-votes-rule, the party-list system, through its proportional method of allocating seats, makes it possible for seats to be granted to a party even if it fails to achieve a majority of votes. Ample representation of basic sectors in the legislature with the end in view of enacting laws reflective of their needs and aspirations would indeed be a significant move towards a true democracy.

Approval of this bill is, therefore, earnestly urged.[25] (Emphasis and underscoring supplied)

As well, Representative Tito R. Espinosa (Representative Espinosa), in his Sponsorship Speech for House Bill No. 3043, stated:

In keeping with the policy of the State to evolve a **full and open party system in order to attain the** x x x **broadest possible representation of group interest in the government's lawmaking body,** the Committee on Suffrage and Electoral Reforms submits

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[25] 9TH CONGRESS 4TH REGULAR SESSION, 3-4 (September 28, 1992).

before you today House Bill No. 3043 which provides for the election of party-list representatives through the party-list system.

House Bill No. 3043 if enacted, will broaden the horizons for the institutionalization of democracy in the Philippine politics. For one, this vital legislative measure strengthens **democratic pluralism that gives premium on true grassroots representation. It encourages the free battle and market of ideas regardless of creed, race or ideology** which in the process would pave the way to the transformation of our electoral and party system into one that is based on issues and platforms and programs of actions not of personalities and platitudes.

Eventually, the integration of the party-list system or the active participation of political parties, coalitions and sectoral organization in the mainstream of Philippine political arena will significantly aid the political maturity of the Filipino people. Once fully realized, the adoption of the system coupled with the people's unswerving commitment and determination to the cause of democracy will signal the end or the withering away of culture of cult, the politics of patronage, of guns, goons and gold and enter the era of political culture that is liberating and humanizing.

Mr. Speaker, distinguished colleagues, I sincerely believe that the adoption of a party-list system among other electoral reform measures is a radical step that transcends beyond reform in the electoral processes. If enacted, this vital piece of legislation will serve as an effective tool in empowering our people who have been historically made powerless by a flawed and iterant electoral system and therefore unable to intervene on policies that often intrude on rather than improve their lives.

With the institutionalization of the party-list, there is a great hope that the broad masses of our people will no longer be marginalized from the mainstream of decision making and governance.

In view of the foregoing, Mr. Speaker, distinguished colleagues, I therefore call upon this august Chamber to take a bold step in the name of democracy and in the name of the Filipino people whom we have vowed to serve by way of approving on second reading and eventually into law House Bill No. 3043.

Thank you, Mr. Speaker.[26] (Emphasis and underscoring supplied)

During the interpellations, Representative Espinosa confirmed that the objectives of the law are "to institutionalize a multiparty system in the Philippines and to equalize political power among the various political sectoral parties and organizations."[27] Similar to what happened in the deliberations of the constitutional provisions regarding the party-list system, the discussion on whether the system ought to be reserved to marginalized sectors once again came up. In clarifying that the system is not reserved to marginalized sectors, Representative Espinosa explained:

MR. JABAR. There is a phrase here under Section 2, Declaration of Principles, line 7, the phrase "all parties", may we be clarified as to what are the parties envisioned or contemplated under this particular section, Mr. Speaker?

MR. ESPINOSA. Yes, Mr. Speaker, Your Honor. All parties would refer to existing political parties and all organizations, group of persons or coalition groups.

MR. JABAR. In other words, all existing registered political parties, like the Lakas-NUCD-UMDP, the LDP, the NP, LP, PDP-Laban and so many other registered political parties can also participate in the party-list election. Am I correct, Mr. Speaker, Your Honor?

MR. ESPINOSA. That is right, Mr. Speaker, Your Honor.

MR. JABAR. Do you agree with me that in the 1987 Constitution, this particular provision on party-list system is being encouraged in order for the sectoral groupings or sectoral organizations to have equal representation or proportional representation in the House of Representatives?

MR. ESPINOSA. Not only equal, but the intention was to...

MR. JABAR. Proportional representation.

MR. ESPINOSA. **Not only proportional, but added to that is to attain the broadest possible representation, not just**

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[26] House 9TH CONGRESS 65-67 (November 8, 1994).

[27] HOUSE 9TH CONGRESS 126 (November 22, 1994).

proportional, but the broadest possible representation.[28] (Emphasis and underscoring supplied)

Clear from all the foregoing, therefore, is that the spirit that animates the party-list system is the hope that the widest range of ideas, beliefs, backgrounds, ideologies, and interests are represented in the HOR as much as possible.

A straightforward formula better reflects the spirit behind the party-list system

Proceeding from the above discussion, I find that the three-tier formula expressed in *BANAT* fails to reflect the intent behind the introduction of the party-list system. Section 2 of RA 7941 states that 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.**"[29]

It is my considered view that these objectives will be best achieved by a straightforward formula in which allotted seats are determined by simply multiplying the percentage of votes garnered by the PLO with the APLS.

Based on this formula, the party-list seats are determined as follows:

Step One. Ranking of PLOs. All PLOs that participated in the election shall be ranked from the highest to the lowest based on the number of votes they each received during the election.

Step Two. Determination of percentage of votes per PLO in proportion to Total Votes of all PLOs. After the ranking, the percentage of votes that each PLO garnered shall then be computed as follows:

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[28] Id. at 152-153.

[29] Emphasis and underscoring supplied.

$$\frac{\text{Total votes garnered by PLO}}{\text{Total votes cast for the party-list system}} = \text{Percentage of votes garnered}$$

Step Three. Allocation of seats for two percenters. The seats allotted to each of the qualified PLOs (the two percenters) shall then be ascertained using the following formula:

$$\text{Percentage of votes garnered} \times \text{APLS} = \text{Seat/s for the concerned qualified PLO}$$

Since the prevailing law and rules do not allow for fractional representation, the product obtained herein shall be rounded down to the nearest whole integer. The three (3) seat limit shall likewise be applied.

This step does away with the three-tier allocation in *BANAT*. In particular, it does away with the first round of allocation. In *BANAT*, the Court created two rounds of allocation because of its interpretation that "[t]he first clause of Section 11(b) of R.A. No. 7941 [which] states that 'parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each' xxx guarantees a seat to the two-percenters."[30] Thus, it created a first of two rounds of allocation where the two percenters would be given one (1) seat each.

However, this separate round of allocation for the two percenters is not supported nor required by the letter of the law. **There is nothing in the text of the law which requires separate rounds of seat allocation.** All that the law requires is that those who garner 2% of the votes be guaranteed one (1) seat each. To illustrate, the straightforward formula still satisfies the requirements of Section 11(b), even without the "first round of allocation," because the APLS will always be more than fifty (50) seats in light of the current number of congressional districts. Thus, all PLOs who obtained at least two percent (2%)

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[30] Supra note 1, at 240.

of the total votes cast in the party-list system are, in reality, guaranteed one (1) seat each — **even in the absence of a separate round "ensuring" them one (1) seat.**

Meanwhile, the second requirement of Section 11(b) — that the "additional seats" for those who obtained more than two percent of the total votes cast in the party-list system shall be in proportion to the total number of votes it obtained — is also complied with because the computation of additional seats for each of the two percenters is in direct proportion to the total number of votes they actually garnered.

Step Four. Allocation of remaining seats. If the APLS have not been fully exhausted after allocating seats to the two percenters (but still enforcing the 3 seat limit) — as is what is expected to happen because, as mentioned the APLS will always be more than fifty seats — the remaining seats shall then be allocated (one (1) seat each) to the parties next in rank (*i.e.*, those who did not get at least two percent of the total number of votes cast), until all the APLS are completely distributed.

During the deliberations, the *ponente* argued that the adoption of a straightforward formula would render nugatory the first clause of Section 11(b), RA 7941 — which provides that "[t]he parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each" — and would amount to judicial legislation. In her Separate Concurring Opinion, Senior Associate Justice Estela M. Perlas-Bernabe opines that the straightforward formula fuses together the character of the guaranteed seats and additional seats so that the separate provisions on guaranteed and additional seats would be rendered redundant and the advantageous position gained by the two percenters would be removed.

Respectfully, this is a wrong understanding of the straightforward formula. Under the straightforward formula, the two percenters will not be prejudiced or divested of their preferred status as they will still be entitled to a guaranteed

seat as provided under the law. The additional seats, which are not guaranteed, will then be determined based on the proportion of their votes. As explained above, the first round of allocation of party-list seats for the two percenters is **not supported nor required by the letter of the law.** The law merely requires that PLOs which garnered 2% of the votes shall be entitled to one seat and that additional seats for those which garnered more than 2%, shall be computed in proportion to their number of votes.

It is, in fact, the *BANAT* formula that constitutes judicial legislation, and not the straightforward formula outlined above which, to repeat, is the more literal and hamionious interpretation of the plain text of Section 11 (b) of RA 7941. As earlier discussed, the straightforward formula complies with the requirement of the first clause in Section 11(b) which guarantees two percenters one seat each while also complying with the proportionality rule in the second clause as the computation of additional seats for the two percenters is in direct proportion to the total number of votes they actually garnered.

Most importantly, the straightforward formula is the formula more in accord with the declared policy of Section 2 of RA 7941 for the State to 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 **provide the simplest scheme possible.**

Allocation of Party-List Seats in the 2019 Elections based on the Straightforward Formula

Below is the tabulation of the party-list seats in the 2019 Elections applying the straightforward formula:

RANK	PARTY	TOTAL VOTES	PERCENTAGE OF VOTES GARNERED (TOTAL VOTES GARNERED/ TOTAL VOTE CAST)	PERCEN-TAGE OF VOTES GARNERED x APLS (61)	TOTAL SEATS OF THE QUALIFIED PARTY-LIST (SUBJECT TO THE 3 SEAT LIMIT)	REMAINING APLS DISTIBUTED TO NON-TWO PERCENTERS
1	ACT-CIS	2,651,987	9.5105	5.8014	3	
2	BAYAN MUNA	1,117,403	4.0072	2.4444	2	
3	AKO BICOL	1,049,040	3.7621	2.2949	2	
4	CIBAC	929,718	3.3341	2.0338	2	
5	ANG PROBINSYANO	770,344	2.7626	1.6852	1	
6	1PACMAN	713,969	2.5604	1.5619	1	
7	MARINO	681,448	2.4438	1.4907	1	
8	PROBINSYANO AKO	630,435	2.2609	1.3791	1	
9	SENIOR CITIZENS	516,927	1.8538			1
10	MAGSASAKA	496,337	1.7800			1
11	APEC	480,874	1.7245			1
12	GABRIELA	449,440	1.6118			1
13	AN WARAY	442,090	1.5854			1
14	COOP NATCCO	417,285	1.4965			1
15	ACT TEACHERS	395,327	1.4117			1
16	PHILRECA	394,966	1.4164			1
17	AKO BISAYA	394,304	1.4140			1
18	TINGOG SINIRANGAN	391,221	1.4030			1
19	ABONO	378,204	1.3563			1
20	BUHAY	361,493	1.2964			1
21	DUTERTE YOUTH	354,629	1.2718			1
22	KALINGA	339,665	1.2181			1
23	PBA	326,258	1.1700			1
24	ALONA	320,000	1.1476			1
25	RECOBODA	318,511	1.1422			1
26	BH	288,752	1.0355			1
27	BAHAY	281,793	1.0106			1

28	CWS	277,940	0.9967			1
29	ABANG LINGKOD	275,199	0.9869			1
30	A TEACHER	274,460	0.9843			1
31	BHW	269,518	0.9665			1
32	SAGIP	257,313	0.9228			1
33	TUCP	256,057	0.9183			1
34	MAGDALO	253,536	0.9092			1
35	GP	249,484	0.8947			1
36	MANILA TEACHERS	249,416	0.8945			1
37	RAM	238,150	0.8540			1
38	ANAKALUSUGAN	237,629	0.8522			1
39	AKO PADAYON	235,112	0.8432			1
40	AAMBIS OOWA	234,552	0.8411			1
41	KUSUG TAUSUG	228,224	0.8185			1
42	DUMPER PTDA	223,199	0.8004			1
43	TGP	217,525	0.7801			1
44	PATROL	216,653	0.7770			1
45	AMIN	212,323	0.7614			1
46	AGAP	208,752	0.7486			1
47	LPGMA	208,219	0.7467			1
48	OFW FAMILY	200,881	0.7204			1
49	KABAYAN	198,571	0.7121			1
50	DIWA	196,385	0.7043			1
51	KABATAAN	195,837	0.7023			1
52	AKMA-PTW	191,804	0.6878			1
53	SBP	180,535	0.6474			1
54	ANGKLA	179,909	0.6452			1
55	AKBAYAN	173,356	0.6217			1
56	WOW PILIPINAS	172,080	0.6171			1
		TOTAL				61

TOTAL VOTES CAST FOR PARTY-LIST SYSTEM IN THE 2016 ELECTIONS	27,884,790
ALLOCATED PARTY-LIST SEATS (APLS)	61

Based on the foregoing table, *AKMA-PTW, SBP, ANGKLA, AKBAYAN,* and *WOW PILIPINAS,* will now be entitled to one seat each, increasing the number of participating PLOs in the HOR from fifty-one (51) to fifty-six (56). Clearly, in contrast to the formulas in *BANAT* and *Veterans,* the straightforward formula is **not only simpler (as is mandated by the law), but more importantly, allows the broadest possible representation of interests in the legislature.**

Due process issues in adopting the straightforward formula

I acknowledge that the straightforward formula may not be immediately applied in this case because of the requirements of due process. As the adoption of the straightforward formula will not only affect petitioners but also other qualified PLOs which have already been proclaimed by the COMELEC, and whose representatives have already assumed office, due process mandates that all qualified PLOs be heard on the matter. Indeed, in *Cipriano v. Commission on Elections*,[31] the Court held:

> It is therefore clear that the law mandates that the candidate must be notified of the petition against him and he should be given the opportunity to present evidence in his behalf. This is the essence of due process. **Due process demands prior notice and hearing. Then after the hearing, it is also necessary that the tribunal shows substantial evidence to support its ruling. In other words, due process requires that a party be given an opportunity to adduce his evidence to support his side of the case and that the evidence should be considered in the adjudication of the case.** In a petition to deny due course to or cancel a certificate of candidacy, since the proceedings are required to be summary, the parties may, after due notice, be required to submit their position papers together with affidavits, counter-affidavits, and other documentary evidence in *lieu* of oral testimony. When there is a need for clarification of certain matters, at the discretion of the Commission *en banc* or Division, the parties may be allowed to cross-examine the affiants.[32] (Emphasis supplied)

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[31] G.R. No. 158830, August 10, 2004, 436 SCRA 45.

[32] Id. at 55.

Here, if the straightforward formula is adopted, there will be party-lists, namely *Bayan Muna, Ang Probinsiyano,* 1PAC MAN, MARINO, and *Probinsiyano Ako,* which will be divested of one of their seats even though they were not impleaded nor given the opportunity to be heard on the matter. It will therefore be offensive to their right to due process that one of their representatives of their current seat in the HOR be divested through this case.

Thus, should the straightforward formula be adopted, it would have to be applied by the Court and the COMELEC in succeeding elections, and not the election subject of this case. This aligns with the general rule that when the Court adopts a new view or doctrine in its interpretation of the laws, it has to be applied prospectively so as not to prejudice those who have relied on the abandoned interpretation. In other words, "when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith."[33] This is the rule because "[t]o hold otherwise would be to deprive the law of its quality of fairness and justice, for, then, there is no recognition of what had transpired prior to such adjudication."[34]

In this connection, considering that the COMELEC simply followed the *BANAT* formula in issuing NBC Resolution No. 004-19, then the Court cannot declare COMELEC to have gravely abused its discretion. The situation, should the straightforward formula be adopted, would be similar to the Court's ruling in *Atong Paglaum, Inc. v. Commission on*

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[33] *Columbia Pictures, Inc. v. Court of Appeals,* G.R. No. 110318, August 28, 1996, 261 SCRA 144, 168; see also: *Benzonan v. Court of Appeals,* G.R. Nos. 97973, 97998, January 27, 1992, 205 SCRA 515, 528, *Unciano Paramedical College, Inc. v. Court of Appeals,* G.R. No. 100335, April 7, 1993, 221 SCRA 285, 292, and *Carpio-Morales v. Court of Appeals,* G.R. Nos. 217126-27, November 10, 2015, 774 SCRA 431,552, all citing *People v. Jabinal,* G.R. No. L-30061, February 27, 1974, 55 SCRA 607 612.

[34] *De Jesus v. Aquino,* G.R. Nos. 164662 & 165787, February 18, 2013, 691 SCRA 71, 89.

Elections[35] where the Court laid down a new doctrine and thus stated:

> **We cannot, however, fault the COMELEC for following prevailing jurisprudence in disqualifying petitioners. In following prevailing jurisprudence, the COMELEC could not have committed grave abuse of discretion. However, for the coming 13 May 2013 party-list elections, we must now impose and mandate the party-list system actually envisioned and authorized under the 1987 Constitution and R.A. No. 7941.** In *BANAT*, this Court devised a new formula in the allocation of party-list seats, reversing the COMELEC's allocation which followed the then prevailing formula in *Ang Bagong Bayani*. In *BANAT*, however, the Court did not declare that the COMELEC committed grave abuse of discretion. **Similarly, even as we acknowledge here that the COMELEC did not commit grave abuse of discretion, we declare that it would not be in accord with the 1987 Constitution and R.A. No. 7941 to apply the criteria in *Ang Bagong Bayani and BANAT* in determining who are qualified to participate in the coming 13 May 2013 party-list elections.** For this purpose, we suspend our rule that a party may appeal to this Court from decisions or orders of the COMELEC only if the COMELEC committed grave abuse of discretion.[36] (Emphasis and underscoring supplied)

In light of the foregoing considerations, I concur with the *ponencia* only insofar as it dismisses the petitions, but with the caveat that the allocation of party-list seats laid down in *BANAT* should be abandoned as it fails to reflect the spirit and intent of the law. Instead, the Court should adopt a straightforward formula as discussed above, which is more in accord with the objective of the party-list system.

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[35] G.R. Nos. 203766, 203818-19, 203922, 203936, 203958, 203960, 203976, 203981, 204002, 204094, 204100, 204122, 204125, 204126, 204139, 204141, 204153, 204158, 204174, 204216, 204220, 204236, 204238, 204239, 204240, 204263, 204318, 204321, 204323, 204341, 204356, 204358,204359, 204364, 204367, 204370, 204374, 204379, 204394, 204402, 204408, 204410, 204421, 204425, 204426, 204428, 204435, 204436, 204455, 204484, 204485, 204486 & 204490, April 2, 2013, 694 SCRA 477.

[36] Id. at 570.

CONCURRING AND DISSENTING OPINION

LOPEZ, *J.*:

I concur with the *ponencia* to maintain the *BANAT* Formula,[1] which recognizes the prerogative of Congress to formulate the manner of filling-up the party-list system while at the same time ensuring that said prerogative remains within constitutional bounds.

Also, I agree that there is no double-counting of votes because the allocation of seats is determined using different formulas based on substantial distinctions and different levels of proportion. The first round allocating one guaranteed seat requires the determination of proportion of votes obtained by a party in relation to the number of votes cast in the Party-List System (PLS). It refers to the threshold mentioned in Republic Act (RA) No. 7941, Section 11 (b) that parties with at least 2% of the votes will have a guaranteed seat. The second round (first part) refers to the proportion of votes obtained by parties garnering at least 2% of the votes cast in relation to the votes cast for the PLS multiplied by the number of remaining seats. The second round (second part) refers to the proportion of votes obtained by the parties relating to the fractional value of their votes represented by decimal values (*e.g.* 0.78, 0.79, 0.80 *etc.*). The purpose of the second round is to completely fill-up the 20% allocation of seats in the PLS.

However, I submit that the allocation of seats to parties receiving fractional seats (second round, second part) as illustrated in *BANAT* should be modified to conform with the principle of proportionality mandated by the law.

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[1] *Barangay Association for National Advancement and Transparency (BANAT) v. COMELEC,* 604 Phil. 131 (2009).

I.

RA No. 7941[2] provides the manner on how seats in the PLS of Representation are allocated:

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

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

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

Interpreting the above-quoted provision, *Veterans Federation Party v. Commission on Elections*[3] identified four inviolable parameters, which must be observed in the allocation of seats:

To determine the winners in a Philippine-style party-list election, the Constitution and Republic Act (RA) No. 7941 mandate at least four inviolable parameters. These are:

First, the twenty percent allocation — the combined number of *all* party-list congressmen shall not exceed twenty percent of the total membership of the House of Representatives, including those elected under the party list.

Second, the two percent threshold — only those parties garnering a minimum of two percent of the total valid votes cast for the

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[2] An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor, Republic Act No. 7941 (1995).

[3] 396 Phil. 419 (2000).

party-list system are "qualified" to have a seat in the House of Representatives;

Third, the three-seat limit — each qualified party, regardless of the number of votes it actually obtained, is entitled to a maximum of three seats; that is, one "qualifying" and two additional seats.

Fourth, proportional representation — the additional seats which a qualified party is entitled to shall be computed **"in proportion to their total number of votes."**[4] (Emphasis supplied.)

In determining proportionality for additional seats, *Veterans* introduced the First Party Rule or a form of proportionality in relation to the number of votes obtained by the party garnering the highest number of votes. Later, *BANAT v. COMELEC*[5] revisited the determination of proportionality and adopted with modification the Niemeyer Formula earlier proposed by then Justice Mendoza in *Veterans*. In his *Dissenting Opinion* in *Veterans*, Justice Mendoza explained why the Niemeyer Formula may be adopted in the Philippine PLS:

Rep. Tito R. Espinosa, co-sponsor of the bill which became R.A. No. 7941, explained that the system embodied in the law was largely patterned after the mixed party-list system in Germany. Indeed, the decision to use the German model is clear from the exchanges in the Constitutional Commission between Commissioners Bias F. Ople and Christian S. Monsod. The difference between our system and that of Germany is that whereas in Germany half (328) of the seats in the Bundestag are filled by direct vote and the other half (328) are filled through the party-list system, in our case the membership of the House of Representatives is composed of 80 percent district and 20 percent party-list representatives.

The party-list system of proportional representation is based on the Niemeyer formula, embodied in Art. 6(2) of the German Federal Electoral Law, which provides that, in determining the number of seats a party is entitled to have in the Bundestag, seats should be multiplied by the number of votes obtained by each party and then the product should be divided by the sum total

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[4] Id. at 424.

[5] *Supra* note 1.

of the second votes obtained by all the parties that have polled at least 5 percent of the votes. First, each party receives one seat for each whole number resulting from the calculation. The remaining seats are then allocated in the descending sequence of the decimal fractions. The Niemeyer formula was adopted in R.A. No. 7941, §11. As Representative Espinosa said:

> MR. ESPINOSA: [T]his mathematical computation or formula was patterned after that of Niemeyer formula which is being practiced in Germany as formerly stated. As this is the formula or mathematical computation which they have seen most fit to be applied in a party-list system. This is not just a formula arrived at because of suggestions of individual Members of the Committee but rather a pattern which was already used, as I have said, in the assembly of Germany.[6] (Emphasis supplied.)

Applying the Niemeyer Formula in Section 11 (b) of RA No. 7941 as worded relating to the additional seats should have been mathematically reduced as follows:

$$\textit{Additional Seats} = \left(\frac{\textit{Total Votes of Parties}}{\textit{Total} \text{ Votes of Parties } \textbf{\textit{receiving at least 2\%}}} \right) * \textit{remaining seats}$$

If the formula is reduced into an analogy, it can be likened to a pie to be distributed only to the 2 percenters based on the number of votes they received.[7] The number of seats to be allocated to the party is proportional to the number of votes it received. This is the clear import of the provision worded as follows: *"[p]rovided, [t]hat those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number of votes."*

Unlike in *Veterans* wherein the 20% PLS membership was considered merely as a ceiling, *BANAT* held that the 20% must be filled-up. Thus, *BANAT* partly modified Section 11(b) of RA No. 7941 and removed the limitation that only those satisfying the 2% threshold should be allocated with "additional" seats.

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[6] *Id.* at 474-495.

[7] *Veterans Federation Party v. Commission on Elections*, *supra* note 3.

BANAT observed that the continuous operation of the 2% in the determination of "additional" seats presents a mathematical impossibility to fulfill the 20% membership. This is only true because Section 11(b) provides that there must be a 3-seat limit. Without the 3-seat limit, the additional seats in the 2019 National and Local Elections (NLE) should have been as follows:

RANK	**PARTY-LIST**	**VOTES GARNERED**	**% OF TOTAL VOTES IN RELATION TO THE TOTAL VOTES CAST FOR THE PLS**	**FIRST ROUND OF ALLOCATION** (Parties garnering at least 2% is given 1 guaranteed seat)	**% OF TOTAL VOTES X 53 REMAINING SEATS** (The divisor should be the total number of votes received by those garnering at least 2%)	**SECOND ROUND** (Integer less the decimal value)	**FRACTIONAL SEATS** (Remaining decimal value)
1	ANTI-CRIME AND TERRORISM COMMUNITY INVOLVEMENT AND SUPPORT, INC.	2,651,987	9.51	1	16.45	16	0.45
2	BAYAN MUNA	1,117,403	4.01	1	6.93	6	0.93
3	AKO BICOL POLITICAL PARTY	1,049,040	3.76	1	6.50	6	0.50
4	CITIZENS BATTLE AGAINST CORRUPTION	929,718	3.33	1	5.76	5	0.76
5	ALYANSA NG MGA MAMAMAYANG PROBINSIYANO	770,344	2.76	1	4.77	4	0.77
6	ONE PATRIOTIC COALITION OF MARGINALIZED NATIONALS	713,969	2.56	1	4.42	4	0.42

7	MARINO SAMAHAN NG MGA SEAMAN, INC.	681,448	2.44	1	4.22	4	0.22
8	PROBINSIYANO AKO	630,435	2.26	1	3.91	3	0.91
				8		48	
TOTAL VOTES OF 2 PERCENTERS		8,544,344					

Either the removal of the 2% threshold or the 3 seat-limit could have served the purpose of filling-up the 20% membership. Instead, *BANAT* held that Section 11(b) should include the non-two percenters in the equation of allocating "additional" seats otherwise it is mathematically impossible to fill-up the 20% membership. Mathematically, the modification is reflected as follows:

$$\textit{Additional Seats} = \left(\frac{\textit{Total Votes of Parties}}{\textit{Total Votes of } \textbf{\textit{all Parties}}} \right) * \textit{remaininq seats}$$

Going back to the analogy of a pie and the illustration above, all parties may now share the remaining number of seats after the first round by adjusting the divisor. Applying this adjustment and going back to the previous illustration, the divisor is no longer 8,544,344 but is now 27,884,890 (total votes cast for the PLS) because all parties will now share the pie of additional seats subject only to the number of remaining seats. The inclusion of the non-two percenters is not to put them on equal footing with the 2 percenters and not to remove the distinction that RA No. 7941 accorded to it but simply a way to fulfill the constitutional provision that the 20% membership should be filled-up.

On this score, I submit that the equal protection clause is not violated because there is no double-counting of votes. The first and second rounds of allocation of seats serve different purposes and involve different formulas involving different levels

of proportions. The petitioners' claim of "double counting" presupposes that there is singularity in the formula used in allocating seats.

The first round gives flesh to the threshold requirement and in consonance with Section 11 (b) — "*[t]he parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one seat each,"* which is mathematically determined by dividing the total votes of a party and the total votes received by all of the parties without regard to the available seats. The second round is for fulfilling the constitutional provision of 20% membership determined proportionally and mathematically in the formula described above. Accordingly, petitioners cannot simply claim that there is double-counting of votes without taking into consideration how seats are allocated. The petitioners' framework presupposes that the seats are allocated using the same formula and level of proportionality. A quick comparison of the number of votes needed to obtain a seat (first round and second round) will readily show that they are not equal. More votes are needed to garner a seat in the first round than in the second round. As discussed in the *ponencia*, petitioners' framework put the 2 percenters at a serious disadvantage. The difference can be seen by comparing the formulas between the first and second round:

FIRST ROUND (1guaranteed seat is given if 2% threshold is satisfied)	**SECOND ROUND** (Additional seats are given depending on the product of the variables involved)
$\left(\frac{\textit{Total votes of the Party}}{\textit{Total Votes of } \textbf{\textit{all Parties}}}\right)$	$\left(\frac{\textit{Total votes of the Party}}{\textit{Total Votes of } \textbf{\textit{all Parties}}}\right)$ **remaining seats*

Be that as it may, the proper treatment of fractional seats should be modified.

II.

The *ponencia* summarized the *BANAT* Formula as follows:

Round 1:

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

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

x x x x

Round 2, Part 1:

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

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

x x x x

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

x x x x

Round 2, Part 2:

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

x x x x[8]

BANAT correctly applied the Niemeyer Formula to determine proportionality in the remaining seats after the first round. However, it is silent on how fractional seats represented by decimal values are to be treated. As held in *VETERANS* and

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[8] *Ponencia,* pp. 18-19.

BANAT, the fractional seats should not be rounded-off in the absence of an enabling law. *BANAT* recognized that there will be fractional seats and introduced the second round (second part) and assigned one seat each to the parties based on their rankings until the seats are exhausted.

However, as can be implied in the illustration in *BANAT*, it completely disregarded the 2 percenters' fractional seats in the second round (second part) and failed to address the question why some 2 percenters, which received a large fractional seat but did not reach the three-seat limit, were not awarded further additional seat. In footnote 31, *BANAT* merely stated that "*[t]he product of the percentage and the remaining available seats of all parties ranked nine and below is less than one.*"

As can be implied from the illustration in *BANAT*, the second round is based on two different formulas of proportionality. The second round (first part) used the Niemeyer Formula while the second round (second part) used the formula used in the first round to rank the non-two percenters including parties, which did not receive a seat during the second round (first part). This made it appear that the "fractional seats" of the non-two percenters are automatically larger than those of the 2 percenters, which justify the exclusion of the 2 percenters in the allocation of seats in the second part.

The same concern highlights the motion for reconsideration in *BANAT*.[9] In dealing with this issue, *BANAT* (MR) explained:

> In the table above, C1BAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. CIBAC's 2.81% (from the percentage of 4.81% less the 2% for its guaranteed seat) has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. ClBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying ClBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional

[9] 604 Phil. 131 (2009) & 609 Phil. 751 (2009).

seats become material only in the second step of the second round of seat allocation to determine the ranking of parties. Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC.

BANAT (MR) explained this by stating that 2% is deducted from parties qualified to garner a "guaranteed" seat in determining whether they are still qualified to obtain a seat in the second round (second part). The *ponencia* adopted this explanation:

Surely, *BANAT* instructs that 2% shall be deducted from the percentage votes of party-lists that obtained a guaranteed seat. This deduction, however, is done in the second step of the second round of seat allocation, not in the first step of the second round as petitioners would have the Court believe. Hence, the application of *BANAT*, as earlier outlined in this Decision, stands.[10]

I disagree on this point. The second round (second part) should still consider the fractional value of seats obtained by the 2 percenters by simply removing the integer representing the credited seats. The absurdity of disregarding the fractional seats of the 2 percenters is adequately illustrated by simply looking at parties ranked 3 and 51:

RANK	PARTY	VOTES GARNERED	% OF TOTAL VOTES	FIRST ROUND	% OF VOTES X 53 REMAINING SEATS	SECOND ROUND (FIRST PART)	SECOND ROUND (SECOND PART)	TOTAL NUMBER OF SEATS
3	AKO BICOL POLITICAL PARTY	1,049,040	3.76	1	1.9928 (**Note:** 0.9928 fractional seat should still be considered in the second round, second part)	1	0	2
51	KABATAAN PARTY LIST	195,837	0.70	0	Not specified but using the Niemeyer Formula (0.371)	0	1	1

[10] *Ponencia*, p. 31.

It would be clear that AKO BICOL still has 0.9928 fractional seat, which is higher than the 0.371 of KABATAAN. However, it was no longer considered in the second round, second part. This amply demonstrates why AKO BICOL was not awarded a seat even if it has not yet reached the three-seat limit. The seat was instead given to a party receiving a lower number of votes because the fractional seat of 0.9928 was no longer considered. This is contrary to the principle of proportionality. This could have been avoided if the Niemeyer Formula was applied to all parties to determine the proportion of their votes in relation to the votes cast for the PLS in allocating the "additional" seats.

I submit that the second round, second part of allocation of seats discussed in *BANAT* should be understood as the distribution of remaining seats to parties receiving seats with fractional value. In order to determine each of the parties' proportional share, the Niemeyer Formula should be uniformly applied to all parties in the second round. After the additional seats represented by whole integers have been distributed in the second round (first part), the parties should then be ranked again in a descending order based on their fractional seats to determine which of them will receive the remaining seats until they are exhausted. This is the more logical approach in treating fractional seats without resorting to rounding-off by recognizing the proportion of votes received by the parties. *BANAT* already implemented this in the second round (second part) but erred not to consider the fractional seats of the 2 percenters.

This adequately explains why some 2 percenters cannot have the maximum 3 seats because the size of their fractional seats may be lower than some of the non-two percenters.

III.

The 2019 NLE have long been concluded, the winning party-list groups have already been declared, and their respective nominees have already taken an oath of and assumed office

before the House of Representatives. No restraining order was issued to prevent the National Board of Canvassers from executing its Resolution No. 004-19. Accordingly, the grant of this petition would necessarily alter the current composition of membership in the House of Representatives, which the Court must carefully consider.

Section 17, Article VI of the Constitution clearly provides that the House of Representatives shall have an electoral tribunal "which shall be the **sole judge** of all contests relating to the election, returns, and qualifications of their respective Members." The importance of observing the delineation of jurisdiction in election contests is recently highlighted in the case of *Reyes v. COMELEC, et al.*[11] where the Court had to clarify when the jurisdiction of the House of Representatives Electoral Tribunal (HRET) begins. According to *Reyes*, a candidate becomes a member of the house if the following requisites are met: (1) proclamation; (2) oath of office; and (3) assumption to office.[12]

The HRET's jurisdiction was recognized in *Rivera, et al. v. Commission on Elections, et al.*[13] relating to a petition for *quo warranto* against a Member of the House of Representatives:

> Concerning now the *quo warranto* petition, G.R. No. 213069, of CIBAC Foundation, the Court reminds the petitioners that under Section 17 of Article IV of the 1987 Constitution, the sole judge of all contests relating to the election, returns and qualifications of the Members of the House of Representatives is the House of Representatives Electoral Tribunal (HRET). Section 17 reads:
>
> **Section 17.** The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members, x x x

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[11] 712 Phil. 192 (2013) & 720 Phil. 174 (2013).

[12] *Id.* at 212.

[13] 785 Phil. 176 (2016).

Because the nominees of CIBAC National Council, Tugna and Gonzales, assumed their seats in Congress on June 26, 2013 and July 22, 2013, respectively, G.R. No. 213069 should be dismissed for lack of jurisdiction. It should be noted that since they had been already proclaimed, the jurisdiction to resolve all election contests lies with the HRET as it is the sole judge of all contests relating to the election, returns, and qualifications of its Members.

In a long line of cases and more recently in Reyes v. COMELEC, et al., the Court has held that once a winning candidate has been proclaimed, taken his oath, and assumed office as Member of the House of Representatives, the COMELEC's jurisdiction over election contests relating to his election, returns, and qualifications ends, and the HRET's own jurisdiction begins. Since the nominees of CIBAC National Council have already assumed their seats in Congress, the *quo warranto* petition should be dismissed for lack of jurisdiction.[14] (Emphasis supplied; citations omitted.)

Here, the adoption of petitioners' framework and the grant of their prayer would mean that the proclamation of some party-list nominees will be voided. In *ABC (Alliance for Barangay Concerns) Party List v. COMELEC, et al.*,[15] the Court reiterated that party-list nominees are the "elected members" of the House of Representatives, and thus covered by HRET's jurisdiction. Curiously, the issue of jurisdiction was not encountered in the cases of *Veterans v. COMELEC*[16] and *BANAT v. COMELEC*[17] In *Veterans*, the Court issued a *Status Quo Ante Orde*r to restrain the Commission on Elections in executing its Resolution of proclaiming the remaining party-list groups, to wit:

On January 12, 1999, this Court issued a Status Quo Order directing the Comelec "to CEASE and DESIST from constituting itself as a National Board of Canvassers on 13 January 1999 or on any other date and proclaiming as winners the nominees of the parties, organizations and coalitions enumerated in the dispositive portions

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[14] *Id.* at 193-194.

[15] 661 Phil. 452 (2011).

[16] *Supra* note 3.

[17] *Supra* note 1.

at its 15 October 1998 Resolution or its 7 January 1999 Resolution, until further orders from this Court."[18]

In *BANAT*, the seats reserved for party-list members were not completely filled-up because *Veterans* held that the 20% membership was merely a ceiling and because the *Veterans Formula* inherently prevented the completion of the 20% membership. Thus, HRET's jurisdiction was again not an essential issue.

However, we must be circumspect in deciding the instant case. While the Court has jurisdiction to pass upon the constitutionality of Section 11 (b) of RA No. 7941, it is the HRET that should pass upon the possible divestment of seats of Members of the House of Representatives. To reiterate, we did not issue a temporary restraining order or a *status quo ante order*. As a result, the nominees of the winning party-list became Members of the House of Representatives. Accordingly, I submit that any discussion on the alternative formula to allocate the seats should be applied prospectively.

FOR THESE REASONS, I vote to **DISMISS** the petition for lack of merit. Insofar as my discussion on how fractional seats are allocated, this should be applied prospectively.

DISSENTING OPINION

GESMUNDO, *J.*:

In this amended petition for *certiorari* and prohibition, petitioners' Angkla: *Ang Partido ng mga Marinong Pilipino (Angkla)* and *Serbisyo sa Bayan Party (SBP)* together with petitioner-in-intervention *Aksyon Magsasaka — Partido Tinig ng Masa (AKMA-PTM)* assail respondent Commission on Elections' (acting as the National Board of Canvassers; COMELEC, for brevity) resolution in NBOC Resolution

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[18] *Supra* note 3 at 434.

No. 004-19, alleging that the same was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

At the center of these petitions is another attack on the validity of Republic Act *(R.A.)* No. 7941 or the *Party-list System Act*, this time on equal protection grounds. The provision in question is highlighted in Section 11 (b) of the law which provides:

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

x x x x

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

The Antecedents

After the dust had settled in the 2019 Congressional and Local Elections, the COMELEC, acting as the National Board of Canvassers, promulgated NBOC Resolution No. 004-19 declaring the winning party list groups in the May 13, 2019 ELECTIONS. Following the formula provided by *BANAT v. COMELEC (BANAT)*[1] the resolution distributed 61 Congressional seats among the winning parties, organizations, and coalitions, thus:

Rank	Party-List	Acronym	Votes Garnered	% of Total Votes	Seats
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	9.51	3
2	Bayan Muna	BAYAN MUNA	1,117,403	4.01	3
3	Ako Bicol Political Party	AKO BICOL	1,049,040	3.76	2

[1] 604 Phil. 131 (2009).

4	Citizens Battle Against Corruption	CIBAC	929,718	3.33	2
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSIYANO	770,344	2.76	2
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	2.56	2
7	Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	2.44	2
8	Probinsyano Ako	PROBINSYANO AKO	630,435	2.26	2
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	1.85	1
10	Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	496,337	1.78	1
11	Association of Philippines Electric Cooperatives	APEC	480,874	1.72	1
12	Gabriela Women's Party	GABRIELA	449,440	1.61	1
13	An Waray	AN WARAY	442,090	1.59	1
14	Cooperative NATCCO Network	COOP-NATCCO	417,285	1.50	1
15	Act Teachers	ACT TEACHERS	395,327	1.42	1
16	Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	394,966	1.42	1
17	Ako Bisaya, Inc.	AKO BISAYA	394,304	1.41	1
18	Tingog Sinirangan	TINGOG SINIRANGAN	391,211	1.40	1
19	Abono	ABONO	378,204	1.36	1
20	Buhay Hayaan Yumabong	BUHAY	361,493	1.30	1
21	Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	354,629	1.27	1
22	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	1.22	1
23	Puwersa ng Bayaning Atleta	PBA	326,258	1.17	1
24	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	1.15	1
25	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	1.14	1
26	Bagong Henerasyon	BH (BAGONG HENERASYON)	288,752	1.04	1
27	Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	281,793	1.01	1
28	Construction Workers Solidarity	CWS	277,940	1.00	1
29	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.99	1
30	Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	274,460	0.98	1
31	Barangay Health Wellness	BHW	269,518	0.97	1

32	Social Amelioration and Genuine Intervention on Poverty	SAGIP	257,313	0.92	1
33	Trade Union Congress Party	TUCP	256,059	0.92	1
34	Magdalo Para Sa Pilipino	MAGDALO	253,536	0.91	1
35	Galing sa Puso Party	GP	249,484	0.89	1
36	Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	249,416	0.89	1
37	Rebulosyonaryong Alyansa Makabansa	RAM	238,150	0.85	1
38	Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	237,629	0.85	1
39	Ako Padayon Pilipino	AKO PADAYON	235,112	0.84	1
40	Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	234,552	0.84	1
41	Kusug Tausug	KUSUG TAUSUG	228,224	0.82	1
42	Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	223,199	0.80	1
43	Talino at Galing Pilipino	TGP	217,525	0.78	1
44	Public Safety Alliance for Transformation and Rule of Law, Inc.	PATROL	216,653	0.78	1
45	Anak Mindanao	AMIN	212,323	0.76	1
46	Agricultural Sector Alliance of the Philippines	AGAP	208,752	0.75	1
47	LPG Marketers Association, Inc.	LPGMA	208,219	0.75	1
48	OFW Family Club, Inc.	OFW Family	200,881	0.72	1
49	Kabalikat ng Mamamayan	KABAYAN	198,571	0.71	1
50	Democratic Independent Workers Association	DIWA	196,385	0.70	1
51	Kabataan Party List	KABATAAN	195,837	0.70	1
52	Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	191,804	0.69	0
53	Serbisyo sa Bayan Party	SBP	180,535	0.65	0
54	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.65	0
55	Akbayan Citizens Action Party	AKBAYAN	173,356	0.62	0
		TOTAL	27,884,790		61[2]

Believing that they are entitled to seats, Angkla and SBP filed this instant petition for *certiorari* and prohibition calling for the adjustment in the formula of allocating additional seats following *BANAT*. They claim that *BANAT* prohibited the double

[2] *Rollo*, pp. 144-150.

counting of votes but at the same time allowed it during the distribution of the additional seats. Crying foul over potential equal protection violations, they wanted the two percent (2%) of the votes already considered allocating a guaranteed seat to organizations who were able to reach the 2% threshold to be deducted from their total votes, for purposes of equal treatment. Petitioner-in-intervention echoes this claim as it will benefit from this change as well.

In the main, petitioners Angkla and SBP raises the following grounds:

I.

THE DOUBLE COUNTING OF VOTES IN THE LAST PARAGRAPH OF SECTION 11 OF THE PARTY-LIST SYSTEM ACT AND ITS IMPLEMENTATION IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION VIOLATES THE EQUAL PROTECTION CLAUSE AND IS A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

A. THERE IS NO SUBSTANTIAL DISTINCTION BETWEEN THE VOTES CAST FOR EACH PARTY-LIST. EVERY VOTE CARRIES EQUAL WEIGHT UNDER THE LAW.

B. THE DOUBLE COUNTING OF VOTES IS NOT GERMANE TO, AND DEFEATS THE PURPOSES OF THE LAW WHICH ARE TO PROMOTE PROPORTIONAL REPRESENTATION, ENABLE MARGINALIZED AND UNDERREPRESENTED FILIPINO CITIZENS TO CONTRIBUTE TO THE FORMULATION AND ENACTMENT OF APPROPRIATE LEGISLATION THAT WILL BENEFIT THE NATION AS A WHOLE, AND ATTAIN THE BROADEST POSSIBLE REPRESENTATION.

II.

TEN YEARS AGO, THIS HONORABLE COURT ALREADY REJECTED THE DOUBLE COUNTING OF VOTES IN ITS RESOLUTION DATED 8 JULY 2009 IN *BANAT V. COMELEC.*

BY ISSUING NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, COMELEC HAS ADAMANTLY REFUSED TO COMPLY WITH THIS HONORABLE COURT'S RESOLUTION.

III.

FURTHER, THE DOUBLE COUNTING OF VOTES, AS PROVIDED FOR IN THE LAST PARAGRAPH OF SECTION 11 AND IMPLEMENTED IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, IS A GRAVE ABUSE OF DISCRETION AS IT DISENFRANCHISES PARTY-LIST VOTERS, AND DEPRIVES THEM OF MUCH NEEDED CONGRESSIONAL REPRESENTATION.

IV.

LASTLY, THE DOUBLE COUNTING OF VOTES IN THE LAST PARAGRAPH OF SECTION 11 AND ITS SUBSEQUENT IMPLEMENTATION IN NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION IS A GRAVE ABUSE OF DISCRETION AS IT VIOLATES THE PRINCIPLE THAT VOTERS ARE ONLY ENTITLED TO ONE PARTY-LIST VOTE.

V.

CONSEQUENTLY, THE WORDS "THEIR TOTAL NUMBER OF VOTES" IN THE LAST PARAGRAPH OF SECTION 11 OF THE PARTY-LIST SYSTEM ACT, AS WELL AS NBOC RESOLUTION NO. 004-19 PROCLAIMING THE WINNERS OF THE 2019 PARTY-LIST ELECTION, SHOULD BOTH BE DECLARED UNCONSTITUTIONAL, AND THE COMELEC SHOULD BE DIRECTED TO MODIFY NBOC RESOLUTION NO. 004-19 SO THAT VOTES COUNTED IN THE ALLOCATION OF GUARANTEED SEATS WILL NOT BE REUSED OR RECOUNTED IN THE ALLOCATION OF ADDITIONAL SEATS.[3]

Put simply, petitioners claim that NBOC Resolution No. 004-19 violates the equal protection clause since it gives undue

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[3] *Rollo,* pp. 118-120.

preference to party-list organizations who garnered 2% or more of the total number of votes cast for the party-list system by allowing these party list organizations to be credited the same votes for the distribution of the guaranteed seats and distribution of the additional seat. Accordingly, petitioners claim that there is double counting of votes made in favor of the 2% party-list earners as opposed to party list organizations who got less than 2%, thereby violating the democratic precept of "*one person, one vote*" or the principle of political equality of votes, *i.e.*, every vote has equal weight.

Thus, petitioners pray that the Court revisits the pronouncement in *BANAT* and declares the phrase "in proportion to their total number of votes" in Section 11(b) of R.A. No. 7941 or the Party-List System Act unconstitutional and, in order to maintain the equality of votes amongst voters and thereby prevent double counting of votes, modify the distribution of the party-list seats in this wise:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one (1) guaranteed seat each;

3. Subtract the two percent (2%) of votes from the percentage of the total votes garnered of the party-list groups which were already allocated a guaranteed seat in the first round, then re-rank the groups accordingly;

4. Multiply the percentage of total votes garnered by each party, as adjusted, with the total number of remaining available seats;

5. The whole integer product shall be the party's share in the remaining available seats;

6. Assign one (1) party-list seat to each of the parties next in rank until all available seats are completely distributed;

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

In her Opinion, Madame Justice Amy C. Lazaro-Javier *(Justice Javier)* recommended the dismissal of the petition and sustaining the constitutionality of Section 11(b) of R. A. No. 7941 or the Party-List System Law. In sustaining the validity of the law, she cited procedural and substantive defects in the petition.

Justice Javier pointed out that some requisites for the exercise of judicial review were not present. She concludes that petitioners failed to raise the constitutionality issue at the earliest opportunity because both Angkla and SBP benefited from the operation of the *BANAT* formula in the previous party-list elections. In fact, SBP was impleaded as a party respondent in *An Warat v. COMELEC*,[5] where it vigilantly defended the application of the *BANAT* formula. The same thing happened to petitioner-in-intervention, *AKMA-PTM in AKMA-PTM v. COMELEC*.[6] She claims that if they truly believed the *BANAT* formula as unconstitutional for violating the equal protection clause, they would have raised their concern there. Instead, both Angkla and SBP kept silent and, therefore, should be considered estopped from claiming that the *BANAT* formula is defective.

Also, Justice Javier maintains that the constitutional challenge is not the *lis mota* of the case since the case can be resolved with the use of existing doctrines and black letter law.

On the substantive aspect, the Opinion of Justice Javier maintains that the *BANAT* formula is sound and consistent with congressional policy. Further, it maintains that there is no violation of the equal protection clause because there is substantial distinction between the two-percenters and the non-two percenters which justifies the difference in treatment between

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[4] *Id.* at 132-133.

[5] G.R. No. 224846, February 4, 2020.

[6] 760 Phil. 562(2015).

the two groups. This distinction, which is discussed in *Veterans Federation Party v. COMELEC (Veterans)*,[7] was carried in the *BANAT* formula. More, Justice Javier's Opinion claims that petitioners' proposal calls for absolute proportionality which is not what is intended by the Constitution. In any event, she insists that there is no double counting of votes considering that the 2% reduction was made in the second step of the second round and not in the first step of the second round. Thus, no double counting of votes exists.

After considering the arguments of both sides, taken with the intention of the Constitutional framers and Congress, as well as the collective wisdom of the Court in previous cases, I cannot regrettably share the views of my esteemed colleague Justice Javier. To my mind, there are no procedural hindrances that would warrant the automatic sacking of this petition and there are sufficient reasons why the Court should entertain questions on the soundness of our previous decisions, particularly those that relate to difficult interpretations of the law, for to blindly adhere to *stare decisis* would violate the very oath that every judge takes.

More, as the *BANAT* formula stands, I am of the view that it violates the equal protection clause particularly the concept of "one person, one vote" which is the bedrock of our democratic and republican society as provided under Article II, Section 1 as the *BANAT* formula allows double counting of votes, *i.e.*, giving some votes more weight compared to others.

Lastly, I do agree that petitioners' proposal is more in line with the Constitutional policy agreed upon by the Constitutional framers and consistent with the intention of Congress to maintain proportionality in the allocation of additional seats.

Allow me to explain.

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[7] 396 Phil. 419 (2000).

The petition satisfies all the requisites for judicial review

The prevailing rule in constitutional litigation is that no question involving the constitutionality or validity of a law or governmental act may be heard and decided by the Court unless there is compliance with the legal requisites for judicial inquiry, namely: (a) there must be an actual case or controversy calling for the exercise of judicial power; (b) the person challenging the act must have the standing to question the validity of the subject act or issuance; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the very *lis mota* of the case.[8]

Truly, while this Court's power of review may be awesome, it is limited to actual cases and controversies dealing with parties having adversely legal claims, to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented.[9]

Here, Justice Javier would have condemned the petition to the dustbin noting that petitioners failed to raise the constitutional challenge at the earliest opportunity and that petitioners are estopped in questioning the validity of the *BANAT* formula since they benefited from the said computation during the previous party-list elections.

Further, she is of the opinion that the constitutional issue is not the *lis mota* of the case considering that the issue can be resolved through existing doctrines and principles especially those espoused in *BANAT*.

I disagree.

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[8] *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1089-1090 (2017).

[9] *Atty. Lozano v. Speaker Nograles*, 607 Phil. 334, 340 (2009).

As early as 1937, the Court in *People v. Vera*,[10] explained the requirement of "earliest opportunity", in constitutional litigation, thus —

> x x x. It is true that, as a general rule, the question of constitutionality must be raised at the earliest opportunity, so that if not raised by the pleadings, ordinarily it may not be raised at the trial, and if not raised in the trial court, it will not be considered on appeal. (12 C. J., p. 786. *See, also,* Cadwallader-Gibson Lumber Co. *vs.* Del Rosario, 26 Phil., 192, 193-195.) But we must state that the general rule admits of exceptions. Courts, in the exercise of sound discretion, may determine the time when a question affecting the constitutionality of a statute should be presented. (*In re* Woolsey [1884], 95 N. Y., 135, 144.) Thus, in criminal cases, although there is a very sharp conflict of authorities, it is said that the question may be raised for the first time at any stage of the proceedings, either in the trial court or on appeal. (12 C. J., p. 786.) Even in civil cases, it has been held that it is the duty of a court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case. (McCabe's Adm'x. *vs.* Maysville & B. S. R. Co. [1910], 136 Ky., 674; 124 S. W., 892; Lohmeyer *vs.* St. Louis Cordage Co. [1908], 214 Mo., 685; 113 S. W., 1108; Carmody *vs.* St. Louis Transit Co. [1905], 188 Mo., 572; 87 S. W., 913.) And it has been held that a constitutional question will be considered by an appellate court at any time, where it involves the jurisdiction of the court below (State *vs.* Burke [1911], 175 Ala., 561; 57 S., 870.) x x x.[11]

Also, in *Arceta v. Judge Mangrobang*,[12] the Court held that seeking judicial review at the earliest opportunity does not mean immediately elevating the matter to this Court. Earliest opportunity means that the question of unconstitutionality of the act in question should have been immediately raised during proceedings in the court below.

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[10] 65 Phil. 56 (1937).

[11] *Id.* at 88-89.

[12] 476 Phil. 106 (2004).

It is clear from the foregoing that the rationale behind this requirement is that it prevents a party litigant from changing or altering the theory of his case and catching the other party off-guard, thereby offending all sense of fairness in court litigations. However, this is not the case here. Respondents have been apprised of petitioners' contentions and arguments and were in fact controverted by the Office of the Solicitor General head-on. There is no violation of fair play or due process of law in this scenario.

Neither should we consider this Court as the "lower court" for purposes of the procedural requirement as the rationale behind the requirement is more focused on the protection of the adverse party from surprises and underhanded tactics of the petitioners that offend fairness. Since the reason behind the requirement is not applicable in this case, it would be unfair to still mandate the rule that would serve an empty purpose—*cessante ratione legis, cessat ipsa lex,* when the reason of the law ceases, the law itself ceases.[13]

Even if we consider the strict application of this rule, I consider the case falling under the recognized exceptions. It has been held that in civil cases, it is the duty of the court to pass on the constitutional question, though raised for the first time on appeal, if it appears that a determination of the question is necessary to a decision of the case.[14]

Here, the argument of double counting raised by petitioners and petitioner-in-intervention was not addressed and resolved by the Court in *Veterans* and *BANAT*. Further, this case goes into the legality of the allocation of additional seats in light of the equal protection prism, particularly the issue of double counting of votes. Contrary to the position taken by Justice Javier, the Court's decision in *BANAT* is insufficient to determine the validity of the arguments based on the equal protection

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[13] *BGen. Comendador v. Gen. de Villa,* 277 Phil. 93, 116 (1991).

[14] *San Miguel Brewery, Inc. v. Magno,* 128 Phil. 328, 334 (1967).

clause. Otherwise stated, the constitutional issue cannot be resolved on the strength of *BANAT* and previous jurisprudence as this issue is novel and is, in fact, the *lis mota* of the case.

As regards the issue on estoppel, I cannot accept petitioners being guilty of such, and are thus prevented from raising the double counting of votes issue. Estoppel, an equitable principle rooted upon natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. For a party to be bound by estoppel, the following requisites must be present: (1) conduct amounting to false representation or concealment of material facts; or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intent, or at least expectation that this conduct shall be acted upon by, or at least influence, the other party; and (3) knowledge, actual or constructive, of the real facts.[15] Obviously, the elements of estoppel are wanting simply because petitioners and petitioner-in-intervention based their conduct on the prevailing law at the time. It cannot be said that they concealed or misrepresented facts when they were merely following the prevailing law. Citizens who relied on the law cannot be expected to follow it blindly if the matter of its constitutionality escapes their immediate attention. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.[16]

Further, it should never escape our attention that the interpretation of the party-list law by the organizations themselves who are allowed to participate in the proper allocation of seats has been subject to numerous litigations that produced different results from *Ang Bagong Bayani-OFW Labor Party v. COMELEC*[17] to

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[15] *Philippine National Bank v. Palma,* 503 Phil. 917, 934 (2005).

[16] *La Bugal-B'laan Tribal Association, Inc. v. Ramos,* 465 Phil. 860, 893 (2004).

[17] 412 Phil. 308 (2001).

Atong Paglaum Inc. v. COMELEC[18] and *Veterans* to *BANAT*. It can even be conceded that the party-list law has become a difficult point of law considering the changes in interpretation of its provisions. From the foregoing, it is my view that a party cannot be estopped from raising issues that relate to difficult questions of law. Otherwise, the development of jurisprudence would be halted indiscriminately simply because an earlier court interpretation has already been made regardless of its soundness and reasonability.

Lastly, reliance on the strength of *stare decisis* established by *BANAT* can be made as long as is passes constitutional muster. In the past, the Court has never been shy in disregarding *stare decisis* especially when the previous ruling no longer appears to be reasonable or proper.

In *De Castro v. Judicial and Bar Council*[19] the Court, in ruling that the appointment of the Chief Justice is outside the midnight appointment prohibition under Article VII, Section 15 of the Constitution, refused to, and in fact abandoned, the Court's earlier ruling in *In Re Appointments of Hon. Valenzuela and Hon. Vallarta.*[20] In doing so, the Court stated —

> In this connection, PHILCONSA's urging of a revisit and a review of *Valenzuela* is timely and appropriate. *Valenzuela* arbitrarily ignored the express intent of the Constitutional Commission to have Section 4(1), Article VIII stand *independently* of any other provision, least of all one found in Article VII. It further ignored that the two provisions had no irreconcilable conflict, regardless of Section 15, Article VII being couched in the negative. As judges, we are not to unduly interpret, and should not accept an interpretation that defeats the intent of the framers.
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> Consequently, prohibiting the incumbent President from appointing a Chief Justice on the premise that Section 15, Article VII

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[18] 707 Phil. 454 (2013).

[19] 629 Phil. 629 (2010).

[20] 358 Phil. 896 (1998).

extends to appointments in the Judiciary cannot be sustained. **A misinterpretation like *Valenzuela* should not be allowed to last after its false premises have been exposed. It will not do to merely distinguish *Valenzuela* from these cases, for the result to be reached herein is entirely incompatible with what *Valenzuela* decreed. Consequently, *Valenzuela* now deserves to be quickly sent to the dustbin of the unworthy and forgettable.**

We reverse *Valenzuela*.[21] (citations omitted, emphasis supplied)

Again, and quite recently, in *Cagang v. Sandiganbayan*,[22] the Court expressly abandoned *People v. Sandiganbayan, First Division*,[23] and excluded the period of time dedicated for fact-finding for purposes of determining whether or not there is a violation of the right to speedy disposition of cases under Section 16, Article III of the Constitution. In deciding to abandon precedent, the Court ruled —

When an anonymous complaint is filed or the Office of the Ombudsman conducts a *motu proprio* fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.

This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.

Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal

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[21] Supra note 19 at 693-694.

[22] G.R. No. 206438, July 31, 2018, 875 SCRA 374, 435-436.

[23] 723 Phil. 444 (2013).

complaint and the subsequent conduct of the preliminary investigation. ***In People v. Sandiganbayan, Fifth Division, the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned,*** (citation omitted, emphasis supplied)

Truly, the evolution of judicial philosophy and the entry of new justices of the Court bring new perspectives and paradigms that question issues thought to be long-settled. For sure, *stare decisis* cannot shackle the solemn duty of jurists to interpret the law on the basis of their own lenses.

While *stare decisis* remains to be the rule in this jurisdiction, there are reasons, as will be discussed below, to forego the application principle especially and re-examine *BANAT* in light of the issue of double counting of votes.

The distribution of additional seats in proportion to the total number of votes under the BANAT formula offends the equal protection clause particularly the concept of "one person, one vote"

A. Equal Protection Clause

Article III, Section 1 of the 1987 Constitution mandates that all persons shall not be denied the equal protection of the laws. The equal protection clause requires that all persons be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities.[24]

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[24] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018.

In *Biraogo v. The Philippine Truth Commission of 2010,*[25] the Court expounded the concept of equal protection in this regard:

"According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed." It "requires public bodies and institutions to treat similarly situated individuals in a similar manner." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statue or by its improper execution through the state's duly constituted authorities." "In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals solely on differences that are irrelevant to a legitimate governmental objective."

The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.

It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of ***reasonableness.*** The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. "The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the

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[25] 651 Phil. 374, 458-461 (2010).

class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him."

The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "underinclude" those that should otherwise fall into a certain classification. As elucidated in *Victoriano v. Elizalde Rope Workers' Union* and reiterated in a long line of cases, [t]he guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.

The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real, differences, that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable

foundation or rational basis and is not palpably arbitrary, (citations omitted)

B. "One Person, One Vote" Concept

Article II, Sec. 1 provides that the Philippines is a democratic and, republican State. Sovereignty resides in the people and all government authority emanates from them. For the Constitutional framers, the concept of republicanism was added to purposely declare that the country adopts a representative democratic system[26] where leaders are chosen by the people to govern and lead them.

As a tool to determine the representatives of the people, elections are held and during such event, the people exercise their sovereign power to choose their leaders. In this regard, the equal protection clause ensures that a person is entitled to one vote and such vote carries the same weight as others. There are no privileged individuals whose vote is weightier than others simply because of gender, race or station in life.

Retired Senior Associate Justice Antonio T. Carpio succinctly discussed this equality of weight of votes or the "one person, one vote" concept in his Dissenting Opinion in *Sen. Aquino III v. COMELEC,*[27] thus —

> Evidently, the idea of the people, as individuals, electing their representatives under the principle of **"one person, one vote,"** is the cardinal feature of any polity, like ours, claiming to be a "democratic and republican State." A democracy in its pure state is one where the majority of the people, under the principle of "one person, one vote," directly run the government. A republic is one which has no monarch, royalty or nobility, ruled by a representative government elected by the majority of the people under the principle of "one person, one vote," where all citizens are equally subject to the laws. A republic is also known as a representative democracy. The democratic and republican ideals are intertwined, and converge on the common

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[26] *Records of the Constitutional Commission No. 086,* September 18, 1986.

[27] 631 Phil. 595 (2010).

principle of ***equality*** — **equality in voting power, and equality under the law.**

The constitutional standard of proportional representation is rooted in equality in voting power — that **each vote is worth the same as any other vote**, not more or less. **Regardless of race, ethnicity, religion, sex, occupation, poverty, wealth or literacy, *voters have an equal vote.***x x x[28]

From the foregoing, two (2) things are clear. First, the concept of "one person, one vote" is inherent in our system and need not be expressly stated because it is a necessary consequence of the republican and democratic nature of the Philippines state. Second, the concept of "one person, one vote" is protected under the mantle of equal protection since the weight of the vote of a person is the same as others and there is no substantial distinction per voter whether on the basis of race, gender, age, lineage, social standing or education.

Considering the concepts discussed above, I am convinced that the *BANAT* formula for distributing additional seats violates this principle.

As correctly pointed out by the petitioners, the 2% votes to justify the allocation of one (1) guaranteed seat were already considered and used during the allocation of the guaranteed seats. To consider them again, this time for purposes of allocating additional seats, would give these votes more weight or more value than others in violation of the equal protection clause as it gives due preference to votes received by party-list organizations who got 2% of the votes from those who did not.

Justice Javier seems to justify the grant of "double counting of votes" by alleging that there is substantial distinction between party-list organizations who received 2% or more of the total votes cast and those party-lists who did not meet the threshold. Thus, justifying the difference in treatment, *i.e.* allowing the votes already counted for the guaranteed seat to once again be considered for the allocation of additional seat.

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[28] Id. at 637-638.

Again, I cannot subscribe to this argument.

First, a reading of *Veterans*, would show that *Veterans* never discussed the validity of the 2% threshold on equal protection grounds. *Veterans* upheld the 2% threshold on the basis of the intent of the Constitutional framers and the intent of Congress to ensure proper representation; and for Congress, 2% of the total votes cast would already ensure a mandate. Even if there is an equal protection component in *Veterans*, its justification is limited only in the first round. The same treatment cannot be extended to the allocation of the additional seat. This is simply not part of *Veterans* and would be an unacceptable stretch of the Court's argument.

Second, there seems to be a contradiction in the stance of Justice Javier when, in one breath, she claims that the double counting of votes is acceptable, since there is substantial distinction between groups obtaining the needed 2% threshold and those who do not,[29] and at the same time declares that there is no double counting of votes since the deduction of 2% as *BANAT* instructs "is done in the second step of the second round of the seat allocation not in the first step of the second round."[30] The stance is self-defeating.

Third, the argument that the deduction of the 2% was made is not an accurate claim. While there is indeed a reduction of the percentages garnered by party-list organizations in the distribution of the additional seats following *BANAT*, the reduction does not amount to the 2% of the total votes cast. This is because in the round that allocates the guaranteed seat, its proportionality is based on the total number of votes cast for the party-list election while in the round for the allocation of additional seats, the proportionality is not dependent on the numbers of votes cast alone but also on the total number of

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[29] *See* draft *ponencia* as of June 2, 2020, p. 22: *"In the exercise of this prerogative, Congress modified the weight of votes cast under the party list system with reason."*

[30] *See* Opinion of Justice Javier, as of June 2, 2020, p. 21.

reserved remaining party-list seats in Congress. Thus, the reason for the reduction is not the deduction of the 2% allocated for the guaranteed seats but because of the change in the basis of the proportionality which is now the total number of votes cast **AND** the total number of seats remaining for party-list organizations after deducting the number of guaranteed seats already allocated. This is why the reduction from the percentage in the guaranteed seats to the percentage in the additional seat can never be 2%. Hence, to claim that there is no double counting of votes because the 2% considered was already deducted is without basis.

Lastly, even if there is an exact 2% reduction given to the party-list organizations who garnered the 2% threshold, the *BANAT* formula would still be flawed considering that the reduction in the allocation of the additional seats apply not only to party-list organizations who obtained the 2% threshold **but to all parties** since all parties will be subjected to the same formula. Thus, any deduction brought about by the formula to the group who obtained the 2% threshold, that same deduction will be applied to the others. Conversely stated, if there are no double counting of votes because the 2% was deducted only from those party-list organizations who already qualified to get a guaranteed seat, then why the reduction on the percentages of votes of party-list organizations who failed to meet the 2% requirement in the allocation of additional seat? Thus, it cannot be said that there is no inequality of votes here.

Clearly, this double counting of votes creates a classification that does not justify the requirements of a valid classification; particularly, the classification not being germane to the purposes of the law. There is no justification why there is a need to re-credit votes already credited. Further, there can be no conceivable explanation why the vote of one person should have more value compared to others. A contrary rule would be obnoxious to the democratic and republican nature of the country and the promise of equal protection under the Bill of Rights.

As such, since there is double counting of votes and the same violates the equal protection clause, particularly the "one person, one vote" mantra of democratic and republican states, the formula as to the allocation of additional seats must be fine-tuned to address this conundrum.

C. Relative Constitutionality

Aside from what was discussed above, the concept of relative constitutionality comes to play in this case which would further show the violation of the equal protection clause.

In *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*,[31] the Court explained the concept of relative constitutionality in this regard, thus:

> The constitutionality of a statute cannot, in every instance, be determined by a mere comparison of its provisions with applicable provisions of the Constitution, since the statute may be constitutionally valid as applied to one set of facts and invalid in its application to another.
>
> A statute valid at one time may become void at another time because of ***altered circumstances.*** Thus, if a statute in its practical operation becomes arbitrary or confiscatory, its validity, even though affirmed by a former adjudication, is open to inquiry and investigation in the light of ***changed conditions.***[32] (citations omitted)

Here, because of the change brought about by *BANAT* to the allocation of additional seats, the double counting of votes, which was absent in the previous computation under *Veterans* is now allowed.

It must be remembered that the allocation of party-list seats was first settled by the Court in *Veterans.* Simply, party-list groups who got 2% of the votes will get one (1) seat and will get an additional seat for every additional 2% it gets not exceeding

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[31] 487 Phil. 531 (2004).

[32] Id. at 562-563.

three (3) seats. As stated above, the Court sustained the validity of the 2% threshold on the grounds that the percentage ensures a proper mandate from the people it seeks to represent. Now, Congress created two kinds of groupings: those who obtain the 2% and thus get a guaranteed seat, and those who fail to obtain the 2% threshold and fail to get a guaranteed seat. To me, this is a valid classification for purposes of validating the grant of the guaranteed seat. The equal protection challenge, however, would end there, since any additional seat would depend on an additional 2% of the votes aside from the earlier 2% credited for the guaranteed seat.

With the advent of *BANAT*, however, the allocation of additional seats was changed and it allowed the distribution of additional seats in relation to, the total number of votes received, including those already credited for the guaranteed seat. While the privilege of the organizations which garnered at least 2% of the votes remained as regards the grant of guaranteed seats as there was substantial distinction between them, the same cannot be said for the distribution of additional seats, *BANAT* allowed the double counting of votes because the same votes used to clinch the guaranteed seats were used to qualify for an additional seat. This violates the equal protection clause because of the inequality of the weight of votes per voter.

Hence, while the advantage given to a party-list organization which obtains at least 2% of the total votes cast remained for purposes of the guaranteed seat, the change in the manner of computation for additional seats results in the obnoxious unequal treatment of votes in favor of groups who failed to secure the 2% threshold that should not endure in our legal system.

Thereby, the phrase "in proportion to their total number of votes" in Section 11 (b) of R.A. No. 7941 should be struck down for it results to the double counting of votes which is repugnant to the equal protection clause; particularly, the concept of "one person, one vote."

What therefore remains would be the mechanism furnished by the petitioners and an examination of the requirements of the Constitution and of R.A. No. 7941. I conclude that the resulting mechanism is consistent with law and the intention of the framers.

The Constitutional Intentions conform with the petitioners' formula for the distribution of additional seats for the party-list system

With the declaration of invalidity of the phrase "in proportion to their total number of votes" in Section 11(b) of R.A. 7941, it becomes apparent that a modified manner of computation for allocation of additional seat is in order. As will be discussed below, I am of the opinion that petitioners' formula best reflects the intention of the Constitutional Commission and meets the demands of Congress.

A. Constitutional Guidelines

Article VI, Section 5(2) provides:

Section 5. x x x

(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, (emphasis supplied)

Justice Javier was correct in stating that the Constitutional Commission left it to the discretion of Congress on how to formulate and implement the party-list system. This, however, does not mean that the framers completely abrogated its authority to provide guidance to Congress on how it should be done, at least on broad strokes. This was the sentiment of the Constitutional framers, thus —

MR. OPLE: Madam President, there is nothing to prevent this Commission from **sending constitutional guidelines to Congress** in the form of this proposal so that it says, "as may be provided by law." It is completely consistent and synchronous with the earlier provision on sectoral representation in the Article on the Legislative. At any rate, I believe that this has been approved by the committee. It has been exhaustively debated on and I see no reason why the Chair should not put this to a vote now.[33] (emphasis supplied)

In support of the presence of these guidelines prescribed by the Constitutional framers, the records of the deliberations of the 1986 Constitutional Commission are replete with discussions and debate on the party-list system and the principles that underlie the system to be proposed. If the commissioners intended to completely pass the duty to Congress, it should have stopped the debates and discussions or limited the same. But this is not the case. The framers of the Constitution discussed and agreed on at least 2 basic guidelines for Congress to follow in crafting the party-list system.

First, the framers intended the party-list system to open up the political system to different groups who have been forgotten for decades, thus, in a debate that supports the proposition against reserved seats for some sectors, Commissioner Christian Monsod explains:

MR. TADEO: *Ang mechanics po ay isinumite namin kay* Commissioner Villacorta. *Nandoon na po kung ano ang mga dapat na gawin.*

MR. MONSOD: Madam President, I just want to say that we suggested or proposed the party list system because ***we wanted to open up the political system to a pluralistic society through a multiparty system. But we also wanted to avoid the problems of mechanics and operation in the implementation of a concept that has very serious shortcomings of classification and of double or triple votes***. We are for opening up the system, and we would like

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[33] *Records of the Constitutional Commission, No. 096,* September 30, 1986.

very much for the sectors to be there. ***That is why one of the ways to do that is to put a ceiling on the number of representatives from any single party that can sit within the 50 allocated under the party list system. This way, we will open it up and enable sectoral groups, or maybe regional groups, to earn their seats among the fifty***. When we talk about limiting it, if there are two parties, then we are opening it up to the extent of 30 seats. We are amenable to modifications in the minimum percentage of votes. Our proposal is that anybody who has two-and-a-half percent of the votes gets a seat. There are about 20 million who cast their votes in the last elections. Two-and-a-half percent would mean 500,000 votes. Anybody who has a constituency of 500,000 votes, nationwide, deserves a seat in the Assembly. If we bring that down to two percent [2%], we are talking about 400,000 votes. The average vote per family is three. So, here we are talking about 134,000 families. We believe that there are many sectors who will be able to get seats in the Assembly because many of them have memberships of over 10,000. In effect, that is the operational implication of our proposal. What we are trying to avoid is this selection of sectors, the reserve seat system. We believe that it is our job to open up the system and that we should not have within that system a reserve seat. We think that people should organize, should work hard, and should earn their seats within that system.[34] (emphases supplied)

The discourse between Commissioner Bias Ople and Commissioner Christian Monsod, also reveals the same intention, thus —

MR. OPLE: It appears that the Commission, for historical reasons, suffers from a lack of knowledge about the party list system. I suppose that we are not really reinventing the wheel here when we incorporate a party list system as among the modes of selecting representatives of the people. Since Commissioner Monsod, for the reason that he has taken a keen interest in electoral science, if we might call it that way, seems to be the sole authority on the party list system as far as we can see this in the Commission, can he share with the Members of the Commission his knowledge of how the party list system works in its country of origin like Germany and Switzerland? As a general principle, does it contemplate making up through a party list for the

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[34] *Records of the Constitutional Commission No. 039,* July 25, 1986.

general weakness of what Commissioner Villacorta calls the "marginalized" sectors, so that the preponderance of traditional parties is overcome and that the less-privileged sectors in society could have their own access to Congress?

In the case of Germany, I understand that the Greens, who otherwise would understand their chance at the beginning, had gotten there through a party list system.

Will Commissioner Monsod oblige by answering this question?

MR. MONSOD: Madam President, I do not presume to be an expert on the party list system. We are using the party list system in a generic sense. However, I believe Commissioner Ople himself is an expert on this. It is true that the party list system can specify those who may sit in it. In fact, if I remember right, in the case of Belgium, it was quite detailed. But if we take a look at that list, it seems that almost 90 or over 90 percent of the country's population would be qualified to be in the party list system because one of the general qualifications is that the member must be a holder of a secondary degree. ***So, what I am saying is that the party list system can be designed in order to allow for an opening up of the system.*** My reservation with respect to what I would call a reserve seat system where we automatically exclude some sectors is the difficulty to make it operational. At this point in time in our country, this is already a novel idea as it is. I believe that all of us really are not yet experts on this and we are still learning through the process. Thus, for us to introduce complications at this time might bring difficulty in implementation.

We can put a cap on the number of seats that-a party or organization can have in the system consistent with our objective of opening it up. But to put the complication by saying, for instance, that UNIDO can register provided that 10 or 15 of its candidates must be farmers, laborers, urban poor and so on, I think would be very difficult to implement.

MR. OPLE: So, Commissioner Monsod grants that ***the basic principle for a party list system is that it is a countervailing means for the weaker segments of our society, if they want to seek seats in the legislature, to overcome the preponderant advantages of the more entrenched and well-established political parties,*** but he is

concerned that the mechanics might be inadequate at this time.[35] (emphases supplied)

Thus, from what can be discerned from the deliberations quoted above, the framers intended that the party-list system serve as a tool to accommodate weaker parties and make them part of the legislative system. This is the reason why there is a three (3)-seat cap limit per party in the party- list system. This is an acknowledgement that in the same marginalized sectors of society, there are minorities that are more disenfranchised or marginalized. These parties, per the intentions of the framers, must be protected and accommodated.

Secondly, as reflected by the records of the deliberations of the Constitutional framers, the party-list system should avoid problematic mechanisms that would lead to undesirable results, like multiple voting[36] and unequal weight of votes. Commissioner Monsod, the proponent of the party-list proposal, objected to the proposal of reserved party-list seats, since it would provide some voters 2 votes while the others only one. Thus —

MR. MONSOD: Thank you, Madam President.

I would like to make a distinction from the beginning that the proposal for the party list system is not synonymous with that of the sectoral representation. Precisely, the party list system seeks to avoid the dilemma of choice of sectors and who constitute the members of the sectors. In making the proposal on the party list system, we were made aware of the problems precisely cited by Commissioner Bacani of which sectors will have reserved seats. In effect, a sectoral representation in the Assembly would mean that certain sectors would have reserved seats; that they will choose among themselves who would sit in those reserved seats. And then, we have the problem of which sector because as we will notice in Proclamation No. 9, the sectors cited were the farmers, fishermen, workers, students, professionals, business, military, academic, ethnic and other similar

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[35] Id.

[36] See *Records of the Constitutional Commission No. 039*, supra note 34.

groups. So these are the nine sectors that were identified here as "sectoral representatives" to be represented in this Commission. The problem we had in trying to approach sectoral representation in the Assembly was whether to stop at these nine sectors or include other sectors. And we went through the exercise in a caucus of which sector should be included which went up to 14 sectors. And as we all know, the longer we make our enumeration, the more limiting the law become because when we make an enumeration we exclude those who are not in the enumeration. Second, we had the problem of who comprise the farmers. Let us just say the farmers and the laborers. These days, there are many citizens who are called "hyphenated citizens." A doctor may be a farmer; a lawyer may also be a farmer. And so, it is up to the discretion of the person to say "I am a farmer" so he would be included in that sector.

The third problem is that when we go into a reserved seat system of sectoral representation in the Assembly, we are, in effect, giving some people two votes and other people one vote. We sought to avoid these problems by presenting a party list system. Under the party list system, there are no reserved seats for sectors. Let us say, laborers and farmers can form a sectoral party or a sectoral organization that will then register and present candidates of their party. How do the mechanics go? **Essentially, under the party list system, every voter has two votes, so there is no discrimination. First, he will vote for the representative of his legislative district. That is one vote. In that same ballot, he will be asked: What party or organization or coalition do you wish to be represented in the Assembly? And here will be attached a list of the parties, organizations or coalitions that have been registered with the COMELEC and are entitled to be put in that list. This can be a regional party, a sectoral party, a national party, UNIDO, Magsasaka or a regional party in Mindanao.** One need not be a farmer to say that he wants the farmers' party to be represented in the Assembly. Any citizen can vote for any party. At the end of the day, the COMELEC will then tabulate the votes that had been garnered by each party or each organization — one does not have to be a political party and register in order to participate as a party — and count the votes and from there derive the percentage of the votes that had been cast in favor of a party, organization or coalition.

When such parties register with the COMELEC, we are assuming that 50 of the 250 seats will be for the party list system. So, we have

a limit of 30 percent of 50. That means that the maximum that any party can get out of these 50 seats is 15. When the parties register they then submit a list of 15 names. They have to submit these names because these nominees have to meet the minimum qualifications of a Member of the National Assembly. At the end of the day, when the votes are tabulated, one gets the percentages. Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2½ percent and anybody who has at least 2½ percent of the vote qualifies and the 50 seats are apportioned among all of these parties who get at least 2½ percent of the vote.

What does that mean? It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly. What is the justification for that? When we allocate legislative districts, we are saying that any district that has 200,000 votes gets a seat. There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly. It also means that, let us say, there are three or four labor groups, they all register as a party or as a group. If each of them gets only one percent or five of them get one percent, they are not entitled to any representative. So, they will begin to think that if they really have a common interest, they should band together, form a coalition and get five percent of the vote and, therefore, have two seats in the Assembly. Those are the dynamics of a party list system.

We feel that this approach gets around the mechanics of sectoral representation while at the same time making sure that those who really have a national constituency or sectoral constituency will get a chance to have a seat in the National Assembly. These sectors or these groups may not have the constituency to win a seat on a legislative district basis. They may not be able to win a seat on a district basis but surely, they will have votes on a nationwide basis.

The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide; have about 1,000,000 or 1,500,000 votes. But they were always third place or fourth place in each of the districts. So, they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is

essentially the mechanics, the purpose and objectives of the party list system.[37] (emphases supplied)

From the foregoing, it is clear that the system should avoid the problems that the framers foresaw, including the problem of unequal treatment of votes. Clearly, the framers intended to prohibit double counting or even triple counting, of votes as they cited it as a problem Congress should be wary about and should prevent.

B. Statutory Enactment and the *BANAT* Decision

When Congress enacted R.A. No. 7941, it was guided by the parameters set forth by the framers of the Constitution. Section 2 of the law clearly mirrors the first guideline of the framers:

> **Section 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, (emphases supplied)

Also, to ensure that a more diverse group of organizations would qualify and more interests are articulated, the 3-cap rule was established to control the well-off party-list groups as opposed to those less known, less organized party-list organizations.

Lastly, Congress also mandated that the system of seat-allocation be proportional.

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[37] *Records of the Constitutional Commission No. 036*, July 22, 1986.

Insofar as the second guideline is concerned, Congress thought it best to pattern the party-list system similar to the electoral system in Germany in order to assure the equal distribution of seats through proportionality and defeat the evils of unequal treatment of votes that concerned the framers.[38]

When the *BANAT* Decision was promulgated, however, it resulted into an evil that the Constitutional Commission itself sought to avoid: the double counting of votes where the votes used to clinch the guaranteed seats were also used to allocate the additional seat. The adoption of petitioners' method actually adheres to the guidelines of the Constitutional Commission as it prevents the evil that *BANAT* allows. The only question that remains is whether or not the petitioners' method complies with the Congressional requirement of proportionality.

I believe it does.

When we look at existing proportional systems that use a quota threshold, proportionality requires the subtraction of credited votes already used just like what the petitioners propose.

C. Electoral Systems

To be clear, R.A. No. 7941 is not an election law; rather it creates what is referred to as an electoral system. The two concepts refer to two (2) different things. David Farrell, in his book, *Comparing Electoral Systems*[39] explains —

x x x. Electoral laws are the family of rules governing the process of elections: from the calling of the election, through the stages of candidate nomination, party campaigning and voting, and right up to the stage of counting votes and determining the actual election result. There can be any number of rules governing how to run an election. For instance, there are laws on who can vote (citizens, residents, people over seventeen years of age, the financially solvent, etc.); there can even be laws, such as in Australia or Belgium, obliging

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[38] See *Veterans Federation Party v. COMELEC*, 396 Phil. 419, 440 (2000).

[39] Farrell, David M. *Comparing Electoral Systems,* MacMillan Press, Ltd., London, 1997, pp. 3-5.

citizens to turn out to vote. Then there are usually a set of rules setting down the procedures for candidate nomination (e.g. a minimum number of signatures, a deposit). The campaign process can also be subject to a number of rules: whether polling, television advertising or the use of campaign cars is permitted; the size of billboards; the location of posters; balance in broadcasting coverage, and so on.

Among this panoply of electoral laws there is one set of rules which deal with the process of election itself: how citizens vote, the style of the ballot paper, the method of counting, and the final determination of who is elected. It is this aspect of electoral laws with which this book is concerned. This is the electoral system, the mechanism of determining victors and losers, which clicks into action once the campaign has ended. This is the stage where the political pundits take over from the politicians; where the television companies dust off their 'pendulums' and 'swingometers' and wheel out their latest computer graphic wizardry. Campaign slogans and electoral recriminations have ended. All attention is focused on thousands of people shuffling ballot papers in 'counting centres' throughout the country. (At least, this is the situation in Britain. In other countries, the counting and even the voting are done by computer.) Politicians, journalists and (some) voters wait with baited breath for the returning officer to announce 'the result'. TV presenters work long into the night, probing with their panelists the meaning of the results and assessing the voters' 'verdict'.

This scenario of 'election night coverage' is common to most political systems. There may be some variation in detail, but the basic theme is similar: we the voters have voted, and now we are waiting to see the result of our votes, in terms of who wins or loses and in terms of the number of seats won by each of the parties. It is the function of the electoral system to work this transformation of votes into seats. To put this in the form of a definition: ***electoral systems determine the means by which votes are translated into seats in the process of electing politicians into office.***

Exactly how this translation occurs varies from one system to the next. In some systems great effort is made to ensure that the number of seats each party wins reflects as closely as possible the number of votes it has received. In other systems greater importance is attached to ensuring that one party has a clear majority of seats over its competitors, thereby (hopefully) increasing the prospect of strong and stable government. The first of these systems is said to be

'proportional', in contrast to the others which are 'non-proportional' electoral systems.

While the Bundestag of Germany uses the Niemeyer Formula, Germany actually patterns its electoral system after a generic system referred to as the German two (2)-vote system. This basic system has adopted with modification by different countries including Hungary, Italy, Japan, New Zealand and Russia.[40]

The basic form of this German 2-vote system is discussed by Farrell in this regard —

> The German voter has two votes for the two types of MP. In the most recent 1994 election, for instance, the Bundestag had 656 MPs: 328 (50 per cent) of these were elected to represent individual constituencies, and 328 (50 per cent) were elected from the regional lists (allocated at the *Land* level). It is important to note that the allocation of the list seats is computed on the basis of the full Bundestag membership, i.e. as if the PR list election were the whole election. In the polling station, each voter receives a ballot paper much like the one shown in Figure 5.1, and is asked to tick two boxes: first, on the left hand side of the ballot paper for a constituency candidate, and second, on the right hand side for a regional list. The first vote is for a candidate, while the second vote is for a party.
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> x x x x
>
> The election count proceeds in three stages. First, there are counts in each constituency to determine which candidate is elected and to work out the total number of constituency seats for each of the parties in each of the federal *Lander*. Just like in British elections, the candidates with most votes in each constituency are elected, regardless of whether or not they have an overall majority of the votes in the constituency. x x x
>
> The crucial factor which separates the two-vote system from FPTP is the second vote where smaller parties have a much greater chance of winning seats. x x x
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> The first two stages in the counting process (i.e. the counting of first and second votes) are common to all existing two-vote systems.

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[40] Id. at 86-87.

It is in the third and final stage that a very important distinction arises. The nature of this distinction is elaborated in Section 5.3 below, for now we will examine how it works in the German case. The basic point of the German system is that it should produce a proportional result. ***In order to achieve this, it is important that the larger parties should not be overly advantaged by the greater ease with which they win constituency seats. Therefore the operating principle of this third stage in the German count is that the total number of constituency seats won by the parties should be subtracted from the total number of lists seats they have been allocated (and remember that the list seats are allocated at the Land level). It is for this reason that the two-vote system is generally referred to as the 'additional member' system, because the result of this subtraction determines the number of additional members to which each party is entitled.***[41] (emphasis supplied)

It does not come as a surprise that our party-list system resembles the basic principles of the German 2-vote system considering that Congress adopted, not the Niemeyer Formula, but the basic principles of the German-2-vote system in this jurisdiction. It is also worth noting that the first step of this electoral system is the election of two (2) representatives, one by district or land, and one by list or party-list organizations. It is also similar in the second step which requires a minimum threshold to garner seats. The third step is also similar as we deduct the obtained seat (guaranteed seat) from the total allowable seat (which is three).

Insofar as the allocation of additional seats, Congress mandates a proportionate distribution. To determine whether the petitioners' proposal meets the required proportionality of the law, we look at different models of proportional representation, generically referred to as the PR List system. PR list systems that closely resemble our system follow the largest remainder system. The central feature of this system (referred to in the USA as the Hamilton method) is an electoral quota. The counting process occurs in two rounds. In the first round, parties with

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[41] Id. at 89-93.

votes exceeding the quota are awarded seats, and the quota is subtracted from their total vote. In the second round, those parties left with the greatest number of votes (the 'largest remainder') are awarded the remaining seats in order of vote size.[42] This is the same system advocated by the petitioners.

In adopting this system, proportionality is achieved while at the same time avoiding the 'double counting' dilemma brought about by the *BANAT* Decision. Thus, we characterize the Philippine party-list system as a hybrid of the German 2-vote system and the PR list system that follows the largest remainder system. Of course, our system becomes distinct from other systems because: (1) we limit the number of party-list representatives to 20% of the House of Representatives; and (2) we impose the 3-seat cap. These characteristics make the party-list system of the Philippines unique.

D. Petitioners' proposal compared to the *BANAT* formula

Petitioners' model which would be the necessary result of the Court's declaration of invalidity of the phrase "in proportion to their total number of votes" is consistent with Constitutional and Statutory directives.

First, it opens up Congress to more groups, thereby ensuring that more interests are properly represented. This includes even those interests that the marginalized sector itself failed to recognize and represent.

Second, it prevents the evil of unequal weight of votes that the *BANAT Decision* perpetuates; and

Lastly, the proposal is still proportionate considering other similar systems around the world.

A comparative table would show how the *BANAT* formula differs from the petitioners' formula and the constitutional violation that the *BANAT* formula presents. As settled, the *BANAT* Decision provides:

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[42] Id. at 62.

In determining the allocation of seats for party-list representatives under Section 11 of R.A. No. 7941, the following procedure shall be observed:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

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

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

As applied in this case, steps 1 and 2 would reveal eight (8) party-list organizations obtained one guaranteed seat each for clinching at least 2% of the votes cast or at least 557,695 votes, thus:

Rank	**Party-List**	**Acronym**	**Votes Garnered**	**% of Total Votes**	**1st Seats**
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	9.51	1
2	Bayan Muna	BAYAN MUNA	1,117,403	4.01	1
3	Ako Bicol Political Party	AKO BICOL	1,049,040	3.76	1
4	Citizens Battle Against Corruption	CIBAC	929,718	3.33	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	770,344	2.76	1
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	2.56	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	2.44	1
8	Probinsyano Ako	PROBINSYANO AKO	630,435	2.26	1
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	1.85	0

From the table above, it is clear that these 8 party-list organizations were able to qualify for a seat in Congress by obtaining more than 557,695 votes or at least 2% of the votes cast for the party-list elections. Applying steps 3 and 4 of *BANAT*, however, would show that the same 557,695 votes are again used to qualify the 8 party-list organizations who obtain additional seats, thus —

Rank	**Party-List**	**Acronym**	**Votes Garnered**	**% vis-a viz remaining seats**	**Add'l Seats**
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	**2,651,987**	5.04	2
2	Bayan Muna	BAYAN MUNA	**1,117,403**	2.12	2
3	Ako Bicol Political Party	AKO BICOL	**1,049,040**	1.99	1
4	Citizens Battle Against Corruption	CIBAC	**929,718**	1.76	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	**770,344**	1.46	1
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	**713,969**	1.35	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	**681,448**	1.29	1
8	Probinsyano Ako	PROBINSYANO AKO	**630,435**	1.19	1
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	0.98	1
10	Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	496,337	0.94	1
11	Association of Philippines Electric Cooperatives	APEC	480,874	0.91	1
12	Gabriela Women's Party	GABRIELA	449,440	0.85	1
13	An Waray	AN WARAY	442,090	0.84	1
14	Cooperative NATCCO Network	COOP-NATCCO	417,285	0.79	1
15	Act Teachers	ACT TEACHERS	395,327	0.75	1
16	Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	394,966	0.75	1
17	Ako Bisaya, Inc.	AKO BISAYA	394,304	0.74	1
18	Tingog Sinirangan	TINGOG SINIRANGAN	391,211	0.74	1
19	Abono	ABONO	378,204	0.71	1
20	Buhay Hayaan Yumabong	BUHAY	361,493	0.68	1
21	Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	354,629	0.67	1
22	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	0.64	1

23	Puwersa ng Bayaning Atleta	PBA	326,258	0.62	1
24	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	0.60	1
25	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	0.60	1
26	Bagong Henerasyon	BH (BAGONG HENERASYON)	288,752	0.54	1
27	Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	281,793	0.53	1
28	Construction Workers Solidarity	CWS	277,940	0.52	1
29	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.52	1
30	Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	274,460	0.52	1
31	Barangay Health Wellness	BHW	269,518	0.51	1
32	Social Amelioration and Genuine Intervention on Poverty	SAGIP	257,313	0.48	1
33	Trade Union Congress Party	TUCP	256,059	0.48	1
34	Magdalo Para Sa Pilipino	MAGDALO	253,536	0.48	1
35	Galing sa Puso Party	GP	249,484	0.47	1
36	Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	249,416	0.47	1
37	Rebulosyonaryong Alyansa Makabansa	RAM	238,150	0.45	1
38	Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	237,629	0.45	1
39	Ako Padayon Pilipino	AKO PADAYON	235,112	0.44	1
40	Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	234,552	0.44	1
41	Kusug Tausug	KUSUG TAUSUG	228,224	0.43	1
42	Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	223,199	0.42	1
43	Talino at Galing Pilipino	TGP	217,525	0.41	1
44	Public Safety Alliance for Transformation and Rule of Law, Inc.	PATROL	216,653	0.41	1
45	Anak Mindanao	AMIN	212,323	0.40	1
46	Agricultural Sector Alliance of the Philippines	AGAP	208,752	0.39	1
47	LPG Marketers Association, Inc.	LPGMA	208,219	0.39	1
48	OFW Family Club, Inc.	OFW Family	200,881	0.38	1
49	Kabalikat ng Mamamayan	KABAYAN	198,571	0.37	1
50	Democratic Independent Workers Association	DIWA	196,385	0.37	1
51	Kabataan Party List	KABATAAN	195,837	0.37	1
52	Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	191,804	0.36	0

53	Serbisyo sa Bayan Party	SBP	180,535	0.34	0
54	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.34	0
55	Akbayan Citizens Action Party	AKBAYAN	173,356	0.32	0
x x	x x x	x x x	x x x	x x x	x x x
		TOTAL	27,884,790		53

This is a clear instance of double counting of votes where votes already used to elect a representative via the guaranteed seat are once again, and without justifiable reason, used to elect a representative for the additional seat. A total of 557,695 votes were unjustifiably and indiscriminately credited twice to the detriment of other votes cast in favor of other party-list organizations. This violates not only the equal protection clause, but also the principle of "one person, one vote" which is a bedrock of the republican and democratic nature of the Philippine State.

In order to remove such an objectionable scenario created by the *BANAT* ruling, petitioner's formula is warranted as it is consistent with the guidelines provided by the framers of the Constitution and Congress. The petitioners' formula provides:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each;

3. Subtract the two percent 2% of the votes from the percentage of the total votes garnered of the party list groups which were already allocated a guaranteed in the first round, then re-rank the groups accordingly;

4. Multiply the percentage of total votes garnered of each party, as adjusted, with the total number of remaining available seats;

5. The whole integer product shall be the party's share in the remaining available seats;

6. Assign on party-list seat to each of the parties next in rank until all available seats are completely distributed;

7. Each party, organization, or coalition shall be entitled to not more than three (3) seats.[43]

Steps 1 and 2 of petitioners' formula are the same as *BANAT*. It is petitioners' step 3 where the divergence starts. Instead of proceeding to the distribution of the additional seats, step 3 requires the removal of the 2% of the votes already considered to award the guaranteed seats from the 8 party-list organizations. The remaining difference will be re-ranked accordingly. This step removes the objectionable part of *BANAT* that allows double crediting of votes. Thus —

Rank	**Party-List**	**Acronym**	**Votes Garnered**	**% of Total Votes**	**1st Seats**
1	Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	9.51	1
2	Bayan Muna	BAYAN MUNA	1,117,403	4.01	1
3	Ako Bicol Political Party	AKO BICOL	1,049,040	3.76	1
4	Citizens Battle Against Corruption	CIBAC	929,718	3.33	1
5	Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSIYANO	770,344	2.76	1
6	One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	2.56	1
7	Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	2.44	1
8	Probinsyano Ako	PROBINSYANO AKO	630,435	2.26	1
9	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	1.85	0

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Party-List	**Acronym**	**Votes Garnered**	**The Difference**
Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	2,651,987	2,094,292
Bayan Muna	BAYAN MUNA	1,117,403	559,708
Ako Bicol Political Party	AKO BICOL	1,049,040	491,345
Citizens Battle Against Corruption	CIBAC	929,718	372,023
Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	770,344	212,649
One Patriotic Coalition of Marginalized Nationals	1 PACMAN	713,969	156,274
Marino Samahan ng mga Seaman, Inc.	MARINO	681,448	123,753
Probinsyano Ako	PROBINSYANO AKO	630,435	72,740

[43] Petition, p. 27.

The re-ranked table applying steps 4, 5 and 6 would show:

Rank	Party-List	Acronym	Votes Garnered	% of Total Votes	Seats
1	**Anti-Crime and Terrorism Community Involvement and Support, Inc.**	**ACT CIS**	**2,094,292**	**3.98**	**2**
2	**Bayan Muna**	**BAYAN MUNA**	**559,708**	**1.06**	**1**
3	Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	516,927	0.98	1
4	Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	496,337	0.94	1
5	**Ako Bicol Political Party**	**AKO BICOL**	**491,345**	**0.93**	**1**
6	Association of Philippines Electric Cooperatives	APEC	480,874	0.91	1
7	Gabriela Women's Party	GABRIELA	449,440	0.85	1
8	An Waray	AN WARAY	442,090	0.84	1
9	Cooperative NATCCO NETWORK	COOP-NATCCO	417,285	0.79	1
10	Act Teachers	ACT TEACHERS	395,327	0.75	1
11	Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	394,966	0.75	1
12	Ako Bisaya, Inc.	AKO BISAYA	394,304	0.74	1
13	Tingog Sinirangan	TINGOG SINIRANGAN	391,211	0.74	1
14	Abono	ABONO	378,204	0.71	1
15	**Citizens Battle Against Corruption**	**CIBAC**	**372,023**	**0.70**	**1**
16	Buhay Hayaan Yumabong	BUHAY	361,493	0.68	1
17	Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	354,629	0.67	1
18	Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	339,665	0.64	1
19	Puwersa ng Bayaning Atleta	PBA	326,258	0.62	1
20	Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	320,000	0.60	1
21	Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	318,511	0.60	1
22	Bagong Henerasyon	BH (BAGONG HENERASYON)	288,752	0.54	1
23	Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	281,793	0.53	1
24	Construction Workers Solidarity	CWS	277,940	0.52	1

25	Abang Lingkod, Inc.	ABANG LINGKOD	275,199	0.52	1
26	Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	274,460	0.52	1
27	Barangay Health Wellness	BHW	269,518	0.51	1
28	Social Amelioration and Genuine Intervention on Poverty	SAGIP	257,313	0.48	1
29	Trade Union Congress Party	TUCP	256,059	0.48	1
30	Magdalo Para Sa Pilipino	MAGDALO	253,536	0.48	1
31	Galing sa Puso Party	GP	249,484	0.47	1
32	Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	249,416	0.47	1
33	Rebulosyonaryong Alyansa Makabansa	RAM	238,150	0.45	1
34	Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	237,629	0.45	1
35	Ako Padayon Pilipino	AKO PADAYON	235,112	0.44	1
36	Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	234,552	0.44	1
37	Kusug Tausug	KUSUG TAUSUG	228,224	0.43	1
38	Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	223,199	0.42	1
39	Talino at Galing Pilipino	TGP	217,525	0.41	1
40	Public Safety Alliance for Transformation and Rule of Law	PATROL	216,653	0.41	1
41	**Alyansa ng mga Mamamayang Probinsyano**	**ANG PROBINSIYANO**	**212,649**	**0.40**	**1**
42	Anak Mindanao	AMIN	212,323	0.40	1
43	Agricultural Sector Alliance of the Philippines	AGAP	208,752	0.39	1
44	LPG Marketers Association, Inc.	LPGMA	208,219	0.39	1
45	OFW Family Club, Inc.	OFW Family	200,881	0.38	1
46	Kabalikat ng Mamamayan	KABAYAN	198,571	0.37	1
47	Democratic Independent Workers Association	DIWA	196,385	0.37	1
48	Kabataan Party List	KABATAAN	195,837	0.37	1
49	Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	191,804	0.36	1
50	Serbisyo sa Bayan Party	SBP	180,535	0.34	1
51	ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	179,909	0.34	1
52	Akbayan Citizens Action Party	AKBAYAN	173,356	0.32	1
x	x x x	x x x	x x x	x x	x
	One Patriotic Coalition of Marginalized Nationals	**1 PACMAN**	**156,001**	**0.29**	**0**

	Marino Samahan ng mga Seaman, Inc.	**MARINO**	**123,753**	**0.23**	**0**
	Probinsyano Ako	**PROBINSYANO AKO**	**72,740**	**0.13**	**0**
		TOTAL	27,884,790		53

Lastly, applying the last step, it shows that petitioners Angkla and SBP and petitioner-in-intervention AKMA-PTM, together with *Akbayan*, would each gain a seat while *Bayan Muna*, 1 PACMAN, *Marino* and *Probinsyano Ako* will lose their seats. The final tally looks —

Party-List	Acronym	Seats
Anti-Crime and Terrorism Community Involvement and Support, Inc.	ACT CIS	3
Bayan Muna	BAYAN MUNA	2
Ako Bicol Political Party	AKO BICOL	2
Citizens Battle Against Corruption	CIBAC	2
Alyansa ng mga Mamamayang Probinsyano	ANG PROBINSYANO	2
One Patriotic Coalition of Marginalized Nationals	1 PACMAN	1
Marino Samahan ng mga Seaman, Inc.	MARINO	1
Probinsyano Ako	PROBINSYANO AKO	1
Coalition of Association of Senior Citizens in the Philippines, Inc.	SENIOR CITIZENS	1 1
Magkakasama sa Sakahan, Kaunlaran	MAGSASAKA	1
Association of Philippines Electric Cooperatives	APEC	1
Gabriela Women's Party	GABRIELA	1
An Waray	AN WARAY	1
Cooperative NATCCO NETWORK	COOP-NATCCO	1
Act Teachers	ACT TEACHERS	
Philippine Rural Electric Cooperatives Association, Inc.	PHILRECA	1 1
Ako Bisaya, Inc.	AKO BISAYA	1
Tingog Sinirangan	TINGOG SINIRANGAN	1
Abono	ABONO	1
Buhay Hayaan Yumabong	BUHAY	1
Duty to Energize the Republic Through the Enlightenment of the Youth	DUTERTE YOUTH	1
Kalinga-Advocacy for Social Empowerment and Nation Building	KALINGA	1
Puwersa ng Bayaning Atleta	PBA	1
Alliance of Organizations, Networks, and Associations of the Philippines	ALONA	1

Rural Electric Consumers and Beneficiaries of Development and Advancement, Inc.	RECOBODA	1
Bagong Henerasyon	BH (BAGONG HENERASYON)	1
Bahay para sa Pamilyang Pilipino, Inc.	BAHAY	1
Construction Workers Solidarity	CWS	1
Abang Lingkod, Inc.	ABANG LINGKOD	1
Advocacy for Teacher Empowerment through Action Cooperation and Harmony Towards Educational Reform	A TEACHER	1 1
Barangay Health Wellness	BHW	1
Social Amelioration and Genuine Intervention on Poverty	SAGIP	1
Trade Union Congress Party	TUCP	1
Magdalo Para Sa Pilipino	MAGDALO	1
Galing sa Puso Party	GP	1
Manila Teachers Savings and Loan Association, Inc.	MANILA TEACHERS'	1
Rebulosyonaryong Alyansa Makabansa	RAM	1
Alagaan Natin Ating Kalusugan	ANAKALUSUGAN	1
Ako Padayon Pilipino	AKO PADAYON	1
Ang Asosayon Sang Mangunguma nga Bisaya-OWA Mangunguma, Inc.	AAMBIS-OWA	1
Kusug Tausug	KUSUG TAUSUG	1
Dumper Philippines Taxi Drivers Association, Inc.	DUMPER PTDA	1
Talino at Galing ng Pilipino	TGP	1
Public Safety Alliance for Transformation and Rule of Law, Inc.	PATROL	1
Anak Mindanao	AMIN	1
Agricultural Sector Alliance of the Philippines	AGAP	1
LPG Marketers Association, Inc.	LPGMA	1
OFW Family Club, Inc.	OFW Family	1
Kabalikat ng Mamamayan	KABAYAN	1
Democratic Independent Workers Association	DIWA	1
Kabataan Party List	KABATAAN	1
Aksyon Magsasaka - Partido Tinig ng Masa (AKMA-PTM)	AKMA-PTM	1
Serbisyo sa Bayan Party	SBP	1
ANGKLA: Ang Partido ng mga Pilipinong Marino, Inc.	ANGKLA	1
Akbayan Citizens Action Party	AKBAYAN	1
	TOTAL	**61**

It does not escape my attention that petitioners' formula and the Court's approval of the same would result in the ouster of

incumbent members of the House of Representatives without due proceedings conducted by the House of Representatives Electoral Tribunal. However, removal of incumbent members through procedures other than through the HRET have been recognized in the past. In *Dimaporo v. Hon. Mitra*[44] the Court recognized several ways on how incumbent members of the Congress may be removed from their seat or their term considerably shortened, thus:

> That the ground cited in Section 67, Article IX of B.P. Big. 881 is not mentioned in the Constitution itself as a mode of shortening the tenure of office of members of Congress, does not preclude its application to present members of Congress. Section 2 of Article XI provides that "(t)he President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. *All other public officers and employees may be removed from office as provided by law, but not by impeachment.*["] Such constitutional expression clearly recognizes that the four (4) grounds found in Article VI of the Constitution by which the tenure of a Congressman may be shortened are not exclusive. As held in the case of *Stale ex rel. Berge vs. Lansing,* the expression in the constitution of the circumstances which shall bring about a vacancy does not necessarily exclude all others. Neither does it preclude the legislature from prescribing other grounds. Events so enumerated in the constitution or statutes are merely conditions the occurrence of any one of which the office shall become vacant not as a penalty but simply as the legal effect of any one of the events. And would it not be preposterous to say that a congressman cannot die and cut his tenure because death is not one of the grounds provided for in the Constitution? The framers of our fundamental law never intended such absurdity, (citations omitted)

Be that as it may, as petitioners' formula would drastically change the membership of Congress and might derail Congressional agenda at the time of a global health pandemic, I am of the opinion that the application of this formula be made prospectively.

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[44] 279 Phil. 843, 857-858 (1991).

I am well aware that, if ever, this will be the third fine-tuning of the formula for the allocation of party-list seats. There is nothing wrong with this. As long as we live in a vibrant democracy, we must continue to perfect our democratic system.

As stated in the main opinion, it is quite unfortunate that the Court was unable to muster enough votes to either affirm or reject the *BANAT* formula. While a stand-still is a less than desirable result for the Court, it becomes an opportunity for the Honorable members of Congress to fine-tune R.A. No. 7941, now with the benefit of the collective wisdom of the Court from *Veterans* to *BANAT* to *Angkla*.

I vote to **GRANT** the petition; **SET ASIDE** COMELEC Resolution dated May 22, 2019 in NBC No. 004-19; and **DECLARE** the phrase "in proportion to their total number of votes" found in Section 11(b) of Republic Act No. 7941 as **UNCONSTITUTIONAL.** The formula discussed above should take effect **PROSPECTIVELY.**

Let a copy of this Opinion be furnished the President of the Senate and the Speaker of the House of Representatives for their information and guidance.

DISSENTING OPINION

ZALAMEDA, *J.*:

> *If ever there is a hierarchy of protected expressions, political expression would occupy the highest rank, and among different kinds of political expression,* ***the subject of fair and honest elections would be at the top***.[1]
>
> - Senior Associate Justice Antonio T. Carpio

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[1] Associate Justice Antonio T. Carpio's Separate Opinion in *Chavez v. Gonzalez,* 569 Phil. 155 (2008). Emphasis supplied.

In this amended Petition for *Certiorari* and Prohibition, petitioners *Angkla: Ang Partido ng mga Marinong Pilipino (Angkla)* and *Serbisyo sa Bayan Party* (SBP), together with petitioner-in-intervention, *Aksyon Magsasaka — Tinig Partido ng Masa* (AKMA-PTM), assail Resolution No. 004-19 issued by respondent Commission on Elections (COMELEC), acting as the National Board of Canvassers (NBOC). They argue that said Resolution was issued with grave abuse of discretion amounting to lack or excess of jurisdiction for blatantly violating the procedure introduced by the Court in its Resolution in *BANAT v. COMELEC* (*BANAT* Resolution),[2] the equal protection clause, and the principle of "one voter, one party-list vote."[3]

Corollary to this, petitioners assail the constitutionality of Section 11 (b) of Republic Act No. (RA) 7941,[4] or the Party-List System Act, providing for the double counting of votes in the allocation of additional seats:

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

NBOC Resolution No. 004-19, issued on 22 May 2019, proclaimed the party-list groups who won in the 13 May 2019 elections. On the basis of the tabulated Party List Canvass Report No. 8,[5] the COMELEC, sitting *en banc* as NBOC, applied the

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[2] G.R. Nos. 179271 and 179295 (Resolution), 08 July 2009; 609 Phil. 751 (2009).

[3] Amended Petition, pp. 2-3.

[4] An Act Providing for the Election of Party-List Representatives Through the Party-List System, and Appropriating Funds Therefor.

[5] *Rollo,* pp. 148-150.

formula adopted in *BANAT v. COMELEC*[6] (*BANAT* Decision) in the allocation of the 61 party-list seats. As a result, only 51 party-list groups were allocated seats leaving petitioners, being among those ranked lower, without a party-list seat.

Petitioners insist that the allocation of additional seats in proportion to a party's total number of votes results in the double counting of votes in favor of the two percenters, which violates the equal protection clause. Petitioners claim that, consistent with the *BANAT* Resolution, the 2% votes counted in the first round should first be excluded or deducted from the total votes of the two percenters before proceeding to the second round of seat allocation. According to petitioner's interpretation of the *BANAT* Resolution, the correct formula should be:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

3. Votes amounting to two percent (2%) of the total votes cast for the party-list system should be deducted from the total votes of the party-list entitled to guaranteed seats.

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

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

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

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[6] G.R. Nos. 179271 & 179295, 21 April 2009; 604 Phil. 131 (2009).

[7] *Rollo,* p. 133.

The party-list system is enshrined in the 1987 Constitution, which mandates that 20% of the total membership of the House of Representatives is reserved for party-list representatives. Paragraphs 1 and 2 of Article VI, Section 5, of the Constitution read:

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

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

Although the party-list system is provided in the Constitution, an enabling law had to be passed to implement this provision. Congress was vested with the duty to define and prescribe the mechanics for the party-list system. Thus, in 1995, Congress enacted RA 7941. Sections 11 and 12 thereof provide:

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

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

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

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

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

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

The party-list system is a mechanism for proportional representation in the election of representatives in the House of Representatives from national, regional, and sectoral parties or organizations of coalitions thereof registered with the COMELEC.[8] In Ang *Bagong Bayani-OFW v. COMELEC*,[9] the Court explained the nature of the Philippine party-list system:

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

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[8] Section 3 of RA 7941.

[9] G.R. Nos. 1457589 & 147613, 26 June 2001; 412 Phil. 308(2001).

and mongrelize the social justice mechanism into an atrocious veneer for traditional politics.

Under Section 18 of RA 7941,[10] the COMELEC is mandated to promulgate the necessary rules and regulations to carry out the purposes of the Act. On 25 June 1996, the COMELEC *en banc* promulgated Resolution No. 2847, prescribing the "Rules and Regulations Governing the Election of Party-List Representatives Through the Party-List System." Under these rules and regulations, the seats are allocated at the rate of one seat per 2% of votes obtained, provided that each party shall be entitled to not more than three seats. Further, only those who have mustered at least 2% of the total votes cast for the party-list are allocated seats for party-list representative.[11] This formula is illustrated in Annex "A" of Resolution No. 2847.

In the *BANAT* Decision,[12] the Court held that **the 2% threshold in relation to the distribution of the additional seats as found in the second clause of Section 11(b) of RA 7941 is unconstitutional.** The Court explained:

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[10] Section 18. *Rules and Regulations.* — The COMELEC shall promulgate the necessary rules and regulations as may be necessary to carry out the purposes of this Act.

[11] The COMELEC's "Primer on the Party-List System of Representation in the House of Representatives" provides the following procedure in the allocation of party-list seats:

1. The parties shall be ranked from highest to lowest based on the number and percentage of votes garnered during the elections;
2. Only a maximum of three seats may be allowed per party. Seats are allocated at the rate of one seat per 2% of votes obtained; and
3. Unallocated seats shall be distributed among the parties which have not yet obtained the maximum 3 seats, provided they have mustered at least 2% of votes.

The variance of percentage in excess of 2% or 4% (equivalent to 1 or 2 seats that have already been obtained, respectively) shall be ranked and be the basis for allocating the remaining seats.

[12] *Supra* note 6.

We rule that, **in computing the allocation of additional seats, the continued operation of the two percent threshold for the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941 is unconstitutional.** This Court finds that the two percent threshold makes it mathematically impossible to achieve the maximum number of available party list seats when the number of available party list seats exceeds 50. **The continued operation of the two percent threshold in the distribution of the additional seats frustrates the attainment of the permissive ceiling that 20% of the members of the House of Representatives shall consist of party-list representatives.**

x x x x

We therefore strike down the two percent threshold only in relation to the distribution of the additional seats as found in the second clause of Section 11 (b) of R.A. No. 7941. **The two percent threshold presents an unwarranted obstacle to the full implementation of Section 5 (2), Article VI of the Constitution and prevents the attainment of "the broadest possible representation of party, sectoral or group interests in the House of Representatives."** (Emphasis supplied)

Further, the Court adopted the following procedure in determining the allocation of seats for party-list representatives under Section 11 of RA 7941:

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

2. The parties, organizations, and coalitions receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to one guaranteed seat each.

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

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

In computing the additional seats, the guaranteed seats shall no longer be included because they have already been allocated, at one

seat each, to every two-percenter. Thus, the remaining available seats for allocation as "additional seats" are the maximum seats reserved under the Party List System less the guaranteed seats. Fractional seats are disregarded in the absence of a provision in R.A. No. 7941 allowing for a rounding off of fractional seats.

xxx **There are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats,** 38, which is the difference between the 55 maximum seats reserved under the Party-List System and the 17 guaranteed seats of the two-percenters. **The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed.** We distributed all of the remaining 38 seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled.[13] (Emphasis supplied)

The Court ruled in the *BANAT* Decision that the 2% threshold is only void in relation to the distribution of the additional seats as this would frustrate the permissive ceiling of 20% constitution of party-list membership in the House of Representatives. The Court averred that **the allocation of additional seats to party-list organizations is still in proportion to their total number of votes.**

In the subsequent *BANAT* Resolution, the Court made some clarifications in view of the reduction of the number of legislative districts,[14] which resulted in a corresponding change in the number of party-list seats from 55 to 54. The Court likewise ruled on the motion for partial reconsideration-in-intervention of Armi Jane Roa-Borje, the third nominee of Citizen's Battle Against Corruption (CIBAC). The Court held:

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[13] Id.

[14] The number of legislative districts was reduced to 219 following the Court's ruling in *Sema v. COMELEC* [G.R. Nos. 177597 & 178628, 16 July 2008], declaring void the creation of the Province of Sharif Kabunsuan.

To address Roa-Borje's motion for partial reconsideration-in-intervention and for purposes of computing the results in future party-list elections, we reiterate that **in the second step of the second round of seat allocation, the preference in the distribution of seats should be in accordance with the higher percentage and higher rank, without limiting the distribution to parties receiving two-percent of the votes.** To limit the distribution of seats to the two-percenters would mathematically prevent the filling up of all the available party-list seats.

In the table above, CIBAC cannot claim a third seat from the seat allocated to TUCP, the last ranked party allocated with a seat. **CIBAC's 2.81% *(from the percentage of 4.81% less the 2% for its guaranteed seat)* has a lower fractional seat value after the allocation of its second seat compared to TUCP's 1.03%. CIBAC's fractional seat after receiving two seats is only 0.03 compared to TUCP's 0.38 fractional seat. Multiplying CIBAC's 2.81% by 37, the additional seats for distribution in the second round, gives 1.03 seat, leaving 0.03 fractional seat. Multiplying TUCP's 1.03% by 37 gives a fractional seat of 0.38, higher than CIBAC's fractional seat of 0.03. The fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.** Thus, for purposes of the second step in the second round of seat allocation, TUCP has a higher rank than CIBAC.[15] (Emphasis supplied)

Petitioners claim that this subsequent ruling of the Court in *BANAT* prohibited the "reusage or double counting of votes in the allocation of additional party-list seats."[16] In line with this ruling, petitioners maintain that the 2% votes counted in the first round should first be excluded or deducted from the total votes of the two percenters before proceeding to the second round of seat allocation.

The statement of the Court in the *BANAT* Resolution regarding the allocation of additional seats is indeed confusing. In computing CIBAC's fractional seat after receiving two seats,

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[15] *Supra* note 2.

[16] *Rollo*, p. 108.

the Court multiplied CIBAC's 2.81% **(from the percentage of 4.81% less the 2% for its guaranteed seat)** by 37, the additional seats for distribution in the second round, resulting in 1.03 seat, leaving a .03 fractional seat, which is lower than TUCP's .38 fractional seat. It would thus appear that the Court deducted the 2%, representing the guaranteed seat allocation, from the total percentage of votes of the two percenters (specifically CIBAC, in this case) before allocating the additional seats. However, the Court went on to clarify that **the fractional seats become material only in the second step of the second round of seat allocation to determine the ranking of parties.**

A scrutiny of the *BANAT* Resolution reveals that the Court still maintained its formula in allocating the party-list seats as enunciated in the *BANAT* Decision. This is clear from the tabulation made by the Court, modifying the COMELEC's computation in NBC No. 09-001. The formula for allocating seats remained the same except that the multiplier for the allocation of additional seats was reduced to 36 (the difference between 54, the number of available party-list seats, and 18, the number of guaranteed seats). **In computing for additional seats, the Court still used the percentage of votes garnered over the total votes for party list without deducting the 2% votes already allotted in the first round for guaranteed seats,** contrary to petitioners' interpretation. In short, **the allocation of additional seats to party-list organizations is still in proportion to their total number of votes, without deducting the 2% votes already allotted for their guaranteed seats.**

In the *BANAT* Resolution,[17] the Court reiterated that "**[t]here are two steps in the second round of seat allocation. First, the percentage is multiplied by the remaining available seats,**

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[17] The *BANAT* Resolution summarized the four parameters in a Philippine-style party-list election system as follows:

1. Twenty percent of the total number of the membership of the House of Representatives is the maximum number of seats available to party-list organizations, such that there is automatically one party-list seat for every four existing legislative districts.

which is the difference between the maximum seats reserved under the Party-List System and the guaranteed seats of the two-percenters. **The whole integer of the product of the percentage and of the remaining available seats corresponds to a party's share in the remaining available seats. Second, we assign one party-list seat to each of the parties next in rank until all available seats are completely distributed.** We distributed all of the remaining seats in the second round of seat allocation. Finally, we apply the three-seat cap to determine the number of seats each qualified party-list candidate is entitled."[18]

Applying the two steps in the second round of seat allocation, the Court, in the **first step,** multiplied CIBAC's 4.81% by 37 and got 1.73, which corresponds to CIBAC's one (1) additional seat since fractional seats are disregarded. It should be stressed that in this first step of the second round of seat allocation, the

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2. Garnering two percent of the total votes cast in the party-list elections guarantees a party-list organization one seat. The guaranteed seats shall be distributed in a first round of seat allocation to parties receiving at least two percent of the total party-list votes.

3. The additional seats, that is, the remaining seats after allocation of the guaranteed seats, shall be distributed to the party-list organizations including those that received less than two percent of the total votes. The continued operation of the two percent threshold as it applies to the allocation of the additional seats is now unconstitutional because this threshold mathematically and physically prevents the filling up of the available party-list seats. **The additional seats shall be distributed to the parties in a second round of seat allocation according to the two-step procedure laid down in the Decision of 21 April 2009 as clarified in this Resolution.**

4. The three-seat cap is constitutional. The three-seat cap is intended by the Legislature to prevent any party from dominating the party-list system. There is no violation of the Constitution because the 1987 Constitution does not require absolute proportionality for the party-list system. The well-settled rule is that courts will not question the wisdom of the Legislature as long as it is not violative of the Constitution. (Emphasis supplied)

[18] See footnotes 6 and 7 of the BANAT Resolution.

Court still used the percentage of votes garnered over the total votes for party list *without deducting the 2% votes already allotted in the first round for guaranteed seats*, which in CIBAC's case is 4.81%. However, in the **second step** of the second round, the Court did not consider CIBAC's fractional seat of 0.73 (the fractional remainder from 1.73 after the allocation of 1 additional seat to CIBAC), which would have entitled CIBAC to an additional seat. Instead, in the second step of the second round of seat allocation, wherein the preference in the distribution is in accordance with the higher percentage and higher rank without limiting the distribution of seats to the two percenters, it appears that **the Court had a separate equation for the two percenters when it deducted the 2% guaranteed seat from the percentage of votes of the two percenters.**

In determining the ranking of parties in the second step of the second round of seat allocation, the Court multiplied CIBAC's 2.81% (**from the percentage of 4.81% less the 2% for its guaranteed seat**) by 37, the additional seats for distribution in the second round, resulting in 1.03 seat, **leaving a 0.03 fractional seat which is lower than TUCP's 0.38 fractional seat.** Thus, in this second step of the second round of seat allocation, CIBAC cannot claim a third seat since TUCP, the last ranked party allocated with a seat, has a higher rank than CIBAC.

To clarify, in the first step of the second round of seat allocation, the **allocation of additional seats to the two percenters is still in proportion to their total number of votes, without deducting the 2% votes already allotted for their guaranteed seats**. It is only in the second step of the second round of seat allocation, wherein the preference in the distribution is in accordance with the higher percentage and higher rank without limiting the distribution of seats to the two percenters, that **the 2% guaranteed seat is deducted from the percentage of votes of the two percenters to compute its fractional seat in order to determine its ranking for additional seat allocation.**

It is therefore erroneous for petitioners to insist that the *BANAT* Resolution excluded the 2% votes counted in the first round from the total votes of the two percenters before proceeding to the second round of seat allocation. Nonetheless, I agree with petitioners that the non-exclusion of the 2% guaranteed votes in the allocation of additional seats results to double counting of votes, which violates the equal protection clause.

Petitioners next argue that the last paragraph of Section 11 of RA 7941, which entitles parties to additional seats "in proportion to their total number of votes," is unconstitutional. I agree. This provision violates the equal protection clause for allowing the 2% already allotted for a guaranteed seat to be re-used and re-counted in the allocation of additional seats. I submit that this clause perpetuates the double counting of votes which is anathema to the "one person, one vote" rule rooted in the Equal Protection Clause.

One of the basic tenets of democracy is that each person has one vote. The principle of "one person, one vote" or equality in voting power is the essence of our democracy and is inherent in proportional representation.[19] All votes are equal and should carry the same weight. In every conduct of elections, the government must ensure that each and every vote cast should have equal voting power. Otherwise, the equal protection of laws, as guaranteed under our Constitution, finds no application.

Indeed, to consider the 2% votes representing the guaranteed seats again would logically grant these votes more weight and influence as compared to other votes in support of those party-list organizations that did not garner at least 2% (the non-two percenters). This assigns undue preference to those party-list organizations who obtained at least 2% of the total number of votes (the two percenters); not only making it easier for the two percenters to get additional seats, but making it more difficult for the non-two percenters to obtain a single seat. The principle

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[19] Justice Antonio T. Carpio's Separate Opinion in *Aquino III v. Commission on Elections* [G.R No. 189793, 07 April 2010].

of "one person, one vote" ensures that a voter's constitutional right to vote in elections is not wrongfully denied or diluted. The double counting of votes for the two percenters would effectively dilute the weight of the votes for the non-two percenters, and is inconsistent with the voters' constitutional right to an equally weighted vote.

We must fiercely guard against the unconstitutional double counting of votes. To this end, I propose that the COMELEC's formula, as provided in the implementing rules and regulations of RA 7941[20] and explained further in the primer on the party-list system of representation, be utilized but with some modification.

The COMELEC's formula **adheres to the 3-seat cap and emphasizes the preference for the two percenters, which is consistent with RA 7941. However, the COMELEC's formula needs to be modified as regards limiting the allocation of seats only to the two percenters since this would negate the 20% allocation of party-list membership in the House of Representatives provided under Article VI, Section 5 of the Constitution.** The Court in *BANAT v. COMELEC*,[21] already held the 2% threshold as void in relation to the distribution of the additional seats as this would frustrate the permissive ceiling of 20% constitution of party-list membership in the House of Representatives. Thus, I present the following procedure in the allocation of seats in the party-list system:

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

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[20] COMELEC Resolution No. 2847, prescribing the "Rules and Regulations Governing the Election of Party-List Representatives Through the Party-List System."

[21] G.R. Nos. 179271 & 179295, 21 April 2009; 604 Phil. 131 (2009).

2. Compute the percentage of votes garnered by the parties, organizations, and coalitions over the total votes cast for the party-list system to distinguish the two percenters and the non- two percenters.

Example:

Two Percenters:

Party A = 9%
Party B = 5.8%
Party C = 3.2%
Party D = 2.1%

Non- Two Percenters:

Party E = 1.9%
Party F= 1.85%
Party G= 1.7%
Party H = 1.5%
Party I = 1.1%
Party J = 0.9%
Party K= 0.6%

3. Determine the number of seats allocated for the two percenters. That is, one seat shall be allotted for every 2% garnered, provided that the total seats allocated per parties, organizations, and coalitions should not exceed 3 seats.

In the example, the two percenters shall have one (1) seat per 2% of votes obtained:

Party A (9%) = 3 seats* [2% x 3 = 6%]
Party B (5.8%) = 2 seats [2% x 2 =4%]
Party C (3.2%) = 1 seat [2% x 1 = 2%]
Party D (2.1%) = 1 seat [2% x 1 = 2%]

*not 4 seats because of the 3-seat cap

4. Compute the percentage not consumed (variance) in the allocation of seats for the two percenters by subtracting

the percentage consumed in allocating the seats (Step #3) from the percentage of votes (Step #2). Disregard those that have already obtained the maximum 3-seat allocation.

Computing the percentage not consumed (or variance) by the two percenters in the example:

> Party A = exempted since already obtained the maximum 3 seats allowed.
> Party B - 5.8% - 4% - **1.8%**
> Party C = 3.1%-2% = **1.2%**
> Party D = 2.1 % - 2% = **0.1 %**

5. **Re-rank** the parties, organizations, and coalitions from highest to lowest **based on the percentage not consumed for the two percenters** and on the **percentage of votes for the non-two percenters.** Again, disregard the two percenters that have already obtained the maximum 3-seat allocation.

In the example, the new ranking for allocating the remaining seats will be:

(Non-Two Percenters: Party E = 1.9%; Party F = 1.85%; Party G = 1.7%; Party H - 1.5%; Party 1=1.1%; Party J = 0.9%; Party K = 0.6%)

1 - Party E (1.9%)
2 - Party F (1.85%)
3 - Party B (1.8%)
4 - Party G (1.7%)
5 - Party H (1.5%)
6 - Party C (1.2%)
7 - Party I (1.1%)
8 - Party J (0.9%)
9 - Party K (0.6%)
10 - Party D (0.1%)

In this **new ranking** for the allocation of the remaining seats, **the two percenters that have not attained the maximum 3 seats are still included.** However, **only** the

percentage **not consumed** is considered (see Step #4). The percentage representing the seats already allocated (2% for 1 seat and 4% for 2 seats) is **deducted** from the original percentage of the two percenters so that **there will be no double counting of votes.**

6. The remaining party-list seats shall be distributed by assigning one party-list seat to the re-ranked, parties, organizations, and coalitions, starting from the highest ranked until all available seats are completely distributed.

This suggested procedure is similar to the COMELEC's formula as provided in the implementing rules and regulations and the primer on RA 7941. However, under the COMELEC's formula, only those parties which have received at least 2% of the total votes cast for the party-list system were entitled to party-list seats.

In my suggested formula, after the two percenters are allocated seats, *i.e.*, one seat per 2% of votes obtained, but not to exceed 3 seats, the variance in excess of 2% or 4% (equivalent to 1 or 2 seats that have already been obtained, respectively) shall be computed and accordingly ranked together with the percentage of the non-two percenters. This new ranking **based on the percentage not consumed for the two percenters** (percentage of votes **less** the percentage consumed on the allocated seats) and on the **percentage of votes for the non-two percenters** (since they were not yet allocated any seats for not having reached the 2% threshold) shall be the basis for allocating the remaining seats until all available seats are distributed.

Applying this formula in the distribution of available party-list seats, where the total number of votes under the party-list system is 27,884,790 and the number of seats reserved for the party-list representatives is 61:

A **Rank**	B **Party/ Organization/ Coalition**	C **Number of Votes Garnered**	D **Percentage (%) of Votes** **[C/Total Number of Votes Under Party-List]**	E **Number of Seats Allocated for the Two Percenters** **[1 seat for every 2% Maximun of 3 seats]**	F **Percentage Consumed** **[E x 2%]**	G **Variance** **[D-F]**	H **New Rank For Additional Seats** **[Base on the Variance (G) for the Two Percenters and Percentage of Votes (D) for the non-Two Percenters]**	I **Additional Seats**	J **Total Seats** **[E+1]**
1	ACT CIS	2,651,987	9.5105	3					3
2	BAYAN MUNA	1,117,403	4.0072	2	4	0.0072			2
3	AKO BICOL	1,049,040	3.7621	1	2	1.7621		1	2
4	CIBAC	929,718	3.3341	1	2	1.3341	3	1	2
5	ANG PROBINSIYANO	770,344	2.7626	1	2	0.7626	13		2
6	1 PACMAN	713,969	2.5604	1	2	0.5604	39		1
7	MARINO	681,448	2.4438	1	2	0.4438			1
8	PROBINSYANO AKO	630,435	2.2609	1	2	0.2069			1
9	SENIOR CITIZENS	516,927	1.8538				1	1	1
10	MAGSASAKA	496,337	1.7800				2	1	1
11	APEC	480,874	1,7245				4	1	1
12	GABRIELA	449,440	1.6118				5	1	1
13	AN WARAY	442,090	1.5854				6	1	1
14	COOP-NATCCO	417,285	1.4965				7	1	1
15	ACT TEACHERS	395,327	1.4177				8	1	1
16	PHILRECA	394,966	1.4164				9	1	1
17	AKO BISAYA	394,304	1.4140				10	1	1
18	TINGOG SINIRANGAN	391,211	1.4030				11	1	1
19	ABONO	378,204	1.3563				12	1	1
20	BUHAY	361,493	1.2964				14	1	1
21	DUTERTE YOUTH	354,629	1.2718				15	1	1
22	KALINGA	339,665	1.2181				16	1	1
23	PBA	326,258	1.1700				17	1	1
24	ALONA	320,000	1.1476				18	1	1
25	RECOBODA	318,511	1.1422				19	1	1

26	BH	288,752	1.0355				20	1	1
27	BAHAY	281,793	1.0106				21	1	1
28	CWS	277,940	0.9967				22	1	1
29	ABANG LINGKOD	275,199	0.9869				23	1	1
30	A TEACHER	274,460	0.9843				24	1	1
31	BHW	269,518	0.9665				25	1	1
32	SAGIP	257,313	0.9228				26	1	1
33	TUCP	256,059	0.9183				27	1	1
34	MAGDALO	253,536	0.9092				28	1	1
35	GP	249,484	0.8947				29	1	1
36	MANILA TEACHERS	249,416	0.8945				30	1	1
37	RAM	238,150	0.8540				31	1	1
38	ANAK KALUSUGAN	237,629	0.8522				32	1	1
39	AKO PADAYON	235,112	0.8432				33	1	1
40	AAMBIS-OOWA	234,552	0.8411				34	1	1
41	KUSUG TAUSUG	228,224	0.8185				35	1	1
42	DUMPER PTDA	223,199	0.8004				36	1	1
43	TGP	217,525	0.7801				37	1	1
44	PATROL	216,653	0.7770				38	1	1
45	AMIN	212,323	0.7614				40	1	1
46	AGAP	208,752	0.7486				41	1	1
47	LPGMA	208.219	0.7467				42	1	1
48	OFW FAMILY	200.881	0.7204				43	1	1
49	KABAYAN	198,571	0.7121				44	1	1
50	DIWA	196,385	0.7043				45	1	1
51	KABATAAN	195,837	0.7023				46	1	1
52	AKMA-PTM	191,804	0.6878				47	1	1
53	SBP	180,535	0.6474				48		1
54	ANGKLA	179,909	0.6452				49	1	1
55	AKBAYAN	173,356	0.6217				50	1	1
56	WOW PILIPINAS	172,080	0.6171				51	1	1
	TOTAL			**11**				50	**61**

In adopting the above procedure, I truly believe that proportionality is achieved without the unconstitutional "double votes," thus allowing the broadest possible representation of interests in the party-list system by enhancing their chances to compete for and win seats in the House of Representatives.[22]

[22] Section 2, RA 7941.

Accordingly, I vote to **GRANT** the present Petitions and to:

1. **DECLARE** the phrase "in proportion to their total number of votes" in Section 11(b) of RA 7941 as **UNCONSTITUTIONAL;**

2. **DECLARE** the COMELEC Resolution NBOC No. 004-19 dated 22 May 2019 as **INVALID** insofar as the party-list seats erroneously proclaimed, in accordance with the revised procedure set herein; and

3. **ORDER** the COMELEC to reconvene and hear all the relevant parties, properly allocate the seats under the party-list system, and after which, issue a new NBOC resolution proclaiming the winning party-list organizations based on the revised procedure.

EN BANC

[G.R. No. 247866. September 15, 2020]

FEDERATION OF CORON, BUSUANGA, PALAWAN FARMER'S ASSOCIATION, INC. (FCBPFAI), represented by its Chairman, RODOLFO CADAMPOG, SR,; SAMAHAN NG MAGSASAKA SA STO. NINO, BUSUANGA, PALAWAN (SAMMASA) represented by its Chairman, EDGARDO FRANCISCO; SANDIGAN NG MAMBUBUKID NG BINTUAN CORON, INC. (SAMBICO), represented by its Chairman, RODOLFO CADAMPOG, SR.; and RODOLFO CADAMPOG, SR., in his personal capacity as a Filipino Citizen, and in behalf of millions of Filipino occupants and settlers on public lands considered squatters in their own country, *Petitioners, v.* **THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES (DENR) and THE DEPARTMENT OF AGRARIAN REFORM (DAR),** *Respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; PRESUMPTION OF CONSTITUTIONALITY; IN PASSING UPON THE VALIDITY OF A LAW, COURTS WILL AFFORD SOME DEFERENCE TO THE STATUTE AND CHARGE THE PARTY ASSAILING IT WITH THE BURDEN OF SHOWING THAT THE ACT IS INCOMPATIBLE WITH THE CONSTITUTION. — Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three (3) coordinate departments of the government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where

a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain. The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the Constitution. The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional. In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction. Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative. The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who seek to declare the law, or parts thereof, unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.

2. ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI*; A PARTY IS ALLOWED TO RAISE A CONSTITUTIONAL QUESTION WHEN HE CAN SHOW THAT HE WILL PERSONALLY SUFFER SOME ACTUAL OR THREATENED INJURY BECAUSE OF THE ILLEGAL CONDUCT OF THE GOVERNMENT, THE INJURY IS FAIRLY TRACEABLE TO THE CHALLENGED ACTION, AND THE INJURY IS LIKELY TO BE REDRESSED BY A FAVORABLE ACTION. — [P]etitioners failed to prove that they have the *locus standi* to raise a constitutional question. Legal standing or *locus standi* is defined as a "personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged." x x x A party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to

the challenged action; and (3) the injury is likely to be redressed by a favorable action. Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."

3. ID.; ID.; ID.; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ALL LANDS NOT APPEARING TO BE CLEARLY UNDER PRIVATE OWNERSHIP ARE PRESUMED TO BELONG TO THE STATE, AND PUBLIC LANDS REMAIN PART OF THE INALIENABLE LAND OF THE PUBLIC DOMAIN UNLESS THE STATE IS SHOWN TO HAVE RECLASSIFIED OR ALIENATED THEM TO PRIVATE PERSONS; EXCEPTION. — It is already well-settled that unclassified land cannot be considered as alienable and disposable land of public domain pursuant to the Regalian Doctrine. Pursuant to the Regalian Doctrine *(Jura Regalia),* a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the Royal Cedulas, all lands of the public domain belong to the State. This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony. All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons. x x x The only exception in the Regalian Doctrine is native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown.

4. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT); CLASSIFICATION OF LANDS OF PUBLIC DOMAIN; THE EXECUTIVE BRANCH HAS THE POWER TO CLASSIFY LANDS OF PUBLIC DOMAIN. — Section 13 of the Philippine Bill of 1902 states that the Government of the Philippine Islands could classify the lands of public domain either as agricultural, timber or mineral land. x x x [T]he law does not provide any presumption that a land of public domain is agricultural. Notably, it merely gave the said government the prerogative to classify land; nothing therein

states that unclassified lands are *ipso facto* treated as agricultural land, which are alienable and disposable x x x. Further, Sec. 13 referred to the President of the United States, who had the power to classify public land, subject to the disapproval or amendment of the Congress of the United States. At that time, the Philippine Islands only had a Philippine Commission, which exercised the powers of the government, but did not have the power to classify lands. As the Executive and Legislative Branch in the Philippine Islands had no power to classify lands of public domain then, the Judiciary had the jurisdiction to determine for itself the classification of a particular parcel of land in justiciable cases. x x x However, the power to classify the lands by the Philippine courts was finally removed in 1919 when Act No. 2874, or the Public Land Act, was enacted, which stated that the Governor-General in the Philippines had the power to classify land x x x. Then, under the 1935 Constitution, Commonwealth Act *(C.A.)* No. 141 or the present Public Land Act, was enacted. It retained the provision that the President of the Philippines had the power to classify lands of public domain x x x. Thus, the State, through the legislature enacting Act No. 2874 and C.A. No. 141, delegated to the Executive Branch the power to classify lands of public domain and finally removed from the courts the power to classify such.

5. ID.; PRESIDENTIAL DECREE NO. 705 (THE FORESTRY REFORM CODE OF THE PHILIPPINES); FOREST LANDS; UNCLASSIFIED LANDS ARE IN THE SAME FOOTING AS FOREST LANDS BECAUSE THESE BELONG TO THE STATE, AND THESE ARE NOT ALIENABLE AND DISPOSABLE LAND OF PUBLIC DOMAIN AND ARE NOT SUBJECT TO PRIVATE OWNERSHIP. — In 1975, P.D. No. 705 was enacted and Sec. 3(a) thereof essentially stated that lands of the public domain which have not been the subject of the present system of classification are considered as forest land. Verily, this provision is consistent with the Regalian Doctrine. Lands of public domain are, by default, owned by the State. The only classification of land that may be subject to private ownership would be agricultural lands that are classified as alienable and disposable lands. Forest and mineral lands cannot be the subject of private ownership. **Thus, Sec. 3(a) merely reiterates that unclassified lands are in the same footing as forest lands because these**

belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership. However, it must be emphasized that even without Sec. 3(a), which declared that unclassified lands are considered as forest lands, the exact same result shall apply — unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain. In *Director of Lands v. Intermediate Appellate Court,* the Court explained that when a land of public domain is unclassified, it cannot be released and rendered open for private disposition pursuant to the Regalian Doctrine and that the private applicant in a land registration case has the burden of proof to overcome State ownership of the lands of public domain x x x. Similarly, in *Manalo v. Intermediate Appellate Court,* it was held that when the land is unclassified, it shall not be subject to disposition pursuant to the Regalian Doctrine that all lands of public domain belong to the State x x x. Indeed, under the Regalian Doctrine, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. **Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.** The argument of petitioners that Sec. 3(a) of P.D. 705 is unconstitutional because unclassified lands of public domain should instead be treated as agricultural land, subject to private disposition, is utterly baseless. The said provision is consistent with the Constitutional mandate of the Regalian Doctrine that lands of public domain, whether unclassified, forest, or mineral lands, remain within the ownership of the State and shall not be subject to alienation or disposition of private persons. Absent any positive act of the government to classify a land of public domain into alienable or disposable land for agricultural or other purposes, it remains with the State.

6. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; LANDS OF PUBLIC DOMAIN; FOREST LANDS; A FORESTED AREA CLASSIFIED AS FOREST LAND OF THE PUBLIC DOMAIN DOES NOT LOSE SUCH CLASSIFICATION EVEN IF IT HAS ALREADY BEEN STRIPPED OF ITS

FOREST COVER, AND UNLESS IT IS RELEASED IN AN OFFICIAL PROCLAMATION TO THE EFFECT THAT IT MAY FORM PART OF THE DISPOSABLE AGRICULTURAL LANDS OF THE PUBLIC DOMAIN, THE RULES ON CONFIRMATION OF IMPERFECT TITLE DO NOT APPLY.— Even if an island or a parcel of land has already been stripped of its forest cover, it does not negate its character as public forest. Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks", do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. **Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.**

7. ID.; ID.; ID.; ID.; ID.; CONSIDERED AS BEYOND THE COMMERCE OF MAN AND NOT SUSCEPTIBLE OF PRIVATE APPROPRIATION AND ACQUISITIVE PRESCRIPTION, SUCH THAT OCCUPATION IN THE CONCEPT OF OWNER NO MATTER HOW LONG CANNOT RIPEN INTO OWNERSHIP AND BE REGISTERED AS A TITLE. — [T]he burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private

appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title. In other words, petitioners have no vested right over the subject lands because these unclassified lands belong to the State, hence, no private right was violated by the State. Verily, Sec. 3(a) of P.D. No. 705 is not unconstitutional because it merely enforces the Regalian Doctrine in favor of the State. No amount of possession will expose the subject lands to private ownership.

LEONEN, *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; AN EXCEPTION THERETO IS A NATIVE TITLE TO LAND, OR OWNERSHIP OF LAND BY FILIPINOS BY VIRTUE OF A CLAIM OF OWNERSHIP SINCE TIME IMMEMORIAL AND INDEPENDENT OF ANY GRANT FROM THE SPANISH CROWN. — The regalian doctrine, while often repeated in our jurisprudence, is a legal fiction that has no clear constitutional mooring. It presumes that all lands are public based on the premise that the State's land ownership was passed down from the Spanish Crown. However, this concept is not textually expressed in our Constitution. Article XII, Section 2 of the 1987 Constitution only states that all lands of public domain are owned by the State, but nowhere does it provide that all unclassified and untitled lands are presumed public lands. Thus, lands shall not be presumed as part of the public domain and shall remain as such unless the State reclassifies them as alienable. x x x In the 1904 case of *Valenton v. Murciano,* the regalian doctrine was first introduced in our jurisprudence. x x x Nevertheless, the 1909 case of *Cariño v. Insular Government* rectified this doctrine and held that not all lands are presumed part of public domain. x x x The ruling establishes two important doctrines. First, it affirms the people's constitutional right over the land since time immemorial; and second, it settles that the Spanish colonial concept of regalian doctrine did not extend to the American occupation and to the subsequent organic acts enacted. *Cariño* concludes that the Maura Law "should not be construed as confiscation, but as the withdrawal of a privilege" to register

a title. x x x *Cariño* and *Herico* [*v. Dar*] affirm that ownership claims based on long occupation and possession of land are still recognized in our system. They recognize that not all untitled lands are automatically deemed part of the public domain and that there is no absolute presumption that all lands are presumed public lands. The due process clause, present from Philippine Bill of 1902 to the present Constitution, respects acquired ownership of land, whether or not ownership is confirmed by a title. Thus, I agree with the *ponencia* that a "native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown[,]" is an exception to the regalian doctrine. This pronouncement not only affirms the validity of a *native* title, but also shows respect and sensitivity by doing away with the reference to "indigenous" or the pejorative "tribal," which is astute and prescient. x x x The benefit of possession since time immemorial means that the holding of the property as an owner must be unbroken. It should not discriminate between a marginal farmer, whose ethnicity is not yet categorized as "indigenous," and a Tagbanua or Palawanon. *Cariño* is a correction of the colonial illusion that all land rights and titles emanated from the Spanish Crown. However, despite its promulgation, *Cariño* was deliberately ignored by the U.S. regime. The errors in our land policies, especially on ancestral domain rights, were never reviewed. Thus, the *ponencia's* assertion and affirmation of the doctrine in *Cariño* is a relief not only to indigenous groups, but also to many marginalized people who have long struggled to defend the native titles to their lands.

2. ID.; ID.; ID.; ID.; ID.; THE PRESUMPTION IN FAVOR OF AGRICULTURAL LAND IS ONLY A DISPUTABLE PRESUMPTION AND IT MAY BE OVERCOME BY SHOWING THE ACTUAL NATURE OF THE LAND. — The Philippine Bill of 1902 granted the colonial government the authority to classify public lands into agricultural, timber, or mineral lands, depending on their "agricultural character and productiveness[.]" x x x In the 1908 case of *Mapa* v. *Insular Government*, this Court settled the scope and meaning of agricultural land *vis-a-vis* other land classifications. x x x In that case, this Court determined whether the land was an agricultural land within the meaning of Section 54 of Act

No. 926. x x x This Court, ruling in favor of Mapa, held that Section 13 of the Philippine Bill of 1902 did not provide an exact standard and definition of what comprises an agricultural land. Nevertheless, Section 13 stated that it was incumbent upon the government to "[m]ake rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands." Referring to the definition in the Public Land Act, this Court ruled that the phrase "agricultural land" embraced those lands which are not timber or mineral lands. This definition was expanded later in *Ramos v. Director of Lands*, which settled that the presumption that land is agricultural in nature absent proof to the contrary. x x x [T]his Court upheld the presumption that lands are agricultural in nature and ruled in favor of Ramos. It explained that under the Philippine Bill of 1902 and the Public Land Act, the determination of the land's classification is by exclusion, meaning, it must be determined "if the land is forestal or mineral in nature and, if not so found, to consider it to be agricultural land." To be classified as a forest, the land must be determined as "forestal" in nature by the Bureau of Forestry. The government policy then is to leave the task of determining forest land to a board of experts, which would investigate if a land may be considered forest land. In its investigation, the Bureau of Forestry uses an exacting list of criteria to classify a land as forest. It ascertains the lands' slope, exposure, soil type, soil cover character, cultivation, among other bio-physical factors. x x x This Court held that the agricultural presumption was based on the government's policy of favoring conversion of lands from public domain to private ownership. Subsequently, in *J.H. Ankron v. The Government of the Philippine Islands*, this Court reiterated the agricultural presumption, expounding that the classification of land as forestal or mineral is a matter of proof. x x x The presumption in favor of agricultural land is only a disputable presumption. It may be overcome by showing the actual nature of the land. This is consistent with the text of Philippine Bill of 1902, which stated that the determination of land was hinged on its "agricultural character and productiveness." Thus, the Bureau of Forestry's investigation is crucial because it is able to ascertain each land's actual character.

3. CIVIL LAW; PRESIDENTIAL DECREE NO. 705 (THE FORESTRY REFORM CODE OF THE PHILIPPINES);

FOREST LANDS; ALIENABLE AND DISPOSABLE LANDS AT LEAST 18% SLOPE ARE REVERTED TO THE CLASSIFICATION OF FOREST LAND. — [I]n the 1970s, the Marcos administration sought to conserve the country's forest cover. Citing a study by a forestry professor, the government adopted a policy seeking to retain at least 42%, or 12,600,000 hectares, of the country's land area for forest purposes. The study had suggested that lands at least 18% in slope must be considered forest lands based on its calculation that approximately 42% of our land area was 18% in slope. As a result, the 18%-slope criteria under Presidential Decree No. 705 was established. Section 15 states that any land at least 18% in slope shall be classified as alienable and disposable x x x. This is consistent with Section 3(a), which creates a blanket declaration that all unclassified public lands are considered forest lands. Alienable and disposable lands at least 18% slope are reverted to the classification of forest land. This sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature.

4. ID.; ID.; ID.; 18%-SLOPE CRITERIA; THE ARBITRARY CONVERSION OF LANDS TO FOREST LANDS AS WELL AS THE PROSCRIPTION AGAINST ALIENABILITY OF LANDS ON THE BASIS OF A SINGLE CRITERION VIOLATES DUE PROCESS. — Section 15 of Presidential Decree No. 705 violates due process. Due process under Article III, Section 1 of the 1987 Constitution protects property rights and precludes undue deprivation of property, regardless of the type and nature of the property. It applies not only to titled lands but also to lands that may be unregistered, but whose ownership was vested upon their occupants by prescription. The arbitrary conversion of lands to forest lands under Section 15 of Presidential Decree No. 705, as well as its proscription against alienability of lands on the basis of a single criterion, violates due process. It unduly severs ownership by automatically declaring lands as inalienable forest lands as long as they have a slope of at least 18%. There may be lands that remain untitled and unregistered but whose ownership had already been vested on their occupants. Section 15 effectively disregards property rights by enacting an outright conversion of any unclassified land as a forest. Section 15 cannot find refuge in the regalian doctrine. To reiterate, this legal fiction

is a jurisprudential aberration that has no constitutional basis. None of our constitutions, past and present, have ever provided a presumption that all lands are public. Thus, it is unsound for this Court to pronounce that "unclassified lands are in the same footing as forest lands" as there may be unclassified lands that have become subject to private ownership. It is likewise unwarranted to equate unclassified lands to forest lands because there are other classifications of lands under our Constitution.

CAGUIOA, *J., concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ESPOUSES THAT ALL LANDS OF THE PUBLIC DOMAIN BELONG TO THE STATE BUT AN EXCEPTION THERETO IS A NATIVE TITLE TO LAND HELD SINCE TIME IMMEMORIAL AND IS DEEMED EXCLUDED FROM THE MASS OF PUBLIC DOMAIN. — In his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*, Justice Reynato S. Puno explained the origins of the Regalian doctrine and traced its history back to the Laws of the Indies x x x. That the Regalian doctrine remained in force even after the Philippines was ceded to the United States appears to have been confirmed by the Court *En Banc* in the 1904 case of *Valenton* v. *Murciano* x x x. Subsequently, the Regalian doctrine was adopted under the 1935 Constitution, particularly, in Section 1, Article XIII x x x. Under the 1973 Constitution, the Regalian doctrine was set forth in clearer terms x x x. At present, the Regalian doctrine remains enshrined in Section 2, Article XII of the 1987 Constitution x x x. In addition, the 1987 Constitution further states that only lands classified as agricultural shall be alienable, and thus, susceptible of private ownership. **Based on the foregoing, I submit that the Regalian doctrine remains the basic foundation of the State's property regime under the present Constitution.** The Regalian doctrine espouses that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land. Accordingly, all lands not otherwise appearing to be clearly within private ownership are *presumed* to belong to the State. Unless land is shown to have been reclassified as agricultural (and thus, alienable), such land remains part of

the inalienable land of the public domain. x x x [A]n exception to the general presumption that "all lands are part of public domain" had been crafted by the United States Supreme Court (U.S. Supreme Court) in the 1909 case of *Cariño v. Insular Government (Cariño)*. x x x I share the *ponente's* view that *Cariño* merely carved out an exception thereto in recognition of native titles which vested prior to the Spanish Conquest. As lands subject of these native titles have been held since time immemorial, they are deemed **excluded** from the mass of public domain placed under the scope of the Regalian doctrine. That is the limited context of *Cariño's* ruling that the presumption of private ownership of lands may be applied.

2. CIVIL LAW; PRESIDENTIAL DECREE NO. 705 (THE FORESTRY REFORM CODE OF THE PHILIPPINES); LANDS WHICH ARE UNCLASSIFIED REMAIN INALIENABLE UNTIL RELEASED AND DECLARED BY THE EXECUTIVE AS AGRICULTURAL LAND, THE LATTER BEING THE SOLE CLASSIFICATION OF LAND WHICH MAY BE SUBJECT TO ALIENATION AND DISPOSITION. — [A]ll lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Unless land is shown to have been reclassified as alienable agricultural land, such land remains, and should be treated as, inalienable land of the public domain. x x x At present, Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into four (4) categories — agricultural lands, forest or timber lands, mineral lands, and national parks x x x. Section 3 mandates that only lands classified as agricultural may be declared alienable, and thus susceptible of private ownership. Thus, all lands which have not been classified as such necessarily remain inalienable. x x x [T]he fact that unclassified lands remain inalienable until released and declared open to disposition has been confirmed by the Court *En Banc* in [Secretary of the Department of Environment and Natural Resources *v.*] Yap x x x. Section 3(a) [of PD 705] does *not* operate as a wholesale classification of alienable land to inalienable land, for lands which are unclassified remain inalienable until released and declared by the Executive as agricultural land, the latter being the sole classification of land which may be subject to alienation and disposition.

APPEARANCES OF COUNSEL

Stephen C. Arceño for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* seeking to declare as unconstitutional Section 3(a) of Presidential Decree *(P.D.)* No. 705, or the Forestry Reform Code of the Philippines.

The Antecedents

Petitioners Federation of Coron, Busuanga, Palawan Farmer's Association, Inc., *(FCBPFAI)* and Sandigan ng Mambubukid ng Bintuan Coron, Inc., *(SAMBICO)* are federations consisting of farmers in Palawan. Sometime in 2002, the farm lands occupied by the members of SAMBICO in Sitio Dipangan and Langka, Brgy. Bintuan, Coron, Palawan were placed under the coverage of the Comprehensive Agrarian Reform Program *(CARP)* by the Department of Agrarian Reform *(DAR)*. The lands placed under CARP had titles in the name of Mercury Group of Companies, covering a total area of 1,752.4006 hectares.[1]

However, the implementation of the CARP over the subject lands was stopped because the said lands were unclassified forest land under Sec. 3(a) of P.D. No. 705 and thus, are inalienable and belong to the government. As these are forest lands, they are under the administration of the Department of Environment and Natural Resources *(DENR)* and not the DAR.[2]

In March 2014, a meeting was conducted at the office of the DAR, Coron, Palawan, attended by the Legal Division Region IV-B, where petitioner Rodolfo Cadampog, Sr. of FCBPFAI

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[1] *Rollo*, p. 6.

[2] Id.

was formally informed that the CARP coverage will not push through because the lands were unclassified forest land.[3]

Similarly, members of the Samahan ng Magsasaka ng Sto. Nino *(SAMMASA)* alleged that they farmed the lands of Brgy. Sto. Nino, Busuanga, Palawan. Farming was their means of livelihood even before their barangay was established in the 1960s. Sometime in 1980, the farm lands they tilled were placed under the coverage of CARP. The land tilled by the farmers was originally titled under the name of a certain Jose Sandoval. However, the land distribution was stopped under the CARP because the DENR stated that the said lands were unclassified forest land under Sec. 3(a) of P.D. No. 705 and these forest lands belong to the government.[4]

In April 3, 2014, petitioner Rodolfo Cadampog, Sr., of FCBPFAI received a letter from Provincial Agrarian Reform Program Officer *(PARPO)* Conrado S. Gueverra stating that the lands of Mercury Group of Companies and Josefa Sandoval Vda. De Perez are within the forest classification of the DENR under Sec. 3(a) of P.D. No. 705. Thus, the same cannot be covered by CARP.[5]

Hence, this petition to declare Sec. 3(a) of P.D. No. 705 unconstitutional.

Issue

WHETHER SECTION 3(a) OF PRESIDENTIAL DECREE NO. 705 IS UNCONSTITUTIONAL.

Petitioners argue that Sec. 3(a) of P.D. No. 705 violates the Philippine Bill of 1902 and the 1935, 1973 and 1987 Constitution; that under the Philippine Bill of 1902, when an unclassified land is not covered by trees and has not been reserved as a forest land, then it is considered as an agricultural land; that

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[3] Id.

[4] Id. at 6-7.

[5] Id. at 7.

Sec. 3(a) retroactively changed the unclassified lands into forest lands; that the said law deprived millions of Filipinos, who possess land and informally settle on the land, with their vested right of ownership; that it unreasonably stated that unclassified land shall be forest land; instead, petitioners insist that unclassified land should be considered as alienable and disposable land of public domain; and that only those lands with trees and timber should be considered as forest land, and the rest should be considered as public agricultural land.

In their Comment,[6] respondents Secretary of the DENR and DAR, as represented by the Office of the Solicitor General *(OSG),* countered that petitioners failed to overcome the presumption of constitutionality of the law; that petitioners have no *locus standi* to file the petition; that the Philippine Bill of 1902 simply gave the State the power to classify lands; that pursuant to the Regalian Doctrine, all lands belong to the State and there must be a positive act from the State before the land can be alienable and disposable; that Sec. 3(a) of P.D. No. 705 is in accordance with the Regalian Doctrine; and that there is no violation of the rights of petitioners because unclassified lands, which are forest lands, belong to the State, hence, petitioners have no property rights to be violated.

In their Reply,[7] petitioners argued that they have the *locus standi* to file this petition; that prior to Sec. 3(a) of P.D. No. 705, there was no requirement that land must first be declared alienable and disposable before it could subject to private ownership; that informal settlement or material occupancy of vacant crown lands were allowed; that there is a presumption that land is agricultural unless the contrary is shown; and that Sec. 3(a) of P.D. No. 705 renders the implementation of the land reform under CARP impossible because the biggest landowner is the government.

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[6] Id. at 85-101.

[7] Id. at 104-154.

The Court's Ruling

The petition lacks merit.

Presumption of constitutionality; locus standi

Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three (3) coordinate departments of the government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.[8]

The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the Constitution. The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional. In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction. Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[9]

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[8] *Cawaling, Jr. v. Commission on Elections*, 420 Phil. 524, 530-531 (2001); citations omitted.

[9] *City of Cagayan De Oro v. Cagayan Electric Power & Light Co., Inc.*, G.R. No. 224825, October 17, 2018.

The fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. Every law has in its favor the presumption of constitutionality. For a law to be nullified, it must be shown that there is a clear and unequivocal breach of the Constitution. The ground for nullity must be clear and beyond reasonable doubt. Those who seek to declare the law, or parts thereof, unconstitutional, must clearly establish the basis therefore. Otherwise, the arguments fall short.[10]

In this case, petitioners assail Sec. 3(a) of P.D. No. 705. However, the Court finds that petitioners failed to discharge the heavy burden in assailing the constitutionality of the law. As will be discussed later, Sec. 3(a) is consistent with the Constitution, which adapted the Regalian Doctrine that all lands of public domain belong to the State.

Further, petitioners failed to prove that they have the *locus standi* to raise a constitutional question. Legal standing or *locus standi* is defined as a "personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged." For a citizen to have standing, he must establish that he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[11]

A party is allowed to "raise a constitutional question" when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental

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[10] *Mayor Rama v. Judge Moises*, 802 Phil. 29, 48 (2016); citation omitted.

[11] *Automotive Industry Workers Alliance v. Hon. Romulo*, 489 Phil. 710, 718 (2005); citations omitted.

interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest."[12]

In this case, aside from their bare assertion that they are recipients of the distribution of the lands in Sitio Dipangan and Langka, Brgy. Bintuan, Coron, and Brgy. Sto. Nino, Busuanga, Palawan under the CARP, petitioners failed to substantiate their claim of ownership and possession over the same. As properly pointed out by respondents, petitioners have not presented any evidence to prove that they actually occupy the lands much less that the lands are alienable and disposable.[13] Further, petitioners have not even alleged that they attempted to file an application to have the subjects lands re-classified from forest lands to alienable and disposable lands of public domain with the proper government agency and that their application was denied. Hence, no actual or threatened injury can be attributed to petitioners.

In any case, even on the substantive aspect, the petition fails.

Sec. 3 (a) is constitutional; Regalian Doctrine

Sec. 3(a) of P.D. No. 705 states:

> (a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.

According to petitioner, it is against the Constitution to declare that unclassified lands should be treated as forest lands because it deprives the actual possessors of the land to claim ownership over it; and that under the Philippine Bill of 1902, lands of public domain are presumed to be agricultural lands.

The argument, however, of petitioner is not of first impression; rather, this issue has already been settled in several decisions

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[12] *Galicto v. H.E. President Aquino III,* 683 Phil. 141, 170-171 (2012).

[13] *Rollo,* pp. 90-91.

of the Court, particularly, in *Heirs of the late Spouses Vda. de Palanca v. Republic (Vda. De Palanca)*[14] and *The Secretary of the Department of Environment and Natural Resources v. Yap (Yap)*.[15] It is already well-settled that unclassified land cannot be considered as alienable and disposable land of public domain pursuant to the Regalian Doctrine.

Pursuant to the Regalian Doctrine *(Jura Regalia)*, a legal concept first introduced into the country from the West by Spain through the Laws of the Indies and the Royal Cedulas, all lands of the public domain belong to the State. This means that the State is the source of any asserted right to ownership of land, and is charged with the conservation of such patrimony. All lands not appearing to be clearly under private ownership are presumed to belong to the State. Also, public lands remain part of the inalienable land of the public domain unless the State is shown to have reclassified or alienated them to private persons.[16]

To further understand the Regalian Doctrine, a review of the previous Constitutions and laws is warranted. The Regalian Doctrine was embodied as early as in the Philippine Bill of 1902. Under Section 12 thereof, it was stated that all properties of the Philippine Islands that were acquired by the United States through the treaty with Spain shall be under the control of the Government of the Philippine Islands, to wit:

> SECTION 12. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety- eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the Government of said Islands, to be administered for the benefit of the inhabitants thereof, except as provided in this Act.

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[14] 531 Phil. 602 (2006).

[15] 589 Phil. 156 (2008).

[16] *Heirs of Malabanan v. Republic*, 717 Phil. 141, 160 (2013); citations omitted.

The only exception in the Regalian Doctrine is native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown.[17] In *Cariño v. Insular Government,*[18] the United States Supreme Court at that time held that:

> It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land.[19]

As pointed out in the case *of Republic v. Cosalan*:[20]

> Ancestral lands are covered by the concept of native title that "refers to pre-conquest rights to lands and domains which, as far back as memory reaches, have been held under a claim of private ownership by ICCs/IPs, have never been public lands and are thus indisputably presumed to have been held that way since before the Spanish Conquest." To reiterate, they are considered to have never been public lands and are thus indisputably presumed to have been held that way.

The CA has correctly relied on the case of *Cruz* v. *Secretary of DENR,* which institutionalized the concept of native title. Thus:

> Every presumption is and ought to be taken against the Government in a case like the present. It might, perhaps, be proper and sufficient to say that **when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way before the Spanish conquest, and never to have been public land.**

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[17] See Agcaoili, Oswaldo D., Property Registration Decree and Related Laws, 2015 edition, p. 7.

[18] 212 U.S. 449 (1909).

[19] Id.

[20] G.R. No. 216999, July 4, 2018, 870 SCRA 575; citations omitted.

From the foregoing, it appears that lands covered by the concept of native title are considered an exception to the *Regalian Doctrine* embodied in Article XII, Section 2 of the Constitution which provides that all lands of the public domain belong to the State which is the source of any asserted right to any ownership of land.[21]

On the other hand, Section 13 of the Philippine Bill of 1902 states that the Government of the Philippine Islands could classify the lands of public domain either as agricultural, timber or mineral land. Contrary to petitioners' assertion, the law does not provide any presumption that a land of public domain is agricultural. Notably, it merely gave the said government the prerogative to classify land; nothing therein states that unclassified lands are *ipso facto* treated as agricultural land, which are alienable and disposable, to wit:

> SEC. 13. That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands, but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.

Further, Sec. 13 referred to the President of the United States, who had the power to classify public land, subject to the disapproval or amendment of the Congress of the United States. At that time, the Philippine Islands only had a Philippine Commission, which exercised the powers of the government,[22] but did not have the power to classify lands.

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[21] Id. at 587-588; citations omitted: emphasis in the original.

[22] SECTION 1. That the action of the President of the United States in creating the Philippine Commission and authorizing said Commission to

As the Executive and Legislative Branch in the Philippine Islands had no power to classify lands of public domain then, the Judiciary had the jurisdiction to determine for itself the classification of a particular parcel of land in justiciable cases. In *Ramos v. The Director of Lands (Ramos)*,[23] and *Ankron v. The Government of the Philippine Islands (Ankron)*,[24] which were decided under the Philippine Bill of 1902, the courts had a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands. At that moment, since there was no central authority in the Philippine Islands to classify lands, the courts had to rely on their own judicial discretion with respect to the classification of land.

However, the power to classify the lands by the Philippine courts was finally removed in 1919 when Act No. 2874,[25] or

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exercise the powers of government to the extent and in the manner and form and subject to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April seventh, nineteen hundred, and in creating the offices of Civil Governor and Vice-Governor of the Philippine Islands, and authorizing said Civil Governor and Vice-Governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive Order dated June twenty-first, nineteen hundred and one, and in establishing four Executive Departments of government in said Islands as set forth in the Act of the Philippine Commission, entitled "An Act providing an organization for the Departments of the Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction," enacted September sixth, nineteen hundred and one, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said Islands shall continue to be governed as thereby and herein provided, and all laws passed hereafter by the Philippine Commission shall have an enacting clause as follows. "By authority of the United States, be it enacted by the Philippine Commission." The provisions of section eighteen hundred and ninety-one of the Revised Statutes of eighteen hundred and seventy-eight shall not apply to the Philippine Islands. Future appointments of Civil Governor, Vice-Governor, members of said Commission and heads of Executive Departments shall be made by the President, by and with the advice and consent of the Senate.

[23] 39 Phil. 175 (1918).

[24] 40 Phil. 10 (1919).

[25] Enacted on November 29, 1919.

the Public Land Act, was enacted, which stated that the Governor-General in the Philippines had the power to classify land:

> SECTION 6. The Governor-General, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into —
>
> (a) Alienable or disposable
>
> (b) Timber, and
>
> (c) Mineral lands,
>
> and may at any time and in a like manner, transfer such lands from one class to another, for the purposes of their government and disposition.

Then, under the 1935 Constitution, Commonwealth Act *(C.A.)* No. 141 or the present Public Land Act, was enacted. It retained the provision that the President of the Philippines had the power to classify lands of public domain, to wit:

> SECTION 6. **The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into** —
>
> (a) Alienable or disposable
>
> (b) Timber, and
>
> (c) Mineral lands,
>
> and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition, (emphasis supplied)

Thus, the State, through the legislature enacting Act No. 2874 and C.A. No. 141, delegated to the Executive Branch the power to classify lands of public domain and finally removed from the courts the power to classify such. Accordingly, the presumption of agricultural classification under *Ankron* and *Ramos* applied by the courts was also set aside. The removal of the court's presumption that a public land was agricultural was succinctly discussed in *Yap*, citing *Vda. De Planca:*

Petitioner's reliance upon *Ramos v. Director of Lands* and *Ankron v. Government* is misplaced. These cases were decided under the Philippine Bill of 1902 and the first Public Land Act No. 926 enacted by the Philippine Commission on October 7, 1926, under which there was no legal provision vesting in the Chief Executive or President of the Philippines the power to classify lands of the public domain into mineral, timber and agricultural so that the courts then were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence.

To aid the courts in resolving land registration cases under Act No. 926, it was then necessary to devise a presumption on land classification. Thus, evolved the dictum in *Ankron* that "the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown."

But We cannot unduly expand the presumption in *Ankron* and *De Aldecoa* to an argument that all lands of the public domain had been automatically reclassified as disposable and alienable agricultural lands. By no stretch of imagination did the presumption convert all lands of the public domain into agricultural lands.

If We accept the position of private claimants, the Philippine Bill of 1902 and Act No. 926 would have automatically made all lands in the Philippines, except those already classified as timber or mineral land, alienable and disposable lands. That would take these lands out of State ownership and worse, would be utterly inconsistent with and totally repugnant to the long-entrenched Regalian Doctrine.

x x x x

Since 1919, courts were no longer free to determine the classification of lands from the facts of each case, except those that have already became private lands. Act No. 2874, promulgated in 1919 and reproduced in [Sec] 6 of [C.A.] No. 141, gave the Executive Department, through the President, the exclusive prerogative to classify or reclassify public lands into alienable or disposable, mineral or forest. Since then, courts no longer had the authority, whether express or implied, to determine the classification of lands of the public domain.[26]

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[26] Supra note 15 at 185-187; citations omitted; emphases supplied.

The 1935 Constitution embodied the Regalian Doctrine, to wit:

ARTICLE XII.

Conservation and Utilization of Natural Resources

SECTION 1. **All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State,** and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.[27] (emphasis supplied)

Similarly, the 1973 Constitution reiterated the Regalian Doctrine that all lands of public domain belong to the State:

ARTICLE XIV

The National Economy and the Patrimony of the Nation

x x x

SECTION 8. **All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State.** With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a

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[27] Section 1, Article XII, 1935 Constitution.

period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.[28] (emphasis supplied)

The 1987 Constitution also stated the Regalian Doctrine:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. x x x[29]

In 1975, P.D. No. 705 was enacted and Sec. 3(a) thereof essentially stated that lands of the public domain which have not been the subject of the present system of classification are considered as forest land. Verily, this provision is consistent with the Regalian Doctrine. Lands of public domain are, by default, owned by the State. The only classification of land that may be subject to private ownership would be agricultural lands that are classified as alienable and disposable lands. Forest and mineral lands cannot be the subject of private ownership. **Thus, Sec. 3(a) merely reiterates that unclassified lands are in the same footing as forest lands because these belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership.**

However, it must be emphasized that even without Sec. 3(a), which declared that unclassified lands are considered as forest lands, the exact same result shall apply — unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain.

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[28] Section 8, Article XIV, 1973 Constitution.

[29] Section 2, Article XII, 1987 Constitution.

In *Director of Lands v. Intermediate Appellate Court*,[30] the Court explained that when a land of public domain is unclassified, it cannot be released and rendered open for private disposition pursuant to the Regalian Doctrine and that the private applicant in a land registration case has the burden of proof to overcome State ownership of the lands of public domain, to wit:

> Lands of the public domain are classified under three main categories, namely: Mineral, Forest and Disposable or Alienable Lands. Under the Commonwealth Constitution, only agricultural lands were allowed to be alienated. Their disposition was provided for under [C.A.] Act No. 141 (Secs. 6-7), which states that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands. Mineral and Timber or forest lands are not subject to private ownership unless they are first reclassified as agricultural lands and so released for alienation. In the absence of such classification, the land remains as unclassified land until released therefrom and rendered open to disposition. Courts have no authority to do so.
>
> This is in consonance with the Regalian Doctrine that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Under the Regalian Doctrine, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Hence, a positive act of the government is needed to declassify a forest land into alienable or disposable land for agricultural or other purposes.
>
> The burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable.[31]

Similarly, in *Manalo v. Intermediate Appellate Court*,[32] it was held that when the land is unclassified, it shall not be subject

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[30] 292 Phil. 341 (1993)

[31] Id. at 349-350; citations omitted.

[32] 254 Phil. 799 (1989), citing *Republic v. Intermediate Appellate Court*, 239 Phil. 393 (1987).

to disposition pursuant to the Regalian Doctrine that all lands of public domain belong to the State, *viz.*:

> In effect, what the Court *a quo* has done is to release the subject property from the unclassified category, which is beyond their competence and jurisdiction. The classification of public lands is an exclusive prerogative of the Executive Department of the Government and not of the Courts. In the absence of such classification, the land remains as unclassified land until it is released therefrom and rendered open to disposition (Sec. 8, [C.A.] No. 141, as amended: *Yngson v. Secretary of Agriculture and Natural Resources,* 123 SCRA 441 [193]; *Republic v. Court of Appeals*, 99 SCRA 742 [1980]. This should be so under time-honored Constitutional precepts. This is also in consonance with the Regalian Doctrine that all lands of the public domain belong to the State (Secs. 8 & 10, Art. XIV, 1973 Constitution), and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony *(Republic v. Court of Appeals,* 89 SCRA 648 [1979].[33]

Indeed, under the Regalian Doctrine, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. **Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain.**[34]

The argument of petitioners that Sec. 3(a) of P.D. 705 is unconstitutional because unclassified lands of public domain should instead be treated as agricultural land, subject to private disposition, is utterly baseless. The said provision is consistent with the Constitutional mandate of the Regalian Doctrine that lands of public domain, whether unclassified, forest, or mineral lands, remain within the ownership of the State and shall not

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[33] Id. at 805-806.

[34] *Heirs of Gozo v. Philippine Union Mission Corp. of the Seventh Day Adventist Church,* 765 Phil. 829, 838 (2015); citation omitted.

be subject to alienation or disposition of private persons.[35] Absent any positive act of the government to classify a land of public domain into alienable or disposable land for agricultural or other purposes, it remains with the State.[36]

Forest lands; No private rights violated

Finally, petitioners argue that only those lands with trees and timber should be considered as forest land, and the rest should be considered as public agricultural land.

The argument fails.

Even if an island or a parcel of land has already been stripped of its forest cover, it does not negate its character as public forest. Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks", do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes.[37]

A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. **Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands**

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[35] See *Republic v. Spouses Alonso*, G.R. No. 210738, August 14, 2019.

[36] See *Republic v. Heirs of Daquer*, G.R. No. 193657, September 4, 2018.

[37] Id.

of the public domain, the rules on confirmation of imperfect title do not apply.[38]

To reiterate, even if the subject lands are unclassified, these are still not subject to private ownership. In *Republic v. Heirs of Daquer*,[39] the Court stated:

> **While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition.** When the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership. This is because, pursuant to Constitutional precepts, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in such lands and is charged with the conservation of such patrimony. Thus, the Court has emphasized the need to show in registration proceedings that the government, through a positive act, has declassified inalienable public land into disposable land for agricultural or other purposes.[40] (emphasis supplied)

To subscribe to the view of petitioners — that unclassified lands should be presumed as disposable land, and not a forest land — would run afoul to the Regalian Doctrine. Any person could simply declare that a parcel of land of public domain is alienable and disposable by the mere fact that it is not covered by trees. The recognized system of classification of lands by the State would be destroyed and conflicting classifications of lands of public domain would arise. Indeed, the better approach is to uphold Sec. 3(a) of P.D. No. 705 because it is consistent with the Regalian Doctrine that all lands of public domain belongs to the State.

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[38] *Heirs of Amunategui v. Director of Forestry*, 211 Phil. 260, 265 (1983); emphasis supplied.

[39] Supra note 36.

[40] Id.

In *Republic v. Heirs of Sin*,[41] the Court underscored that there must be a positive act from the Government before a land of public domain can be considered as alienable and disposable land of public domain:

> Under the Regalian Doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.
>
> **There must be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government,** such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.[42] (emphasis supplied)

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[41] 730 Phil. 414 (2014).

[42] Id. at 423-424.

In effect, as petitioners failed to assail Sec. 3(a) of P.D. No. 705, which is consistent with the Regalian Doctrine, wherein the subject lands remain within the ownership of the State. To repeat, the burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title.[43] In other words, petitioners have no vested right over the subject lands because these unclassified lands belong to the State, hence, no private right was violated by the State.

Verily, Sec. 3(a) of P.D. No. 705 is not unconstitutional because it merely enforces the Regalian Doctrine in favor of the State. No amount of possession will expose the subject lands to private ownership. Petitioners should not seek to devoid the said statutory provision; instead, they should proceed to the Executive Department, through the Secretary of DENR, to establish that the subject unclassified forest lands must be re-classified to alienable and disposable lands of public domain.[44] Only when the lands of public domain are classified as alienable or disposable, may petitioners assert their property rights over the subject lands.

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[43] *Republic v. Abarca,* G.R. No. 217703, October 9, 2019.

[44] Section 6 of Commonwealth Act No. 141 states that the President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable;

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

Remedy is beyond the courts

Assuming that petitioners have indeed been tilling the subject lands, which they eventually discovered to be unclassified forest lands of public domain, hence, non-registrable, the Court commiserates with their predicament. It is distressing for a farmer to physically possess and till a parcel of land for decades, or even generations, only to discover that it is not subject to disposition and alienation simply because it is an unclassified land or a forest land of public domain. However, as thoroughly discussed-above, the assailed provision Sec. 3(a) of P.D. No. 705 is constitutional because it is consistent with the Regalian Doctrine. In such a case, the farmer must undergo the tedious process for the reclassification of land to be alienable and disposable; the authority to reclassify is lodged with the central executive government. It is settled that the declaration of alienability must be through executive fiat, as exercised by the Secretary of the DENR.[45] As the centralized process may be beyond the farmer's reach and means, the land ultimately remains untitled.

Notably, as the Court painstakingly discussed in *Heirs of Malabanan v. Republic*[46] the difficulty arising from the classification of land is attributable to the policy of the law itself:

> A final word. The Court is comfortable with the correctness of the legal doctrines established in this decision. Nonetheless, discomfiture over the implications of today's ruling cannot be discounted. For, every untitled property that is occupied in the country will be affected by this ruling. The social implications cannot be dismissed lightly, and the Court would be abdicating its social responsibility to the Filipino people if we simply levied the law without comment.
>
> The informal settlement of public lands, whether declared alienable or not, is a phenomenon tied to long-standing habit and cultural acquiescence, and is common among the so-called "Third World"

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[45] *Republic v. Spouses Noval*, 818 Phil. 298, 316 (2017).

[46] 605 Phil. 244 (2009).

countries. This paradigm powerfully evokes the disconnect between a legal system and the reality on the ground. The law so far has been unable to bridge that gap. Alternative means of acquisition of these public domain lands, such as through homestead or free patent, have proven unattractive due to limitations imposed on the grantee in the encumbrance or alienation of said properties. Judicial confirmation of imperfect title has emerged as the most viable, if not the most attractive means to regularize the informal settlement of alienable or disposable lands of the public domain, yet even that system, as revealed in this decision, has considerable limits.

There are millions upon millions of Filipinos who have individually or exclusively held residential lands on which they have lived and raised their families. Many more have tilled and made productive idle lands of the State with their hands. They have been regarded for generation by their families and their communities as common law owners. There is much to be said about the virtues of according them legitimate states. Yet such virtues are not for the Court to translate into positive law, as the law itself considered such lands as property of the public dominion. It could only be up to Congress to set forth a new phase of land reform to sensibly regularize and formalize the settlement of such lands which in legal theory are lands of the public domain before the problem becomes insoluble. This could be accomplished, to cite two examples, by liberalizing the standards for judicial confirmation of imperfect title, or amending the Civil Code itself to ease the requisites for the conversion of public dominion property into patrimonial.

One's sense of security over land rights infuses into every aspect of well-being not only of that individual, but also to the person's family. Once that sense of security is deprived, life and livelihood are put on stasis. It is for the political branches to bring welcome closure to the long pestering problem.[47]

C.A. No. 141 could be improved with respect to manner and method of classifying land. Instead of giving the President, through his alter ego the Secretary of DENR, the sole power to classify lands of public domain, this authority could be decentralized and simplified so that the masses, especially the

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[47] Id. at 286-288; citation omitted.

farmers of the far-flung provinces, would not have to rely on the central executive government in order to secure a title in their land. Of course, decentralization of the governmental functions has both positive and negative impact on State regulation, which must be thoroughly studied and deliberated by policy-makers.

In any case, the remedy that petitioners seek is definitely beyond the powers of the Court; Rather, it is matter of policy that must be addressed by the other branches of government. Indeed, the question of wisdom of the law is beyond the province of this Court to inquire. An inquiry of that sort amounts to a derogation of the principle of separation of powers.[48]

WHEREFORE, the petition is **DISMISSED.**

Let copies of this Resolution be furnished to the Senate President and the Speaker of the House of Representatives for possible consideration of the amendment of Commonwealth Act No. 141 and other related laws for the decentralization of the authority and simplification of the process to classify lands of public domain.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Leonen, J., concurs, see separate opinion.

Caguioa, J., see concurring opinion.

Baltazar-Padilla, J., on leave.

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[48] *Atitiw v. Zamora,* 508 Phil. 321, 341 (2005).

CONCURRING OPINION

LEONEN, *J.*:

Petitioners are federations of farmers in Coron and Busuanga, Palawan, whose lands were placed under the coverage of the Comprehensive Agrarian Reform Program. They allege that since 1960, they had been tilling and occupying the parcels of land registered under the Mercury Group of Companies and Jose Sandoval.[1]

However, the Department of Agrarian Reform discontinued the land distribution after the Department of Environment and Natural Resources had claimed that the land was an unclassified forest under Section 3(a) of Presidential Decree No. 705.[2]

This Petition[3] assails the constitutionality of Section 3(a) of Presidential Decree No. 705. The provision reads:

> SECTION 3. Definitions.
>
> (a) Public forest is the mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purposes and which are not.[4]

First, petitioners aver that the declaration of all unclassified public lands as public forests contravenes the Constitution.[5] They argue that past and present constitutions have consistently classified public lands depending on their character.[6] They

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[1] *Rollo,* pp. 6-7.

[2] Id.

[3] Id. at 3-30.

[4] Presidential Decree No. 705 (1975), Sec. 3(a).

[5] *Rollo,* p. 7.

[6] Id. at 8. The Philippine Bill of 1902 and the 1935 Constitution classified public lands into agricultural, forest, and timber lands. The 1973 Constitution

contend that Section 3(a) of Presidential Decree No. 705 violates this constitutional prescription because it automatically converts all public lands as forest land.[7]

Second, petitioners contend that the provision violates due process because it is an undue deprivation of property.[8] They argue that under Act No. 926, the first Public Land Act, all public agricultural lands possessed since July 26, 1894 were converted into private lands.[9] Pursuant to this law, an occupant-owner can apply for judicial confirmation of imperfect title or free patent under Act No. 2874 and Commonwealth Act No. 141 without prior declaration that the land is alienable and disposable.[10] Through this process, ownership is not acquired but merely confirmed.[11]

Petitioners further argue that Presidential Decree No. 705 disregarded vested ownership when it required prior classification of land as alienable and disposable for the purposes of prescription or confirmation of title.[12] By classifying all public lands as forests, the law effectively declares as inalienable lands that have been declared as agricultural under the 1935, 1973, and 1987 Constitutions.[13]

Petitioners further lament the disconnect between the law and the actual classifications of land, claiming that under Section 3 (a) of Presidential Decree No. 705, all unclassified lands were automatically reclassified as forests regardless of

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provided more classifications, but this was abbreviated by the 1987 Constitution into four (4) categories: agricultural, forest, timber, and national parks.

[7] Id. at 9.

[8] Id.

[9] Id. at 13.

[10] Id. at 13-15 and 17-18.

[11] Id. at 16.

[12] Id. at 15.

[13] Id. at 19.

their nature. They point out that with the current law, there are urbanized lands without trees but are still considered forests.[14]

In their Comment,[15] respondents claim that petitioners do not have the legal standing to file the Petition as they have failed to show that they sustained any real injury.[16]

Respondents also maintain that Section 3(a) of Presidential Decree No. 705 is not unconstitutional because it is consistent with the Constitution and the regalian doctrine.[17] They assert that petitioners are mistaken in their interpretation of Philippine Bill of 1902 and Act No. 926 because there is no presumption that all public lands are converted to agricultural lands under Act No. 926. The law merely laid down how land registration courts should classify public domain lands. Ultimately, they maintain, classification still depends on the proof presented.[18]

Respondents argue that pursuant to the regalian doctrine and Article XII, Section 2 of the 1987 Constitution, all lands of public domain are owned by the State.[19] They assert that Section 3(a) of Presidential Decree No. 705 merely echoes this recognition in categorizing all unclassified lands of public domain as public forests.[20]

Respondents further dispute petitioners' claim that Section 3(a) is an undue deprivation of property. Considering that there was no automatic classification of lands as agricultural lands, they claim that the unclassified lands remained part of the public domain and no property right on these lands was vested upon their occupants.[21]

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[14] Id. at 22.

[15] Id. at 85-98.

[16] Id. at 90-91.

[17] Id. at 91.

[18] Id. at 93.

[19] Id. at 94.

[20] Id. at 95.

[21] Id.

In their Reply,[22] petitioners assert that they have the legal standing to file the Petition because their property rights are affected by Presidential Decree No. 705.[23] Moreover, they claim that their Petition raises an issue of transcendental importance because it is bound to affect Filipinos who have occupied and tilled lands for generations.[24]

Petitioners reiterate that before Presidential Decree No. 705 took effect, there was no requirement that agricultural lands first be declared alienable and disposable before being registered under Commonwealth Act No. 141.[25] They point out that public agricultural lands are lands acquired from Spain that are neither timber nor mineral in nature and these lands are alienable; hence, they are no longer subject to presidential or congressional declaration of alienability.[26] The presumption that the land is agricultural still holds true. The government can make a forest reservation on public agricultural lands but subject to prior vested rights.[27]

Petitioners add that that this presumption is consistent with Article 421 of the Civil Code. Under this provision, there is no need for a prior declaration of alienability or manifestation that a public agricultural land is not intended for public use or service for it to be considered patrimonial property of the State.[28] Rather, they say that the property is presumed patrimonial, and the State bears the burden to declare that the land is intended for public service or use for it to become part of public dominion.[29]

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[22] Id. at 104-153.

[23] Id. at 104.

[24] Id. at 105.

[25] Id. at 106.

[26] Id. at 107-108, citing *Mapa v. Insular Government,* 10 Phil. 175 (1908) [Per J. Willard, First Division]: and *De Alcoa v. Insular Government,* 13 Phil. 159 (1909) [Per J. Torres, En Banc].

[27] Id. at 113-114 citing *Ankron v. Government of the Philippine Islands,* 40 Phil. 10 [Per J. Johnson, First Division].

[28] Id. at 126-128.

[29] Id. at 128.

Petitioners further aver that under Sections 32 and 54 of Act No. 926, public agricultural lands were not only considered alienable, but deemed alienated as they were opened to homestead, sale, or lease application.[30] Such lands will only be withdrawn from disposition after the declaration that they a non-alienable.[31] Moreover, the requirement of declaration of alienability only applied to reclassification of forest to agricultural lands.[32]

Petitioners point out that since *Cariño v. Insular Government*,[33] jurisprudence has held that public agricultural land may be automatically converted to private property by prescription.[34] Section 3(a) of Presidential Decree No. 705 is, in effect, a State-sponsored grabbing of agricultural land whose ownership is already vested on its occupants.[35]

Lastly, petitioners argue that Section 3(a) renders the Comprehensive Agrarian Reform Program useless,[36] as it automatically converts all unclassified lands into forest lands, which cannot be covered by agrarian reform.[37]

The *ponencia* dismissed the Petition. First, it held that petitioners have no legal standing to file the Petition because they failed to show real and actual injury.[38]

Second, the *ponencia* reasons that "unclassified land[s] cannot be considered alienable and disposable land of public domain pursuant to the Regalian doctrine."[39] It maintains that there is

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[30] Id. at 128-129, citing Act No. 926 (1903), Secs. 32 and 54.

[31] Id. at 128, citing Act No. 926(1903), Sec. 71.

[32] Id. at 132, citing ADM. CODE, Sec. 1827.

[33] 41 Phil. 935 (1909) [Per J. Holmes].

[34] *Rollo*, pp. 132-135.

[35] Id. at 137.

[36] Id. at 150.

[37] Id. at 151, citing Republic Act No. 6657 (1988), Sec. 4.

[38] Ponencia, p. 5.

[39] Id. at 6.

no presumption that a land of public domain is agricultural. The Constitution and the laws merely allowed the government to classify lands of public domain.[40]

According to the *ponencia,* while Section 3(a) of Presidential Decree No. 705 indeed declared unclassified lands of public domain as forests, it is not unconstitutional because it is in accord with the regalian doctrine, which the *ponencia* says is incorporated in the Constitution.[41] It adds that Section 3(a) "merely reiterates that unclassified lands are in the same footing as forest lands because these belong to the State; these are not alienable and disposable land of public domain; and these are not subject to private ownership."[42] Even without this provision, the *ponencia* maintains that "unclassified lands are still not subject to private ownership because they belong to the State and are not alienable and disposable lands of public domain."[43]

To the *ponencia,* petitioners' view that unclassified lands are presumed disposable violates the regalian doctrine. As settled

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[40] Id. at 6-10.

1987 CONST., Art. XII, Sec. 2 provides in part:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated.

Commonwealth Act No. 141 (1936), Sec. 6 provides:

SECTION 6. The President, upon the recommendation of the Secretary of Agriculture and Commerce, shall from time to time classify the lands of the public domain into —

(a) Alienable or disposable,

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

[41] Id. at 11.

[42] Id.

[43] Id.

by this Court, for a land to be considered alienable and disposable land of public domain, there must be a positive act from the government.[44] Until then, the land remains part of the public domain and its occupation cannot ripen into ownership.[45]

Third, the *ponencia* held the classification of a land as forest does not refer to its actual nature, but is only a legal description. Hence, even if a parcel of land no longer has forest cover, it may still be classified as a public forest under the law.[46]

The *ponencia* concludes that the issue presented by petitioners is a question of policy—a matter beyond the jurisdiction of this Court.

Let me express a few points.

The regalian doctrine, while often repeated in our jurisprudence, is a legal fiction that has no clear constitutional mooring. It presumes that all lands are public based on the premise that the State's land ownership was passed down from the Spanish Crown. However, this concept is not textually expressed in our Constitution. Article XII, Section 2 of the 1987 Constitution only states that all lands of public domain are owned by the State, but nowhere does it provide that all unclassified and untitled lands are presumed public lands.

Thus, lands shall not be presumed as part of the public domain and shall remain as such unless the State reclassifies them as alienable.[47] Jurisprudence since *Cariño*[48] has acknowledged that

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[44] Id. at 13.

[45] Id. at 15 citing *Republic v. Abarca,* G.R. No. 217703, October 9, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/l/65854> [Per J. J.C. Reyes, Jr., Second Division].

[46] Id. at 13 citing *Republic v. Spouses Alonso,* G.R. No. 210738, August 14, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/l/65724> [Per J. J.C. Reyes, Jr., Second Division].

[47] *See* J. Leonen, Separate Opinion in *Heirs of Malabanan v. Republic,* 717 Phil. 141 (2013) [Per J. Bersamin, En Banc].

[48] 41 Phil. 935 (1909) [Per J. Holmes].

there are lands that have never become part of the public domain, even if they are found untitled and unregistered.

Further, Section 15 of the Presidential Decree No. 705 must be declared unconstitutional because it violates due process. It declares all unclassified lands as forests without regard to lands whose ownership are already vested upon its occupants.

The definition of public forest in Section 3(a) must be read in conjunction with Section 15, which uses a single criterion in determining in classifying lands. Using the land's slope as the sole factor in classifying land as forest or as timber land is patently arbitrary.

I

In the precolonial era, land ownership in the Philippines was communal in nature.[49] Land titles were vested not to natural persons but to the communal barangay.[50]

When the Spaniards came, the recognition of property rights transitioned to individual ownership and the titling of land was introduced. While communal ownership was still acknowledged, only individual ownership and rights were deemed alienable and were allowed documentation and registration.[51] Royal decrees allowed for the titling of lands when "long and continuous possession" was shown.[52]

Claimants then had to prove tradition and submit witness depositions. Alleging that this process caused controversy, the Spanish government required all landowners to obtain official documentation of their ownership.[53] In 1893, the Spanish

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[49] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era,* 63 Phil. L.J. 82, 85 (1988).

[50] Id. at 85-86.

[51] Id. at 86.

[52] Jose Mencio Molintas, *The Philippine Indigenous People's Struggle for Land and Life: Challenging Legal Texts,* 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004).

[53] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era,* 63 PHIL. L.J. 82, 87 (1988).

Mortgage Law put in place a systematic registration of titles.[54] However, due to government officials' abuses, lack of effective notice, illiteracy, and the costs of registration, land ownership registration became inaccessible to a large majority of natives, who could "only show their title by actual possession."[55] In an attempt to address this problem, a unilateral registration deadline was imposed through the Maura Law of 1894—the law that presaged the regalian doctrine.[56]

As provided in its preamble, the Maura Law sought to "insure to the natives, in the future, whenever it may be possible, the necessarily land for cultivation, in accordance with traditional usages." However, this policy is contradicted by Article 4 of the law, which stated that lands not titled will "revert back to the State." The provision further stated that "[a]ny claim to such lands by those who might have applied for adjustment of the same but have not done so [on April 17, 1895], will not avail themselves in any way nor at any time."[57] With the Maura Law in place, the recognition of customary land rights was effectively denied.[58] It introduced a legal concept that presumed all undocumented lands as owned by the Spanish Crown and its successors.[59]

This policy was cemented in the 1898 Treaty of Paris, which expressly stated that "all immovable properties . . . belong to

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[54] Jose Mencio Molintas, *The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts*, 21 ARIZ. J. INT'L. AND COMP. L. 269, 283 (2004), citing Renato Constantino, THE PHILIPPINES: A PAST REVISITED (1975).

[55] Owen James Lynch, Jr., *Land Rights, Land Laws and Land Usurpation: The Spanish Era*, 63 Phil. L.J. 82, 107 (1988).

[56] Id. at 108. The Maura Law, or the Royal Decree of February 13, 1894, was named after the then Minister of Colonies, Antonio Maura y Montaner.

[57] Id.

[58] Id. at 109.

[59] Owen James Lynch, Jr. and Kirk Talbott, *Legal Responses to the Philippine Deforestation Crises*, 20 N.Y.U. Int'l. L. & Pol. 679, 686 (1988).

the Crown of Spain and were to be ceded and relinquished to the new colonial master."[60] It was also textually reflected in the Philippine Bill of 1902. Section 12 stated:

> SECTION 12. *That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain,* signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, *are hereby placed under the control of the Government of said Islands,* to be administered for the benefit of the inhabitants thereof, except as provided in this Act.[61] (Emphasis supplied)

In the 1904 case of *Valenton* v. *Murciano,*[62] the regalian doctrine was first introduced in our jurisprudence. In *Valenton,* claimants alleged ownership over a parcel of untitled public land based on adverse possession for over 30 years, counting from 1860 until they filed the case in 1890. In dismissing the case, this Court ruled that there was no right of prescription against the State as to public lands. It explained:

> It happened, in the course of time, that tracts of the public land were found in the possession of persons who either had no title papers therefor issued by the State, or whose title papers were defective, either because the proper procedure had not been followed or because they had been issued by persons who had no authority to do so. Law 14, title 12, book 4 of said compilation (referred to in the regulations of June 25, 1880, for the Philippines) was the first of a long series of legislative acts intended to compel those in possession of the public lands, without written evidence of title, or with defective title papers, to present evidence as to their possession or grants, and obtain the confirmation of their claim to ownership. . . .
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[60] Jose Mencio Molintas, *The Philippine Indigenous People's Struggle For Land and Life: Challenging Legal Texts,* 21 Ariz. J. Int'l. And Comp. L. 269, 284 (2004).

[61] Philippine Bill of 1902, Sec. 12.

[62] 3 Phil. 537 (1904) [Per J. Willard, En Banc].

While the State has always recognized the right of the occupant to a deed if he proves a possession for a sufficient length of time, yet it has always insisted that he must make that proof before the proper administrative officers, and obtain from them his deed, and until he did that the State remained the absolute owner.

In the preamble of this law there is, as is seen, a distinct statement that all those lands belong to the Crown which have not been granted by Philip, or in his name, or by the kings who preceded him. This statement excludes the idea that there might be lands not so granted, that did not belong to the king. It excludes the idea that the king was not still the owner of all ungranted lands, because some private person had been in the adverse occupation of them. By the mandatory part of the law all the occupants of the public lands are required to produce before the authorities named, and within a time to be fixed by them, their title papers. And those who had good title or showed prescription were to be protected in their holdings. It is apparent that it was not the intention of the law that mere possession for a length of time should make the possessors the owners of the lands possessed by them without any action on the part of the authorities. It is plain that they were required to present their claims to the authorities and obtain a confirmation thereof. What the period of prescription mentioned in this law was does not appear, but later, in 1646, law 19 of the same title declared "that no one shall be 'admitted to adjustment' unless he has possessed the lands for ten years."[63] (Emphasis supplied)

Nevertheless, the 1909 case of *Cariño v. Insular Government*[64] rectified this doctrine and held that not all lands are presumed part of public domain.

In *Cariño*, Mateo Cariño claimed that he and his ancestors had occupied and tilled a land in Benguet since time immemorial, one he had inherited the land in accordance with Igorot custom. He said that the land was not titled pursuant to the Spanish royal decrees despite his application in 1893 to 1894 and 1896 to 1897. Thus, in 1902, Cariño applied for ownership, though he could only show a possessory title.[65]

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[63] Id. at 542-544.

[64] 41 Phil. 935 (1909) [Per J. Holmes].

[65] Id.

His petition before the Court of Land Registration was approved, but this was reversed on appeal before the Benguet Court of First Instance. When the case reached the Philippine Supreme Court in 1906, the ruling was affirmed. Citing Article 4 of the Maura Law, the Court reasoned that Cariño could no longer assert ownership over the land after he had failed to have it registered within the period set in the law.[66]

Upon appeal, the United States Supreme Court ruled in favor of Cariño. It held that the United States was not bound to assert the same powers held by its predecessor, and the government must respect the rights under the laws of the United States, including due process rights, granted in favor of Cariño.[67] Thus:

> If we suppose for the moment that the government's contention is so far correct that the Crown of Spain in form asserted a title to this land at the date of the Treaty of Paris, to which the United States succeeded, it is not to be assumed without argument that the plaintiffs case is at an end. It is true that Spain, in its earlier decrees, embodied the universal feudal theory that all lands were held from the Crown, and perhaps the general attitude of conquering nations toward people not recognized as entitled to the treatment accorded to those in the same zone of civilization with themselves. It is true, also, that, in legal theory, sovereignty is absolute, and that, as against foreign nations, the United States may assert, as Spain asserted, absolute power. But it does not follow that, as against the inhabitants of the Philippines, the United States asserts that Spain had such power. When theory is left on one side, sovereignty is a question of strength, and may vary in degree. How far a new sovereign shall insist upon the theoretical relation of the subjects to the head in the past, and how far it shall recognize actual facts, are matters for it to decide.
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> The Province of Benguet was inhabited by a tribe that the Solicitor-General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials

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[66] *Cariño v. Insular Government*, 7 Phil. 132 (1906) [Per J. Willard, First Division].

[67] *Cariño v. Insular Government of the Philippine Islands*, 41 Phil. 935 (1909) [Per J. Holmes].

would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the Island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.[68]

The United States Supreme Court explained that under the Philippine Bill of 1902, "all the property and rights acquired there by the United States are to be administered 'for the benefit of the inhabitants thereof.'"[69] It added that the same charter likewise guarded against undue deprivation of property. Taking these into consideration, the United States Supreme Court held that due process rightfully extended to unregistered and untitled properties whose owners presumably have not heard and availed of the registration processes. In the same vein, the charter did not consider as part of public domain lands held "by native custom and by long association."[70]

Cariño further pointed out that the presumption ought to be against the State. Thus, in cases where the land in question has been held since time immemorial, it must be presumed to have been held in private ownership before the Spanish occupation and never to have been public land. The United States Supreme Court held:

Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government in a case like the present. It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed

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[68] Id. at 938-939.

[69] Id. at 940.

[70] Id.

to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly in a case like this, if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the Organic Act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitudes of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."[71]

Cariño does not only embrace ancestral land rights, but it applies to all people who have held land since time immemorial.

The ruling establishes two important doctrines. First, it affirms the people's constitutional right over the land since time immemorial; and second, it settles that the Spanish colonial concept of regalian doctrine did not extend to the American occupation and to the subsequent organic acts enacted. *Cariño* concludes that the Maura Law "should not be construed as confiscation, but as the withdrawal of a privilege"[72] to register a title.

In 1903, Act No. 926, otherwise known as the Public Land Act, mandated the expropriation of "unoccupied, unreserved, unappropriated agricultural public land" through homestead.[73]

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[71] Id. at 941.

[72] Id. at 944.

[73] Act No. 926 (1903), Sec. 1 provides:

SECTION 1. Any citizen of the Philippine Islands, or of the United States, or of any Insular possession thereof, over the age of twenty-one years or the head of a family may, as hereinafter provided, enter a homestead of not exceeding sixteen hectares of unoccupied, unreserved unappropriated agricultural public land in the Philippine Islands, as defined by the Act of Congress of July first, nineteen hundred and two entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes which shall be taken, if on surveyed lands, by legal subdivisions, but if on unsurveyed lands shall be located in a body which shall be as nearly as practicable rectangular in shape and not more than eight hundred meters in length; but no person who is the owner

It continued to require registration and titling of land ownership, but it also provided a presumption in favor of persons who have openly, continuously, exclusively, and notoriously possessed and occupied agricultural public lands. Section 54(6) of Act No. 926 states:

> 6. *All persons who by themselves or their predecessors in interest has been in the open, continuous exclusive, and notorious possession and occupation of agricultural public lands*, as defined by said Act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this Act except when prevented by war or force majeure, shall be *conclusively presumed to have performed all the conditions essential to a government grant and to have received the same*, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

Similar to *Cariño*, the Public Land Act provides for judicial confirmation in affirming the native title claims. However, unlike Cariño, the Public Land Act no longer demands a claim of ownership based on occupation "since time immemorial." Rather, it only requires possession and occupation for a specified number of years.[74]

This provision was reiterated in Section 44 of Commonwealth Act No. 141, which grants free patents to citizens who do not own more than 24 hectares of land and have "continuously occupied and cultivated . . . agricultural public lands" since July 4, 1955.[75]

This provision was central in the 1980 case of *Herico v. Dar*.[76] In *Herico*, this Court ruled that upon compliance with

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of more than sixteen hectares of land in said islands or who has had the benefits of any gratuitous allotment of sixteen hectares of land since the acquisition of the Islands by the United States, shall be entitled to the benefits of this chapter.

[74] *See* Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 280 (1982).

[75] Commonwealth Act No. 141 (1936), Sec. 44.

[76] 184 Phil. 401 (1980) [Per J. De Castro, First Division].

the provision, the possessor acquires a right to a grant even without a certificate of title. As a result, the land is acknowledged as privately owned, withdrawn from the public domain.

In 1956, a free patent was granted to respondent Cipriano Dar (Dar) after claiming that he has possessed and cultivated a parcel of land since 1922. According to a report of a Public Land Inspector, nobody else claimed the land and Dar cultivated around 8.6 hectares of land, introducing 700 coconut trees ranging from 20 to 30 years. Subsequently, petitioner Moises Herico (Herico) filed a complaint seeking the cancellation of Dar's title, which was granted by the Court of First Instance. This was reversed by the Court of Appeals.

Upon appeal, this Court reversed the appellate court's decision. It found that Herico's predecessors-in-interest possessed the land way back in 1914 and declared the land for taxation purposes in 1940—earlier than Dar's tax declaration in 1952. It ruled that under Republic Act No. 1942, the law amending Commonwealth Act No. 141, Herico's occupation and cultivation for more than 30 years since 1914 has vested on him title over the land. The land, then, has been effectively withdrawn from public dominion. This Court expounded:

> As interpreted in several cases when the conditions as specified in the foregoing provision are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant, without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain, and beyond the authority of the Director of Lands to dispose of. The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent.[77] (Citation omitted)

The judicial confirmation of title under Section 48(b) of Commonwealth Act No. 141 was later amended by Republic Act No. 1942. It dispensed with the requirement of possession

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[77] Id. at 406-407.

beginning not later than July 26, 1984, removed the phrase "except as against the Government," and qualified the possession "under a bona fide claim of acquisition of ownership."[78]

Cariño and *Herico* affirm that ownership claims based on long occupation and possession of land are still recognized in our system. They recognize that not all untitled lands are automatically deemed part of the public domain and that there is no absolute presumption that all lands are presumed public lands. The due process clause, present from Philippine Bill of 1902 to the present Constitution, respects acquired ownership of land, whether or not ownership is confirmed by a title.

Thus, I agree with the *ponencia* that a "native title to land, or ownership of land by Filipinos by virtue of a claim of ownership since time immemorial and independent of any grant from the Spanish Crown[,]"[79] is an exception to the regalian doctrine.

This pronouncement not only affirms the validity of a *native* title, but also shows respect and sensitivity by doing away with the reference to "indigenous" or the pejorative "tribal," which is astute and prescient.

We are all natives in relation to our ancestral properties. The distinction of tribal or indigenous was introduced by our colonizers to convince their metropolis that there were "civilized" and "uncivilized" among us. Through their many laws, they favored ethnolinguistic groups, such as Tagalogs and Ilocanos, that easily succumbed to their rule and painfully marginalized indigenous groups through the legal order, suggesting that they are weak and uncivilized.[80]

The distinction was a political device employed by the Spanish colonizers who labeled as "uncivilized" Filipinos who refused

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[78] Republic Act No. 1942 (1957), Sec. 1.

[79] Ponencia, p, 7.

[80] See *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919) [Per J. Malcolm, En Banc].

to identify as Christians, and as "civilized" those who were converted and who were subservient to the Spaniards and their beliefs. This dichotomy was further utilized by the Americans, who labeled uncolonized groups as "non-Christian tribes." As Professor Owen J. Lynch observed:

> At the end of the Spanish era an estimated ten to twenty percent of the native population continued to live outside the colonial pale. Most either belonged to Islamicized communities in the southern parts of the colony or lived among the upland interiors of the major islands. The U.S. Regime generically labeled these labeled these peoples as 'non-Christian tribes.' An official Christian/non-Christian dichotomy ensued and was reified in the minds of the colonial elites. The dichotomy ignored the indigenous cultural traits that endured among the Hispanicized, the varied degrees of Hispanization among ostensible Christians, and the cultural variations among those labeled non-Christian.
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> One of the greatest, and largely unrecognized, ironies of the Taft era was the tendency to overlook the wide spectrum of westernized acculturation among the Philippine masses, as well as the enduring indigenous influences in their lives. As a result, the much disdained Hispanicized peasantry was lumped together and indiscriminately labeled, along with Filipino elites, as 'civilized.' Worcester insisted that people from the three main Christian ethnic groups, i.e. the Tagalogs, Ilocanos, and Visayans, were culturally homogeneous and 'to be treated as a class.'. . .[81]

The benefit of possession since time immemorial means that the holding of the property as an owner must be unbroken. It should not discriminate between a marginal farmer, whose ethnicity is not yet categorized as "indigenous," and a Tagbanua or Palawanon.

Cariño is a correction of the colonial illusion that all land rights and titles emanated from the Spanish Crown. However, despite its promulgation, *Cariño* was deliberately ignored by

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[81] 1 OWEN J. LYNCH, COLONIAL LEGACIES IN A FRAGILE REPUBLIC: PHILIPPINE LAND LAW AND STATE FORMATION 243-244 (1st ed., 2011).

the U.S. regime. The errors in our land policies, especially on ancestral domain rights, were never reviewed.[82]

Thus, the *ponencia's* assertion and affirmation of the doctrine in *Cariño* is a relief not only to indigenous groups, but also to many marginalized people who have long struggled to defend the native titles to their lands.

II

The Philippine Bill of 1902 granted the colonial government the authority to classify public lands into agricultural, timber, or mineral lands, depending on their "agricultural character and productiveness[.]" Section 13 of Philippine Bill of 1902 provides:

> SECTION 13. *That the Government of the Philippine Islands,* subject to the provisions of this Act and except as herein provided, *shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands,* but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: Provided, That a single homestead entry shall not exceed sixteen hectares in extent.[83] (Emphasis supplied)

In the 1908 case of *Mapa v. Insular Government*,[84] this Court settled the scope and meaning of agricultural land vis-a-vis other land classifications.

In *Mapa,* petitioner Cirilo Mapa (Mapa) sought registration of his land, a lowland he and his ancestors had uninterruptedly

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[82] Id. at 437.

[83] Philippine Bill of 1902, Sec. 13.

[84] 10 Phil. 175 (1908) [Per J. Willard, First Division].

possessed and used as fish pond, nipa lands, and salt deposits. The government opposed this, saying his land was not agricultural land.[85]

In that case, this Court determined whether the land was an agricultural land within the meaning of Section 54 of Act No. 926. The provision reads:

> SECTION 54. The following described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuances of a certificate of title therefor, to wit:
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> 6) All persons who by themselves or their predecessors in interest have been in the open, continuous exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war, or force majeure, shall be conclusively presumed to have performed all the conditions essential to a Government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter.

This Court, ruling in favor of Mapa, held that Section 13 of the Philippine Bill of 1902 did not provide an exact standard and definition of what comprises an agricultural land. Nevertheless, Section 13 stated that it was incumbent upon the government to "[m]ake rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands."[86] Referring to the definition in the Public Land Act, this Court ruled that the phrase "agricultural land" embraced those lands which are not timber or mineral lands.[87]

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[85] Id.

[86] Philippine Bill of 1902, Sec. 13.

[87] *Mapa v. Insular Government*, 10 Phil. 175 (1908) [Per J. Willard, First Division].

This definition was expanded later in *Ramos v. Director of Lands*,[88] which settled that the presumption that land is agricultural in nature absent proof to the contrary.

In *Ramos*, petitioner Cornelio Ramos (Ramos) sought the registration of his possessory title over a land under Section 54 of the Public Land Act.The Director of Lands opposed, arguing that Ramos had not acquired a good title from the Spanish government and that the land was a forest land. The trial court denied the registration.[89]

Upon appeal, this Court upheld the presumption that lands are agricultural in nature and ruled in favor of Ramos. It explained that under the Philippine Bill of 1902 and the Public Land Act, the determination of the land's classification is by exclusion, meaning, it must be determined "if the land is forestal or mineral in nature and, if not so found, to consider it to be agricultural land."[90]

To be classified as a forest, the land must be determined as "forestal" in nature by the Bureau of Forestry. The government policy then is to leave the task of determining forest land to a board of experts, which would investigate if a land may be considered forest land. In its investigation, the Bureau of Forestry uses an exacting list of criteria to classify a land as forest. It ascertains the lands' slope, exposure, soil type, soil cover character, cultivation, among other bio-physical factors. This Court stated:

> In many cases, in the opinion of the Bureau of Forestry, lands without a single tree on them are considered as true forest land. For instance, mountain sides which are too steep for cultivation under ordinary practice and which, if cultivated, under ordinary practice would destroy the big natural resource of the soil, by washing, is considered by this Bureau as forest land and in time would be reforested. Of course, examples exist in the Mountain Province where steep hillsides have been terraced and intensive cultivation practiced but even then the

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[88] 39 Phil. 175 (1918) [Per *J.* Malcolm, *En Banc*].

[89] Id.

[90] Id. at 181.

mountain people are very careful not to destroy forests or other vegetative cover which they from experience have found protect their water supply. Certain chiefs have lodged protests with the Government against other tribes on the opposite side of the mountain cultivated by them, in order to prevent other tribes from cutting timber or destroy cover guarding their source of water for irrigation.

. . . .

The method employed by the Bureau of Forestry in making inspection of lands, in order to determine whether they are more adapted for agricultural or forest purposes by a technical and duly trained personnel on the different phases of the conservation of natural resources, is based upon a previously prepared set of questions in which the different characters of the land under inspection are discussed, namely:

Slope of land: Level; moderate; steep; very steep.

Exposure: North; South; East; West.

Soil: Clay; sandy loam; sand; rocky; very rocky.

Character of soil cover: Cultivated, grass land, brush land, brush land and timber mixed, dense forest.

If cultivated, state crops being grown and approximate number of hectares under cultivation. (Indicate on sketch.)

For growth of what agricultural products is this land suitable?

State what portion of the tract is wooded, name of important timber species and estimate of stand in cubic meters per hectare, diameter and percentage of each species.

If the land is covered with timber, state whether there is public land suitable for agriculture in vicinity, which is not covered with timber.

Is this land more valuable for agricultural than for forest purposes? (State reasons in full.)

Is this land included or adjoining any proposed or established forest reserve or communal forest? Description and ownership of improvements.

If the land is claimed under private ownership, give the name of the claimant, his place of residence, and state briefly (if necessary on a separate sheet) the grounds upon which he bases his claim.

When the inspection is made on a parcel of public land which has been applied for, the corresponding certificate is forwarded to the Director of Lands; if it is made on a privately claimed parcel for which the issuance of a title is requested from the Court of Land Registration, and the inspection shows the land to be more adapted for forest purposes, then the Director of Forestry requests the Attorney-General to file an opposition, sending him all data collected during the inspection and offering him the forest officer as a witness.[91]

This Court held that the agricultural presumption was based on the government's policy of favoring conversion of lands from public domain to private ownership.[92]

Subsequently, in *J.H. Ankron v. The Government of the Philippine Islands,*[93] this Court reiterated the agricultural presumption, expounding that the classification of land as forestal or mineral is a matter of proof. It held:

[W]hether the particular land in question belongs to one class or another is a question of fact. The mere fact that a tract of land has trees upon it or has mineral within it is not of itself sufficient to declare that one is forestry land and the other, mineral land. There must be some proof of the extent and present or future value of the forestry and of the minerals. While, as we have just said, many definitions have been given for "agriculture," "forestry," and "mineral" lands, and that in each case it is a question of fact, we think it is safe to say that in order to be forestry or mineral land the proof must show that it is more valuable for the forestry or the mineral which it contains than it is for agricultural purposes. (Sec. 7, Act No. 1148.) It is not sufficient to show that there exists some trees upon the land or that it bears some mineral. Land may be classified as forestry or mineral today, and, by reason of the exhaustion of the timber or mineral, be classified as agricultural land tomorrow. And vice-versa,

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[91] Id. at 183-185.

[92] Id.

[93] 40 Phil. 10 (1919) [Per J. Johnson, First Division].

by reason of the rapid growth of timber or the discovery of valuable minerals, lands classified as agricultural today may be differently classified tomorrow. Each case must be decided upon the proof in that particular case, having regard for its present or future value for one or the other purposes. We believe, however, considering the fact that it is a matter of public knowledge that a majority of the lands in the Philippine Islands are agricultural lands, that the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown. Whatever the land involved in a particular land registration case is forestry or mineral land must, therefore, be a matter of proof. Its superior value for one purpose or the other is a question of fact to be settled by the proof in each particular case.[94]

The presumption in favor of agricultural land is only a disputable presumption. It may be overcome by showing the actual nature of the land. This is consistent with the text of Philippine Bill of 1902, which stated that the determination of land was hinged on its "agricultural character and productiveness."[95] Thus, the Bureau of Forestry's investigation is crucial because it is able to ascertain each land's actual character.

However, in the 1970s, the Marcos administration sought to conserve the country's forest cover. Citing a study by a forestry professor, the government adopted a policy seeking to retain at least 42%, or 12,600,000 hectares, of the country's land area for forest purposes. The study had suggested that lands at least 18% in slope must be considered forest lands based on its calculation that approximately 42% of our land area was 18% in slope.[96]

As a result, the 18%-slope criteria under Presidential Decree No. 705 was established.[97] Section 15 states that any land at least 18% in slope shall be classified as alienable and disposable:

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[94] Id. at 15-16.

[95] Philippine Bill of 1902, Sec. 13.

[96] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 285 (1982).

[97] Id.

SECTION 15. *Topography*. — No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: Provided, That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: Provided, Further, That when public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land application, or eject occupants thereof.[98]

This is consistent with Section 3(a), which creates a blanket declaration that all unclassified public lands are considered forest lands. Alienable and disposable lands at least 18% slope are reverted to the classification of forest land. This sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature. In fact, this criterion led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise."[99]

The imposition of a single criterion has drawn criticisms for being an insufficient standard to determine how to economically

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[98] Presidential Decree No. 705 (1975), Sec. 15.

[99] *See Secretary of the Department of Environment and Natural Resources v. Yap*, 589 Phil. 156 (2008) [Per J. R.T. Reyes, En Banc], where Boracay Islands, even if admittedly stripped of its forest cover and has become a commercial land, was still classified as forest pursuant to Section 3(a) of Presidential Decree No. 705.

use the lands without endangering the ecosystem.[100] It fails to account for other factors that will protect and respect the property rights of landowners whose lands are surrounded by forest zones.[101]

Section 15 of Presidential Decree No. 705 violates due process.

Due process under Article III, Section 1 of the 1987 Constitution protects property rights and precludes undue deprivation of property, regardless of the type and nature of the property. It applies not only to titled lands but also to lands that may be unregistered, but whose ownership was vested upon their occupants by prescription.

The arbitrary conversion of lands to forest lands under Section 15 of Presidential Decree No. 705, as well as its proscription against alienability of lands on the basis of a single criterion, violates due process. It unduly severs ownership by automatically declaring lands as inalienable forest lands as long as they have a slope of at least 18%. There may be lands that remain untitled and unregistered but whose ownership had already been vested on their occupants. Section 15 effectively disregards property rights by enacting an outright conversion of any unclassified land as a forest.

Section 15 cannot find refuge in the regalian doctrine. To reiterate, this legal fiction is a jurisprudential aberration that has no constitutional basis. None of our constitutions, past and present, have ever provided a presumption that all lands are public. Thus, it is unsound for this Court to pronounce that "unclassified lands are in the same footing as forest lands"[102] as there may be unclassified lands that have become subject to private ownership. It is likewise unwarranted to equate unclassified lands to forest lands because there are other classifications of lands under our Constitution.

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[100] Owen James Lynch, Jr., *Native Title, Private Right and Tribal Land Law: An Introductory Survey*, 57 PHIL. L.J. 268, 285-286 (1982).

[101] Id. at 286.

[102] Ponencia, p. 11.

Thus, I take exception to the validity of Section 15 of the Presidential Decree No. 705.

Nevertheless, as pointed out in the *ponencia*, the exception established in *Cariño* remains an option for those who seek recognition of their native titles to their lands.

Accordingly, I vote to **DISMISS** the Petition.

CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* dismisses the present Petition for *Certiorari* and affirms the constitutionality of Section 3(a) of Presidential Decree No. (PD) 705,[1] otherwise known as the Forestry Reform Code of the Philippines.

I concur.

I submit this Concurring Opinion principally to express my views with respect to the Regalian doctrine and clarify the parameters of the presumption of State ownership.

The Regalian doctrine is the foundation of the State's property regime.

In his Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources*,[2] Justice Reynato S. Puno explained the origins of the Regalian doctrine and traced its history back to the Laws of the Indies, thus:

The capacity of the State to own or acquire property is the state's power of *dominium.* This was the foundation for the early Spanish

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[1] REVISING PRESIDENTIAL DECREE NO. 389, OTHERWISE KNOWN AS THE FORESTRY REFORM CODE OF THE PHILIPPINES, May 19, 1975.

[2] G.R. No. 135385, December 6, 2000, 347 SCRA 128, 162-242.

decrees embracing the feudal theory *of jura regalia.* The "Regalian [d]octrine" or *jura regalia* is a Western legal concept that *was first introduced by the Spaniards into the country through the Laws of the Indies and the Royal Cedulas.* The Laws of the Indies, *i.e.*, more specifically, *Law 14, Title 12, Book 4 of the Novisima Recopilacion de Leyes de las Indias,* set the policy of the Spanish Crown with respect to the Philippine Islands in the following manner:

> "We, having acquired full sovereignty over the Indies, and all lands, territories, and possessions not heretofore ceded away by our royal predecessors, or by us, or in our name, still pertaining to the royal crown and patrimony, it is our will that all lands which are held without proper and true deeds of grant be restored to us as they belong to us, in order that after reserving before all what to us or to our viceroys, audiencias, and governors may seem necessary for public squares, ways, pastures, and commons in those places which are peopled, taking into consideration not only their present condition, but also their future and their probable increase, and after distributing to the natives what may be necessary for tillage and pasturage, confirming them in what they now have and giving them more if necessary, all the rest of said lands may remain free and unencumbered for us to dispose of as we may wish.
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> We therefore order and command that all viceroys and presidents of pretorial courts designate at such time as shall to them seem most expedient, a suitable period within which all possessors of tracts, farms, plantations, and estates shall exhibit to them and to the court officers appointed by them for this purpose, their title deeds thereto. And those who are in possession by virtue of proper deeds and receipts, or by virtue of just prescriptive right shall be protected, and all the rest shall be restored to us to be disposed of at our will."

The Philippines passed to Spain by virtue of "discovery'" and conquest. Consequently, all lands became the exclusive patrimony and dominion of the Spanish Crown. The Spanish Government took charge of distributing the lands by issuing royal grants and concessions to Spaniards, both military and civilian. Private land titles could only be acquired from the government either by purchase or by the various modes of land grant from the Crown.

The Laws of the Indies were followed by the *Ley Hipotecaria,* or the *Mortgage Law of 1893.* The Spanish Mortgage Law provided

for the systematic registration of titles and deeds as well as possessory claims. The law sought to register and tax lands pursuant to the Royal Decree of 1880. The Royal Decree of 1894, or the "Maura Law," was partly an amendment of the Mortgage Law as well as the Laws of the Indies, as already amended by previous orders and decrees. This was the last Spanish land law promulgated in the Philippines. It required the "adjustment" or registration of all agricultural lands, otherwise the lands shall revert to the State.

Four years later, by the *Treaty of Paris of December 10, 1898*, Spain ceded to the government of the United States all of its rights, interests and claims over the national territory of the Philippine Islands. In 1903, the United States colonial government, through the Philippine Commission, passed Act No. 926, the first Public Land Act.[3]

That the Regalian doctrine remained in force even after the Philippines was ceded to the United States appears to have been confirmed by the Court *En Banc* in the 1904 case of *Valenton* v. *Murciano,*[4] through the following observations:

> The policy pursued by the Spanish Government from the earliest times, requiring settlers on the public lands to obtain deeds therefor from the State, has been continued by the American Government in Act No. 926, which takes effect when approved by Congress. x x x[5]

Subsequently, the Regalian doctrine was adopted under the 1935 Constitution, particularly, in Section 1, Article XIII:

> SECTION 1. **All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State,** and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the

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[3] Id. at 165-167.

[4] 3 Phil. 537 (1904) [En Banc, per J. Willard].

[5] Id. at 553.

inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant. (Emphasis supplied)

Under the 1973 Constitution, the Regalian doctrine was set forth in clearer terms, hence:

SECTION 8. **All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State.** With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.[6] (Emphasis supplied)

At present, the Regalian doctrine remains enshrined in Section 2, Article XII of the 1987 Constitution, which reads:

SECTION 2. **All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State.** With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per*

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[6] 1973 CONSTITUTION, Art. XIV.

centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant. (Emphasis supplied)

In addition, the 1987 Constitution further states that only lands classified as agricultural shall be alienable, and thus, susceptible of private ownership.[7]

Based on the foregoing, I submit that the Regalian doctrine remains the basic foundation of the State's property regime under the present Constitution.

The Regalian doctrine espouses that all lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership of land. Accordingly, all lands not otherwise appearing to be clearly within private ownership are *presumed* to belong to the State. Unless land is shown to have been reclassified as agricultural (and thus, alienable), such land remains part of the inalienable land of the public domain.[8]

As pointedly discussed by the *ponencia*, an exception to the general presumption that "all lands are part of public domain" had been crafted by the United States Supreme Court (U.S.

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[7] Article XII. Sec. 3 states:

SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.

[8] *Zarate v. Director of Lands*, G.R. No. 131501, July 14, 2004, 434 SCRA 322, 331 [Second Division, Per J. Callejo, Sr.].

Supreme Court) in the 1909 case of *Cariño v. Insular Government*[9] *(Cariño).*

Cariño involved a claim of ownership over land occupied by the petitioner therein and his ancestors since time immemorial, that is, before the Spanish Conquest. Taking this peculiar circumstance into account, the U.S. Supreme Court held:

> The Province of Benguet was inhabited by a tribe that the Solicitor General, in his argument, characterized as a savage tribe that never was brought under the civil or military government of the Spanish Crown. It seems probable, if not certain, that the Spanish officials would not have granted to anyone in that province the registration to which formerly the plaintiff was entitled by the Spanish laws, and which would have made his title beyond question good. Whatever may have been the technical position of Spain, it does not follow that, in the view of the United States, he had lost all rights and was a mere trespasser when the present government seized his land. The argument to that effect seems to amount to a denial of native titles throughout an important part of the island of Luzon, at least, for the want of ceremonies which the Spaniards would not have permitted and had not the power to enforce.
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> x x x x
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> Whatever the law upon these points may be, and we mean to go no further than the necessities of decision demand, every presumption is and ought to be against the government **in a case like the present.** It might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to have been held in the same way from before the Spanish conquest, and never to have been public land. Certainly **in a case like this,** if there is doubt or ambiguity in the Spanish law, we ought to give the applicant the benefit of the doubt. Whether justice to the natives and the import of the organic act ought not to carry us beyond a subtle examination of ancient texts, or perhaps even beyond the attitude of Spanish law, humane though it was, it is unnecessary to decide. If, in a tacit way, it was assumed that the wild tribes of the Philippines

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[9] 212 U.S. 449 (1909). The case was brought from the Philippine Supreme Court to the U.S. Supreme Court via writ of error.

were to be dealt with as the power and inclination of the conqueror might dictate, Congress has not yet sanctioned the same course as the proper one "for the benefit of the inhabitants thereof."[10] (Emphasis supplied)

I share the *ponente's* view that *Cariño* merely carved out an exception thereto in recognition of native titles which vested prior to the Spanish Conquest. As lands subject of these native titles have been held since time immemorial, they are deemed **excluded** from the mass of public domain placed under the scope of the Regalian doctrine. That is the limited context of *Cariño's* ruling that the presumption of private ownership of lands may be applied.

Section 3 (a) of PD 705 is consistent with the Regalian doctrine.

Proceeding now to the issue at hand, the petitioners herein assail the constitutionality of Section 3 (a) of PD 705 which defines public forest. It states:

> SECTION 3. *Definitions.* —
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> a) Public forest is the mass of lands of the public domain which **has not been the subject of the present system of classification** for the determination of which lands are needed for forest purposes and which are not. (Emphasis supplied)

According to the petitioners, the automatic treatment of unclassified lands as forest lands is unconstitutional as it operates to deprive those who have long been in possession of their vested right of ownership over said unclassified lands.[11]

The petitioners anchor their position on two premises —*first*, that unclassified lands of the public domain are *presumed* to be agricultural land, and thus, alienable,[12] and *second*, that

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[10] *Cariño v. Insular Government*, id. at 458-460.

[11] *Ponencia*, p. 3.

[12] See Petition, *rollo*, p. 8.

Section 3(a) operates as a wholesale classification of *alienable* unclassified land to *inalienable* forest land.[13]

Both premises are incorrect.

I. *Unclassified lands of the public domain are inalienable*

As stated, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State. Unless land is shown to have been reclassified as alienable agricultural land, such land remains, and should be treated as, inalienable land of the public domain.

I am aware of the Court's ruling in *Ibañez de Aldecoa v. Insular Government*[14] *(De Aldecoa)* to the effect that "with the exception of those comprised within the mineral and timber zone, all lands owned by the State or by the sovereign nation are public in character, and *per se* alienable x x x, provided they are not destined to the use of the public in general or reserved by the Government in accordance with law."[15] I am likewise aware of the Court's pronouncements in *Ramos v. Director of Lands*[16] *(Ramos)* and *J.H. Ankron v. Government of the Philippine Islands*[17] *(Ankron)* which are now relied upon by the petitioners as basis to argue that lands should be presumed agricultural in nature, in the absence of contrary proof.

I submit, however, that these rulings should be understood in their proper context.

De Aldecoa, Ramos and *Ankron* involved actions for registration of title decided under the regime of the Philippine Bill of 1902.[18]

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[13] See id. at 9.

[14] Phil. 159 (1909) [En Banc, Per J. Torres].

[15] Id. at 166.

[16] 39 Phil. 175 (1918) [En Banc, Per J. Malcolm].

[17] 40 Phil. 10 (1919) [First Division, Per J. Johnson].

[18] ACT OF CONGRESS OF JULY FIRST, NINETEEN HUNDRED AND TWO, "THE PHILIPPINE BILL" AN ACT TEMPORARILY TO PROVIDE

Under the Philippine Bill of 1902, the Government of the Philippine Islands had been authorized to classify land into three categories — timber, mineral, and agricultural, thus:

SECTION 13. **That the Government of the Philippine Islands, subject to the provisions of this Act and except as herein provided, shall classify according to its agricultural character and productiveness, and shall immediately make rules and regulations for the lease, sale, or other disposition of the public lands other than timber or mineral lands,** but such rules and regulations shall not go into effect or have the force of law until they have received the approval of the President, and when approved by the President they shall be submitted by him to Congress at the beginning of the next ensuing session thereof and unless disapproved or amended by Congress at said session they shall at the close of such period have the force and effect of law in the Philippine Islands: *Provided*, That a single homestead entry shall not exceed sixteen hectares in extent. (Emphasis supplied)

Pursuant to the mandate in Section 13, the Philippine Commission enacted Act No. 926[19] (Act 926) otherwise known as the first Public Land Act.

FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES, July 1, 1902.

[19] AN ACT PRESCRIBING RULES AND REGULATIONS GOVERNING THE HOMESTEADING, SELLING, AND LEASING OF PORTIONS OF THE PUBLIC DOMAIN OF THE PHILIPPINE ISLANDS, PRESCRIBING TERMS AND CONDITIONS TO ENABLE PERSONS TO PERFECT THEIR TITLES TO PUBLIC LANDS IN SAID ISLANDS, PROVIDING FOR THE ISSUANCE OF PATENTS WITHOUT COMPENSATION TO CERTAIN NATIVE SETTLERS UPON THE PUBLIC LANDS, PROVIDING FOR THE ESTABLISHMENT OF TOWN SITES AND SALE OF LOTS THEREIN, AND PROVIDING FOR THE DETERMINATION BY THE PHILIPPINES COURT OF LAND REGISTRATION OF ALL PROCEEDINGS FOR COMPLETION OF IMPERFECT TITLES AND FOR THE CANCELLATION OR CONFIRMATION OF SPANISH CONCESSIONS AND GRANTS IN SAID ISLANDS, AS AUTHORIZED BY SECTIONS THIRTEEN, FOURTEEN, FIFTEEN AND SIXTY-TWO OF THE ACT OF CONGRESS OF JULY FIRST, NINETEEN HUNDRED AND TWO, ENTITLED "AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE

While Act 926 prescribed the rules and regulations for the lease, sale, and other disposition of alienable public lands, it failed to grant the power to classify lands to any central authority. In the absence of such specific grant of power, courts were then confronted with the task of determining land classification in justiciable cases on an *ad hoc* basis, that is, depending on the evidence presented in each particular case.

The Court's ruling in *Secretary of the Department of Environment and Natural Resources v. Yap*[20] *(Yap)* is instructive.

In *Yap,* Proclamation No. (Proclamation) 1801[21] issued by President Ferdinand Marcos (President Marcos) and its implementing circular Philippine Tourism Authority (PTA) Circular No. 3-82 were called into question.

Under Proclamation 1801, President Marcos declared certain islands, coves, and peninsulas as tourist zones and marine reserves and placed them under the administration of the PTA. Boracay Island was included among the islands declared as tourist zones.

Land claimants in *Yap* argued that Proclamation 1801 and PTA Circular No. 3-82 raised doubts on their ability to secure Torrens titles over land which they have been occupying since June 12, 1945 or earlier. Thus, they filed a Petition for Declaratory Relief with the RTC of Kalibo, Aklan.

The Republic, through the Office of the Solicitor General (OSG), opposed the Petition for Declaratory Relief, primarily arguing that Boracay Island constitutes unclassified land which, in turn, is inalienable. Since Boracay Island has not been classified as alienable and disposable land, whatever form of

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AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES," October 7, 1903.

[20] G.R. Nos. 167707 and 173775, October 8, 2002, 568 SCRA 164 [En Banc, Per J. R. T. Reyes].

[21] DECLARING CERTAIN ISLANDS, COVES AND PENINSULAS IN THE PHILIPPINES AS TOURIST ZONES AND MARINE RESERVE UNDER THE ADMINISTRATION AND CONTROL OF THE PHILIPPINE TOURISM AUTHORITY, November 10, 1978.

possession which the claimants had, could not ripen into ownership.

Acting on the claimants' Petition for Declaratory Relief, the RTC held that Proclamation 1801 and PTA Circular No. 3-82 "pose no legal obstacle to the petitioners and those similarly situated to acquire title to their lands in Boracay, in accordance with the applicable laws and in the manner prescribed therein."[22] The CA affirmed.

The Republic later elevated the case to the Court *via* Petition for Review which was docketed as G.R. No. 167707. G.R. No. 167707 was later consolidated with an original petition for prohibition, mandamus, and nullification of Proclamation 1064[23] docketed as G.R. No. 173775 filed by another set of land claimants.

Under Proclamation 1064, President Gloria Macapagal-Arroyo classified Boracay Island into 400 hectares of reserved forest land and 628.96 hectares of agricultural land. The petitioners in G.R. No. 173775 assailed the validity of Proclamation 1064 as it allegedly infringed on their vested rights over portions of Boracay Island. The Republic, again through the OSG, countered that Boracay Island is unclassified land. Thus, the portions of the island which remain inalienable under Proclamation 1064 could not be subject of judicial confirmation of imperfect title.

The land claimants in G.R. Nos. 167707 and 173775 argued, among others, that Boracay Island constitute agricultural land pursuant to *Ankron* and *De Aldecoa.* The Court **rejected** this assertion in this wise:

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[22] *Secretary of the Department of Environment and Natural Resources v. Yap*, supra note 20, at 178.

[23] CLASSIFYING BORACAY ISLAND SITUATED IN THE MUNICIPALITY OF MALAY, PROVINCE OF AKLAN INTO FORESTLAND (PROTECTION PURPOSES) AND INTO AGRICULTURAL LAND (ALIENABLE AND DISPOSABLE) PURSUANT TO PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY REFORM CODE OF THE PHILIPPINES), May 22, 2006.

Ankron and *De Aldecoa* were decided at a time when the President of the Philippines had no power to classify lands of the public domain into mineral, timber, and agricultural. **At that time, the courts were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence.** This was the Court's ruling in *Heirs of the Late Spouses Pedro S. Palanca* and *Soterranea Rafols Vda. De Palanca v. Republic*, in which it stated, through Justice Adolfo Azcuna, *viz.:*

> "x x x Petitioners furthermore insist that a particular land need not be formally released by an act of the Executive before it can be deemed open to private ownership, citing the cases *of Ramos v. Director of Lands* and *Ankron v. Government of the Philippine Islands.*
>
> x x x x
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> Petitioner's reliance upon *Ramos v. Director of Lands* and *Ankron v. Government* is misplaced. These cases were decided under the Philippine Bill of 1902 and the first Public Land Act No. 926 enacted by the Philippine Commission on October 7, 1926, under which there was no legal provision vesting in the Chief Executive or President of the Philippines the power to classify lands of the public domain into mineral, timber and agricultural so that the courts then were free to make corresponding classifications in justiciable cases, or were vested with implicit power to do so, depending upon the preponderance of the evidence."

To aid the courts in resolving land registration cases under Act No. 926, it was then necessary to devise a presumption on land classification. Thus evolved the dictum in *Ankron* that "the courts have a right to presume, in the absence of evidence to the contrary, that in each case the lands are agricultural lands until the contrary is shown."

But We cannot unduly expand the presumption in *Ankron* and *De Aldecoa* to an argument that all lands of the public domain had been automatically reclassified as disposable and alienable agricultural lands. By no stretch of imagination did the presumption convert all lands of the public domain into agricultural lands.

If We accept the position of private claimants, the Philippine Bill of 1902 and Act No. 926 would have automatically made all

lands in the Philippines, except those already classified as timber or mineral land, alienable and disposable lands. That would take these lands out of State ownership and worse, would be utterly inconsistent with and totally repugnant to the long-entrenched Regalian doctrine.

The presumption in *Ankron* and *De Aldecoa* attaches only to land registration cases brought under the provisions of Act No. 926, or more specifically those cases dealing with judicial and administrative confirmation of imperfect titles. The presumption applies to an applicant for judicial or administrative conformation of imperfect title under Act No. 926. It certainly cannot apply to landowners, such as private claimants or their predecessors-in-interest, who failed to avail themselves of the benefits of Act No. 926. As to them, their land remained unclassified and, by virtue of the Regalian doctrine, continued to be owned by the State.

In any case, the assumption in *Ankron* and *De Aldecoa* was not absolute. Land classification was, in the end, dependent on proof. If there was proof that the land was better suited for non-agricultural uses, the courts could adjudge it as a mineral or timber land despite the presumption. x x x

x x x x x x x x x

Since 1919, courts were no longer free to determine the classification of lands from the facts of each case, except those that have already become private lands. Act No. 2874, promulgated in 1919 and reproduced in Section 6 of CA No. 141, gave the Executive Department, through the President, the exclusive prerogative to classify or reclassify public lands into alienable or disposable, mineral or forest. Since then, courts no longer had the authority, whether express or implied, to determine the classification of lands of the public domain.[24] (Emphasis supplied)

Verily, the presumption espoused in *De Aldecoa*, *Ramos*, and *Ankron* was an evidentiary tool devised in the limited context of registration cases brought under the provisions of Act 926. **Such presumption no longer applies in the current statutory regime**.

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[24] *Secretary of the Department of Environment and Natural Resources v. Yap*, supra note 20, at 194-197.

II. *Owing to the Regalian doctrine, unclassified lands of the public domain necessarily remain inalienable until classified as agricultural land*

At present, Section 3, Article XII of the 1987 Constitution classifies lands of the public domain into four (4) categories — agricultural lands, forest or timber lands, mineral lands, and national parks, to wit:

> SECTION 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. **Alienable lands of the public domain shall be limited to agricultural lands.** x x x (emphasis supplied)

Section 3 mandates that only lands classified as agricultural may be declared alienable, and thus susceptible of private ownership. Thus, all lands which have not been classified as such necessarily remain inalienable.

As pointedly discussed by the *ponencia,* the fact that unclassified lands remain inalienable until released and declared open to disposition has been confirmed by the Court *En Banc* in *Yap,* thus:

> Except for lands already covered by existing titles, Boracay was an unclassified land of the public domain prior to [Proclamation 1064]. Such unclassified lands are considered public forest under [PD 705]. The DENR and the National Mapping and Resource Information Authority certify that Boracay Island is an unclassified land of the public domain.
>
> [PD 705] issued by President Marcos categorized all unclassified lands of the public domain as public forest. Section 3(a) of [PD 705] defines a public forest as "a mass of lands of the public domain which has not been the subject of the present system of classification for the determination of which lands are needed for forest purpose and which are not". **Applying [PD 705], all unclassified lands, including those in Boracay Island, are *ipso facto* considered public forests. [PD 705], however, respects titles already existing prior to its effectivity.**

The Court notes that the classification of Boracay as a forest land under [PD 705] may seem to be out of touch with the present realities in the island. Boracay, no doubt, has been partly stripped of its forest cover to pave the way for commercial developments. As a premier tourist destination for local and foreign tourists, Boracay appears more of a commercial island resort, rather than a forest land.

Nevertheless, that the occupants of Boracay have built multi-million peso beach resorts on the island; that the island has already been stripped of its forest cover; or that the implementation of [Proclamation 1064] will destroy the island's tourism industry, do not negate its character as public forest.

Forests, in the context of both the Public Land Act and the Constitution classifying lands of the public domain into "agricultural, forest or timber, mineral lands, and national parks," do not necessarily refer to large tracts of wooded land or expanses covered by dense growths of trees and underbrushes. The discussion in *Heirs of Amunategui v. Director of Forestry* is particularly instructive:

> "A forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted to crops by kaingin cultivators or other farmers. "Forest lands" do not have to be on mountains or in out of the way places. Swampy areas covered by mangrove trees, nipa palms, and other trees growing in brackish or sea water may also be classified as forest land. The classification is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as "forest" is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply."
> x x x

There is a big difference between "forest" as defined in a dictionary and "forest or timber land" as a classification of lands of the public domain as appearing in our statutes. One is descriptive of what appears on the land while the other is a legal status, a classification for legal purposes. At any rate, the Court is tasked to determine the legal status of Boracay Island, and not look into its physical layout. Hence, even

if its forest cover has been replaced by beach resorts, restaurants and other commercial establishments, it has not been automatically converted from public forest to alienable agricultural land.

Private claimants cannot rely on [Proclamation 1801] as basis for judicial confirmation of imperfect title. The proclamation did not convert Boracay into an agricultural land. However, private claimants argue that [Proclamation 1801] issued by then President Marcos in 1978 entitles them to judicial confirmation of imperfect title. The Proclamation classified Boracay, among other islands, as a tourist zone. Private claimants assert that, as a tourist spot, the island is susceptible of private ownership.

[Proclamation 1801] or PTA Circular No. 3-82 did not convert the whole of Boracay into an agricultural land. There is nothing in the law or the Circular which made Boracay Island an agricultural land. The reference in Circular No. 3-82 to "private lands" and "areas declared as alienable and disposable" does not by itself classify the entire island as agricultural. Notably, Circular No. 3-82 makes reference not only to private lands and areas but also to public forested lands, x x x

x x x x

[Proclamation 1801] cannot be deemed the positive act needed to classify Boracay Island as alienable and disposable land. If President Marcos intended to classify the island as alienable and disposable or forest, or both, he would have identified the specific limits of each, as President Arroyo did in [Proclamation. 1064]. This was not done in [Proclamation 1801].

x x x x

It was [Proclamation 1064] of 2006 which positively declared part of Boracay as alienable and opened the same to private ownership. Sections 6 and 7 of CA No. 141 provide that it is only the President, upon the recommendation of the proper department head, who has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands.

In issuing [Proclamation 1064], President Gloria Macapagal-Arroyo merely exercised the authority granted to her to classify lands of the public domain, presumably subject to existing vested rights. **Classification of public lands is the exclusive prerogative of the Executive Department, through the Office of the President. Courts**

have no authority to do so. Absent such classification, the land remains unclassified until released and rendered open to disposition.[25] (Emphasis supplied; emphasis in the original omitted)

Contrary to the petitioners' view, Section 3(a) does *not* operate as a wholesale classification of alienable land to inalienable land, for lands which are unclassified remain inalienable until released and declared by the Executive as agricultural land, the latter being the sole classification of land which may be subject to alienation and disposition.

Section 15 of PD 705 was not assailed herein.

My esteemed colleague Justice Leonen is of the view that Section 15 of PD 705 violates the due process clause enshrined under Section 1, Article III of the 1987 Constitution.[26]

Section 15 of PD 705 states:

SECTION 15. *Topography*. — No land of the public domain eighteen per cent (18%) in slope or over shall be classified as alienable and disposable, nor any forest land fifty per cent (50%) in slope or over, as grazing land.

Lands eighteen per cent (18%) in slope or over which have already been declared as alienable and disposable shall be reverted to the classification of forest lands by the Department Head, to form part of the forest reserves, unless they are already covered by existing titles or approved public land application, or actually occupied openly, continuously, adversely and publicly for a period of not less than thirty (30) years as of the effectivity of this Code, where the occupant is qualified for a free patent under the Public Land Act: *Provided,* That said lands, which are not yet part of a well-established communities, shall be kept in a vegetative condition sufficient to prevent erosion and adverse effects on the lowlands and streams: *Provided, further,* That when public interest so requires, steps shall be taken to expropriate, cancel defective titles, reject public land application, or eject occupants thereof.

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[25] Id. at 200-205.

[26] J. Leonen, Concurring Opinion, p. 19.

Justice Leonen adds that the "sudden shift in land policy meant that a sole criterion is now used to declare a land as a forest, regardless of its nature"[27] and has in fact "led to unrealistic pronouncements declaring lands as forestal even if other biophysical factors show otherwise."[28]

I note, however, that the Petition solely assails the constitutionality of Section 3 (a) of PD 705.

Section 3(a) merely defines the term "public forest" as "the mass of lands of the public domain which has not been the subject of the present system of classification[.]" As explained, Section 3(a) does not have the effect of changing the nature of the lands under its scope, as both unclassified and forest lands are similarly inalienable. On the other hand, Section 15 mandates the reversion of alienable and disposable land 18% in slope or over to the classification of forest lands, subject to existing rights. To my mind Section 3(a) and Section 15 cover entirely different subject matters.

Thus, considering that the validity of Section 15 of PD 705 (including the 18% slope criterion set forth thereunder) is not assailed by the petitioners herein, I submit that any pronouncement on these matters must await the filing of the proper case which directly puts the validity of Section 15 in issue. Any opinion thus expressed regarding Section 15 would be completely irrelevant and *obiter*.

Based on these premises, I vote to **DISMISS** the Petition.

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[27] Id.

[28] Id.

EN BANC

[G.R. No. 248061. September 15, 2020]

MORE ELECTRIC AND POWER CORPORATION, *Petitioner, v.* **PANAY ELECTRIC COMPANY, INC.,** *Respondent*.

[G.R. No. 249406. September 15, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner-Oppositor*, **MORE ELECTRIC AND POWER CORPORATION,** *Petitioner, v.* **PANAY ELECTRIC COMPANY, INC.,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; POWER OF EMINENT DOMAIN; PRINCIPLES AND LIMITATIONS FOR A VALID EXERCISE THEREOF; BILL OF RIGHTS; RIGHT TO PRIVATE PROPERTY. — The *Heirs of Suguitan v. City of Mandaluyong* provides the most precise formulation of the general principle of law on the valid exercise of the power or right of eminent domain. The power is inherent in a sovereign State whose mandate is to promote public welfare, and to which end private property might be condemned to serve. Though inherent, the power is not absolute, but subject to limitations set out in the Constitution, notably in Section 3, Article III, that no person shall be deprived of property without due process of law, and Section 9, that private property shall not be taken for public use without just compensation.

These constitutional limitations have been strictly interpreted by the Court, given the risk of impairment to the right of the individual to private property that might result from the exercise by the State of the power of eminent domain. Strict interpretation is warranted even more when a mere agent of the State, such as a public utility, exercises a delegated right of eminent domain.

2. ID.; ID.; ID.; ID.; ADDITIONAL LIMITATIONS WHEN THE POWER IS EXERCISED BY AGENTS OF THE STATE.

— When the power of eminent domain is exercised by an agent of the State and by means of expropriation of real property, further limitations are imposed by law, the rules of court and jurisprudence. In essence, these requirements are:

1. A valid delegation to a public utility to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property;

2. An identified public use, purpose or welfare for which eminent domain or expropriation is exercised;

3. Previous tender of a valid and definite offer to the owner of the property sought to be expropriated, but which offer is not accepted; and

4. Payment of just compensation.

3. ID.; ID.; ID.; PRIVATE PROPERTY ALREADY DEVOTED TO PUBLIC USE CAN BE EXPROPRIATED FOR A DIFFERENT PUBLIC PURPOSE ONLY IF ALLOWED BY LAW. — The general rule is that private property which is already devoted to a public use can be burdened by expropriation with a different public purpose, provided it is expressly authorized by law or necessarily implied in the law. The underlying reason for this is that the power of eminent domain is an attribute of sovereignty which is not exhausted by use; otherwise, the promotion of the public good, which is the purpose of sovereignty, would be frustrated.

4. ID.; ID.; ID.; LEGISLATIVE FRANCHISES; THE ELECTRICITY DISTRIBUTION SYSTEM COVERED BY LEGISLATIVE FRANCHISE CAN BE EXPROPRIATED FOR THE SAME PUBLIC PURPOSE OF ELECTRICITY DISTRIBUTION. –– [U]nder the foregoing legislative franchises, the distribution system of PECO in Iloilo City is susceptible to expropriation by the government for the very same public purpose of electricity distribution. There is no specific public necessity that can precipitate the exercise of eminent domain; mere desire to operate by the government or mere assignment of the right to operate to a local government or agency is sufficient. It is notable that, while these provisions can be found in PECO's own legislative franchises, PECO never questioned their constitutionality.

The foregoing history of the legislative franchise of PECO establishes that its distribution system in Iloilo City is no ordinary private property. To begin with, the very installation of the distribution system depends on a franchise. Section 1, Act No. 2983, Section 2, Act No. 3035, Section 1, Act No. 3665 and Section 1 of R.A. No. 5360 all provide that the right to construct, install and establish a distribution system on public space in Iloilo City must be based on a franchise. Ownership was co-existent with the franchise. Moreover, the distribution system is burdened with public use even after the termination of the franchise either by expiration or decision of the government. This is evident in the original franchise under Section 11 of Act No. 2983 and Act No. 3035, which provides that upon expiration of the franchise, the distribution system automatically becomes the property of the government, without mention of payment of compensation to Dela Rama or PECO. Moreover, even before expiration of the franchise of PECO, its distribution system may be taken over by the government and put to the very same public use.

5. ID.; ID.; ID.; ID.; R.A. NO. 11212; THE EXPROPRIATION UNDER R.A. NO. 11212 IS OUT OF THE PUBLIC NECESSITY OF ENSURING UNINTERRUPTED SUPPLY OF ELECTRICITY. — Expropriation under Sections 10 and 17 of R.A. No. 11212 is not only for the general purpose of electricity distribution. A more distinct public purpose is emphasized: the protection of the public interest by ensuring the uninterrupted supply of electricity in the city during the transition from the old franchise to the new franchise. This distinct purpose has arisen because MORE is the new franchise holder in a city whose public space is already burdened by an existing distribution system, and that distribution system cannot continue to serve a public use for it is owned by the old franchise holder.

. . .

The public necessity of ensuring uninterrupted electricity is implicit in Section 10 of R.A. No. 11212, which authorizes MORE to expropriate the existing distribution system to enable itself to efficiently establish its service. This distinct public necessity is reiterated in Section 17 of R.A. No. 11212 under which MORE may initiate expropriation proceedings even as PECO is provisionally operating the distribution system. In fact,

this distinct public necessity of ensuring uninterrupted electricity is the very rationale of the ERC in granting PECO a provisional CPCN. The provisional CPCN is the legal basis of PECO's continued operation of the distribution system. PECO cannot deny that such distinct necessity to ensure uninterrupted electricity supply is public and genuine.

6. ID.; ID.; ID.; ID.; ID.; A PROVISION OF UNINTERRUPTED SUPPLY OF ELECTRICITY IS BOTH A PUBLIC AND GENUINE PURPOSE; CASE AT BAR. — [U]nder R.A. No. 9136, one recognized public purpose is the protection of "public interest as it is affected by the rates and services of electric utilities and other providers of electric power." . . .

Furthermore, R.A. No. 11361 recently took effect declaring that the uninterrupted conveyance of electricity from generating plants to end-users is not just a matter of public interest, but already an elevated "matter of national security and is essential to sustaining the country's economic development." Without a doubt, the provision of uninterrupted supply of electricity is a public purpose which is distinct from the general purpose of electricity distribution. Such distinct purpose is both public and genuine.

. . . In sum, [the] expropriation by MORE of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity.

7. ID.; ID.; ID.; ID.; ID.; IT IS WITHIN THE POWER OF CONGRESS TO GRANT AUTHORITY TO EXPROPRIATE THE DISTRIBUTION ASSETS OF THE PREVIOUS FRANCHISEE; RA NO. 11212 IS NOT A CLASS LEGISLATION AND IS CONSTITUTIONAL. — The grant to MORE of the authority to initiate expropriation of the distribution assets of PECO is within the power of Congress to make, subject to the requirements of a valid expropriation. That the assets of PECO will be the subject of expropriation does not signify that it is being singled out. Only PECO has had a franchise over the same area. There is no other previous franchise holder. Only its assets continue to burden public space in the franchise area. If and when other distribution assets are allowed to be installed and to operate in the same franchise

area, their expropriation by MORE is not precluded by Sections 10 and 17 of R.A. No. 11212.

. . .

. . . [B]eing peculiarly situated, MORE was validly granted by Section 10 with a unique power of expropriation. Moreover, given that its distribution system is imbued with public interest, PECO was not unusually prejudiced by the reservation in Section 10 of R.A. No. 11212 to expropriate the property. Section 10 is no class legislation. It is constitutional.

. . .

. . . [T]here is more than sufficient basis in the facts and law . . . . to uphold the constitutionality of Sections 10 and 17 of R.A. No. 11212.

PERLAS-BERNABE*, J., separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; POWER OF EMINENT DOMAIN; EXPROPRIATION AND ITS TWO PHASES; THE PROPRIETY OF THE TAKING AND THE AMOUNT OF JUST COMPENSATION MUST BE JUDICIALLY DETERMINED. — In *National Power Corporation v. Posada (National Power Corp.)*, the Court described the two phases of expropriation proceedings as follows:

> Expropriation, the procedure by which the government takes possession of private property, is outlined primarily in Rule 67 of the Rules of Court. It undergoes two phases. The first phase determines the propriety of the action. The second phase determines the compensation to be paid to the landowner." x x x
>
> [In the first phase, the trial court] is concerned with **the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit**." . . .

Thus, it is not merely the amount of just compensation, **but the propriety of the taking itself**, which is up for judicial determination by the courts. Accordingly, the evaluation of the propriety of the taking is, in theory, a **judicial function**.

2. ID.; ID.; ID.; EMINENT DOMAIN, DEFINED; LIMITATION ON THE VALID EXERCISE THEREOF. — [T]he propriety

of an eminent domain taking is hinged on its "public use." This is implicit from Section 9, Article III of the 1987 Constitution which states that **"[p]rivate property shall not be taken for public use** without just compensation." The Court, however, reckoned that the exercise of the power of eminent domain is **also circumscribed by the due process clause of the Constitution,** *viz.:*

> In general, eminent domain is defined as "the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community."
>
> **The exercise of the power of eminent domain is constrained by two constitutional provisions: (1) that private property shall not be taken for public use without just compensation under Article III (Bill of Rights), Section 9 and (2) that no person shall be deprived of his/her life, liberty, or property without due process of law under Art. III, Sec. 1.**

3. ID.; ID.; ID.; ID.; PUBLIC USE; NARROW AND EXPANSIVE DEFINITION OF PUBLIC USE; PUBLIC USE IS EQUATED TO WHATEVER IS BENEFICIALLY EMPLOYED FOR THE GENERAL WELFARE. — The term "public use" is undefined in the eminent domain clause of our Constitution. In this regard, the Court recognized that "there is no precise meaning of 'public use' and the term is susceptible of myriad meanings depending on diverse situations."

Historically, there are two (2) views on this matter. The first is the narrow definition of public use — that is "**[t]he limited meaning attached to 'public use' is 'use by the public' or 'public employment,'** that 'a duty must devolve on the person or corporation holding property appropriated by right of eminent domain to furnish the public with the use intended, and that there must be a right on the part of the public, or some portion

of it, or some public or quasi-public agency on behalf of the public, to use the property after it is condemned." However, this narrow definition of "public use" being equivalent to the "use of the public" has been later superseded by a more expansive definition of the term **equating "public use"** to **"public purpose."**

. . .

In our jurisdiction, this Court has acceded to "[t]he more generally accepted view [which] sees **'public use' as 'public advantage, convenience, or benefit,** and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, [which] contributes to the general welfare and the prosperity of the whole community.'" In *Manapat v. Court of Appeals,* this Court stated that "the 'public use' requisite for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. At present, it may not be amiss to state that **whatever is beneficially employed for the general welfare satisfies the requirement of public use."**

4. ID.; ID.; ID.; ID.; THE PUBLIC USE REQUIREMENT IS SATISFIED BY THE TAKING BEING PREMISED ON SOME PUBLIC ADVANTAGE, CONVENIENCE, OR BENEFIT. — [W]hile this Court has held that "[t]he number of people is not determinative of whether or not it constitutes public use, **provided [that] the use is exercisable in common and is not limited to particular individuals,"** still, **the *discernible divide* between a taking that subserves some public interest but at the same time, accommodates a clear private benefit, and which between the two in a particular case is a mere incidence, remain blurry subjects in our current body of jurisprudence.**

In *Vda. De Ouano v. Republic,* cited in the 2015 case of *National Power Corp.,* the Court expressed that "the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws," . . .

This notwithstanding, there is no clear and settled guidance in our cases so as to determine what is "predominant" use for another's own private gain. Rather, what is more compellingly abound in our jurisprudence is the doctrine that the public use requirement is satisfied by the taking being premised on some public advantage, convenience, or benefit.

5. ID.; ID.; ID.; ID.; LEGISLATIVE FRANCHISES; DELEGATION OF EMINENT DOMAIN TO FRANCHISEES; THE EXERCISE OF DELEGATED EMINENT DOMAIN POWER UNDER THE COVER OF A LEGISLATIVE FRANCHISE WILL THEORETICALLY SATISFY THE REQUIREMENT OF PUBLIC USE REGARDLESS OF THE PRIVATE BENEFIT THAT THE FRANCHISEE WILL GAIN. — [T]he broad definition of "public use" seems to create a practical conundrum as to whether or not the propriety of an exercise of eminent domain power, ***when delegated by the State to a franchisee,*** is still properly a judicial function, or just a matter of the judiciary confirming the determination already made by legislature.

To explain, implicit in the franchise grant is the advancement of public interest. Conceptually, franchisees are given statutory privileges to conduct the covered activities in their franchise for the benefit of the public. Thus, when a franchisee is concomitantly conferred with an eminent domain power to acquire private properties, any taking made under the legal cover of the grantee's franchise will theoretically satisfy the requirement of public use.

At this juncture, it may not be amiss to point out that while the statutory delegation of eminent domain power to franchisees does not dispense with the need of filing expropriation proceedings before the court, the practical effect, however, is that trial courts are put in an awkward position to defer to Congress' will, else it be accused of frustrating the pursuits of the franchisee who enjoys the imprimatur of the lawmaking body. In fact, it may also be argued that the franchisee's taking under the cover of its franchise will always carry some semblance of public benefit, ***regardless of the private benefit it will gain.***

6. ID.; ID.; ID.; ID.; ID.; THE LEGISLATURE'S DECLARATION THAT A FRANCHISEE'S TAKING OF PROPERTY IS FOR PUBLIC USE MUST BE RESPECTED

BY THE COURTS EXCEPT IN EXTREME CASES WHERE THE TAKING IS COMPLETELY AND WANTONLY WITHOUT PUBLIC PURPOSE. — [W]hen the exercise of eminent domain is necessary to carry out the franchise, the taking is intermixed with the Congress' will. *As such, the judicial function of the courts in determining the propriety of expropriation is somewhat constrained by an attitude of legislative deference*. In *Kelo*, Justice Thomas especially criticized the "almost insurmountable deference to legislative conclusions that a use serves a 'public use,'" *viz*.: . . .

. . .

As Justice Thomas pointed out, with the prevailing legal regime, "when the legislature has declared the use or purpose to be a public one, **its judgment will be respected by the courts, unless the use be palpably without reasonable foundation**." However, with our expansive definition of public use, where — in Justice O'Connor's words — "**nearly any lawful use of real property can be said to generate some incidental benefit to the public**," it would be quite difficult to tag any taking done under the cover of a franchise as "unreasonable." Most probably, it would only be in **extreme cases where the taking is completely and wantonly without any public purpose** that our courts can validly rule against the propriety of a franchisee's taking of another's private property. In so doing, for as long as this wanton and complete unreasonableness does not exist, a taking may be done to advance private benefit.

7. ID.; ID.; ID.; ID.; ID.; CONSTITUTIONALITY OF REPUBLIC ACT (RA) NO. 11212; SECTIONS 10 AND 17 OF RA NO. 11212 ARE CONSTITUTIONAL. — [I]n theory, PECO's precarious situation is actually legitimized by our prevailing framework on eminent domain. Hypothetically speaking, there is nothing legally prohibiting the government to delegate the eminent domain power to a private entity embedded in its franchise, and in so doing, allow the takeover of the properties of the previous franchisee upon the reason that the taking is — in the language of our numerous franchise laws — "actually necessary for the realization of the purposes for which this franchise is granted."

In fine, up until our current paradigm on "public use" *completely* or *partially* shifts, Section 10 — and its corollary

provision, Section 17 of RA 11212 - are in accord with subsisting doctrine, and hence, constitutional. This pronouncement, however, is without prejudice to the outcome of the expropriation proceedings where the propriety of MORE's actual taking of PECO's properties, in relation to the jurisprudential parameters of public use (which may or may not be revisited), may be raised.

8. ID.; POLITICAL QUESTION; AS TO WHOM A FRANCHISE IS TO BE GIVEN IS A POLITICAL QUESTION. — *As to whether or not PECO deserves to continue its franchise or whether MORE is qualified as a new franchisee is clearly beyond the province of the Court as it is a pure political question left to the wisdom of Congress.*

CAGUIOA, *J., separate opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; POWER OF EMINENT DOMAIN; ESSENTIAL LIMITATIONS ON THE POWER OF EMINENT DOMAIN; DELEGATION OF SUCH POWER. –– The power of eminent domain, essentially legislative in nature, may be validly delegated to local government units, other public entities, and public utilities, such as MORE, an electric power distribution utility. The scope of this delegated legislative power is narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.

But for all its primacy and urgency, the power of expropriation is by no means absolute. The limitation is found in Section 9, Article III of the 1987 Constitution, which provides that: "Private property shall not be taken for public use without just compensation." Clearly, the two essential limitations on the power of eminent domain are that: (1) the purpose of taking must be for public use; and (2) just compensation must be given to the owner of the private property. These constitutional safeguards serve as a check on the possible abuse of this power and circumscribe the excessive encroachment on the property rights of the individual.

2. ID.; ID.; ID.; ID.; "PUBLIC USE" INCLUDES WHATEVER IS BENEFICIALLY EMPLOYED IN THE COMMUNITY. — [T]he Court has recognized that the term "public use," which traditionally was limited to actual use by the public, has evolved

in this jurisdiction to include "whatever is beneficially employed for the community." Conversely, when the taking is for a *purely* private purpose, such that there is no perceptible benefit flowing to the public, the taking ought to be struck down for being unconstitutional. It is repugnant to our laws to use the power of eminent domain over private property *predominantly* for purposes of another citizen's private gain. The Court has hewed to this principle, . . . that notwithstanding the inherent power of the State to expropriate all property, the Constitution does not sanction the taking of a private party for the *sole purpose* of transferring it to another private party, even when there is payment of just compensation.

3. **ID.; ID.; ID.; ID.; THE TAKING OF PRIVATE PROPERTY FOR PUBLIC PURPOSES MUST SPRING FROM AND LIMITED TO "THE NECESSITY". —** [T]he right to take private property for public purposes must necessarily originate from "the necessity" and the taking must be limited to such necessity. The burden of proving the necessity is borne by the State, which takes precedence before resolving any issue involving just compensation. The necessity need not be absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with such benefit. If genuine public necessity is absent or eventually ceases, the expropriation of the private property cannot continue.

4. **ID.; ID.; ID.; ID.; THE ELEMENTS OF PUBLIC PURPOSE AND GENUINE NECESSITY MUST BE CLEARLY SHOWN. —** [I]t is my view that despite the enormous power of eminent domain, the constitutional limitations on its exercise is an explicit recognition of the protection accorded to one's right to property. The power affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty. As such, the need for a circumspect operation of this exercise cannot be overemphasized. The Court, under its expanded power of judicial review, retains the authority to determine whether there is grave abuse of discretion in the exercise of the power of eminent domain. The Court's judicial function is not stymied by the expanded definition of public use, especially when the purported

public use is merely incidental or pretextual, thereby serving as a guise to favor private interests. In other words, the elements of public purpose and genuine necessity must be clearly shown. A bare invocation that the taking is for a public purpose or is attended with genuine necessity should never serve as an automatic and absolute guarantee to the Court that the taking is legal.

5. ID.; ID.; ID.; LEGISLATIVE FRANCHISES; THE DELEGATED POWER GRANTED TO MORE ELECTRIC AND POWER CORPORATION (MORE) TO EXPROPRIATE EXISTING ASSETS OF PANAY ELECTRIC COMPANY, INC., (PECO) IS REASONABLY NECESSARY FOR THE EXERCISE OF ITS FRANCHISE. — A careful examination of the limits of the power of eminent domain under the peculiar factual circumstances of this case yields to the conclusion that the grant to MORE of the delegated power was imperative for the urgent and important public purpose that MORE was tasked to undertake under its franchise. Prior to the award of the legislative franchise to MORE, PECO was the lone electric power distribution utility in Iloilo City for 96 years, or close to a century. This rather distinct situation, in my view, was a crucial factor in the legislative decision to craft Sections 10 and 17 of R.A. 11212.

. . . For the longest time, the residents of Iloilo City were exclusively serviced by PECO, the sole franchise holder for the operation of an electric power distribution utility.

Its position as the sole operator of the electric power distribution utility in Iloilo City is typical in the industry, as the energy distribution sector has always been a natural monopoly. Since the operation of an electric power distribution utility involves extremely high-fixed costs, it would be more efficient if only one producer services the community. Hence, the assailed provisions, which purportedly granted MORE "unwarranted benefits" and "discriminate" against PECO, should be appreciated in light of these unique factual circumstances. MORE, as a new player in the electric power distribution sector, naturally needs to **establish,** as opposed to merely maintain, its services.

6. ID.; ID.; ID.; ID.; R.A. NO. 11212; THE ASSESSED VALUE REFERRED TO IN SECTION 10 OF R.A. NO. 11212 IS JUST THE PROVISIONAL AMOUNT TO BE DEPOSITED

IN ORDER TO IMMEDIATELY POSSESS THE PROPERTY BEING EXPROPRIATED. — Neither is MORE given unwarranted benefits when Section 10 of R.A. 11212 granted it the authority to take possession of expropriated properties after the payment of a provisional amount based on their *assessed value*. True, had the government proceeded to expropriate PECO's assets pursuant to its legislative franchise under R.A. 5360, the government is obliged to pay the *fair market value* of PECO's properties. But textually, Section 4 of R.A. 5360 reveals that the provision contemplates a government takeover during the lifetime of PECO's franchise. By virtue of this provision, the government is granted the option to operate the electric power distribution system itself, cutting short PECO's franchise without requiring the prior deposit or payment of any provisional value before the government enters the property expropriated. Thus, the fair market value on which the payment of just compensation is based pertains to the final amount that the government would have paid had it proceeded to take over PECO's operations. In contrast, the assessed value referred to in Section 10 of R.A. 11212 is the provisional amount that MORE should deposit in order to immediately possess the property being expropriated. It is not the final amount of compensation contemplated in Section 4 of R.A. 5360.

. . .

. . . Section 10 does not, by any means, foreclose or limit the payment of just compensation on the basis of the assessed value as this is, again, merely a provisional amount. MORE is still liable for the full amount of just compensation to be determined during the expropriation proceedings on the basis of, among other things, the market value of the property.

7. ID.; ID.; ID.; ID.; ID.; BILL OF ATTAINDER; R.A. NO. 11212, PARTICULARLY SECTIONS 10 AND 17, DOES NOT PROVIDE PUNISHMENTS SO AS TO CONSTITUTE A BILL OF ATTAINDER; NON-RENEWAL OF PECO'S FRANCHISE CANNOT BE CONSIDERED AS A PUNISHMENT. — R.A. [No.] 11212 cannot be classified as a bill of attainder simply because Sections 10 and 17 do not constitute "punishments" in the sense of the bill of attainder clause as it has been interpreted. To suggest that R.A. [No.] 11212 was enacted for the purpose of punishing PECO is, to say the least, an overstretch and a diminution of the legitimate purpose

and intent of Congress behind the enactment of the law. R.A. [No.] 11212 involves a grant of a franchise to MORE and nothing else. It bears stressing that the grant of a franchise is not a right but a mere privilege, and to construe the non-renewal of PECO's franchise as a punishment is wholly baseless and completely unwarranted.

. . .

. . . [T]he identification of PECO's shortcomings, which eventually led to the non-renewal of its franchise, was not meant to inflict any punishment against PECO so as to consider R.A. [No.] 11212 as a bill of attainder. . . . [I]t was simply part and parcel of the whole legislative process in the grant or renewal of franchises. Necessarily, as PECO was the previous franchise holder for close to a century and the issue concerned the renewal or grant of said franchise, there was a need to examine the performance of PECO. This was not done to punish PECO but to determine whether its franchise should be renewed. It was but natural and reasonable to expect that an evaluation of PECO's performance as the existing franchise holder would come into play.

8. ID.; ID.; ID.; ID.; ID.; SECTIONS 10 AND 17 OF R.A. NO. 11212 ARE CONSTITUTIONAL; PRESUMPTION OF CONSTITUTIONALITY OF LAW. — I remain convinced that Sections 10 and 17, viewed as integral parts of the grant of franchise in R.A. [No.] 11212, are constitutional. The rationale of these provisions cannot be overturned by potential unconstitutional effects resulting from a distrustful reading. It must be underscored that the grant of a franchise is constitutionally committed to the Legislative department. This has to be considered with the presumption of constitutionality "rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law." The Court can go no further than to inquire whether Congress had the power to enact a law. It cannot delve into the wisdom of policies Congress adopts or into the adequacy under existing conditions of measures it enacts. The equal protection clause is not a license for the courts "to judge the wisdom, fairness, or logic of legislative choices."

Consonant with this principle is another deep-rooted doctrine that on the side of every law lays the presumption of constitutionality. This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch of the government to encroach upon the duties and powers of another. If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority.

The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal showing of the bases for invalidating a law and not merely a doubtful, speculative, or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain. In this regard, I find no invalidity or unreasonableness that appears on the face of the assailed provisions, or is established by proper evidence which could rebut the presumption.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; A CLASS LEGISLATION THAT DISCRIMINATES IS PROHIBITED. — The Constitution in Article III, Section 1 provides that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." The equal protection clause mandates that "all persons under similar circumstances ... must be treated in the same manner ... both in the privileges conferred and the liabilities imposed." Consequently, class legislation, or a law that discriminates against some, but favors others, is prohibited.

2. ID.; ID.; ID.; ID.; A CLASSIFICATION TO BE VALID MUST BE REASONABLE. — The prohibition on class legislation does not mean that valid classifications cannot be created by law. However, to be valid, the classification must—at the very least—conform to the traditional standard of reasonableness. A reasonable classification is that which is: (1) "based on substantial distinctions"; (2) "germane to the purposes of the

law"; (3) "[applies] equally to all the members of the class[;]" and (4) not "limited to existing conditions only[.]"

3. ID.; ID.; ID.; ID.; THREE LEVELS OF TESTS IN DECIDING EQUAL PROTECTION CASES, EXPLAINED. — The rational basis test—that a statute must reasonably relate to the purpose of the law—is said to be the least intensive of the three (3) levels of tests developed to decide equal protection cases. The rational basis test is applied if the case does not involve a classification historically characterized as suspect, such as race or nationality, or a fundamental right protected by the Constitution.

If an equal protection case involves quasi-suspect classifications, such as sex or illegitimacy, the intermediate scrutiny test or the middle-tier judicial scrutiny is applied. To be a valid classification under the immediate scrutiny test, the classification "must serve important governmental objectives and must be substantially related to [the] achievement of those objectives."

The most intensive of these levels of scrutiny is the strict scrutiny test, applied when the case involves a suspect classification, such as race or nationality, or a fundamental right protected by the Constitution. It requires that the classification "serve a compelling state interest and is necessary to achieve such interest."

4. ID.; ID.; ID.; ID.; ID.; IN VIEW OF THE FUNDAMENTAL RIGHT INVOLVED IN THIS CASE, THE STRICT SCRUTINY TEST MUST BE APPLIED. — Determining the right involved in this case determines what level of scrutiny this Court should apply. Here, the challenged provision is Section 10 of Republic Act No. 11212, which delegates to More Electric Power Corporation the right of eminent domain. Eminent domain, or the State's inherent power to forcibly acquire private property for public use upon payment of just compensation, necessarily involves the right to property. In turn, the right to property is a fundamental right protected by the Constitution, specifically under Article III, Section 1, and Article III, Section 9, among others. Therefore, We must apply the strict scrutiny, or the compelling state interest test, in resolving the present case.

5. ID.; ID.; ID.; ID.; STATUTORY CONSTRUCTION; CONSTITUTIONALITY OF REPUBLIC ACT NO. (RA) 11212; SECTIONS 10 AND 17 THEREOF VIOLATE THE EQUAL PROTECTION CLAUSE BY GIVING UNDUE BENEFITS TO MORE ELECTRIC AND POWER CORPORATION (MORE) AT THE EXPENSE OF PANAY ELECTRIC COMPANY (PECO). — Section 10 grants unwarranted benefits to More Electric—benefits that are not granted to other public utilities similarly situated to it. Section 10 is an example of class legislation proscribed by the equal protection clause.

. . .

. . . [W]hen read in conjunction with the legislative franchises of other public utilities, Section 10 clearly gives More Electric undue benefits.

Section 10 allows More Electric to immediately take possession, control, and even demolish, the properties expropriated upon payment of the assessed value of the properties. This amount is significantly lower than that payable to Panay Electric Company, had the government — during the 95-year effectivity of Panay Electric Company's franchise — chosen to expropriate the latter's properties. To recall, More Electric's franchise requires it to deposit an amount equivalent to the full amount of the assessed value of the properties sought to be expropriated.

In contrast, Panay Electric Company's legislative franchise, Republic Act No. 5360, provided that the government must pay Panay Electric Company the fair market value of its properties, had the government chosen to operate the electricity distribution system for itself. . . .

By definition, the assessed value of a piece of property is that determined by a local government unit for purposes of real property taxation. It is a mere percentage and therefore, necessarily lower, than the fair market value or "the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy[.]" This is a marked difference in the amount payable upon immediate taking, and is one clear economic benefit to More Electric; a grant that, in my view, serves no compelling state interest. That the government has delegated the power of eminent

domain to other electric distribution utilities *without the same benefit* emphasizes that the benefits granted to More Electric Power are unwarranted.

. . .

Furthermore, the legislative franchises of other electricity distribution utilities similarly situated to More Electric do not contain a provision allowing it to hire the employees of a competitor. Indeed, More Electric Company will operate the electricity distribution system by acquiring the assets, even the workforce of Panay Electric Company, as shown by Section 17 of Republic Act No. 11212.

. . .

All these, to my mind, show that unwarranted privileges were given to a corporation that has never ventured in the business of electricity distribution.

Conversely, Section 10 of Republic Act No. 11212 violates the equal protection clause because it discriminates against a particular entity, i.e., Panay Electric Company. Nowhere does Section 10 mention Panay Electric Company, at least directly. However, the provision cannot be read in any other way except that More Electric will conduct its business *at the expense of Panay Electric Company*.

. . .

. . . While Section 10 seemingly allows More Electric to expropriate property other than those owned by Panay Electric Company, still, More Electric could operate an electricity distribution business and prevent further brownouts in Iloilo *only* by forcefully acquiring Panay Electric Company's assets.

6. ID.; ID.; A FRANCHISE RELATES ONLY TO THE PRIVILEGE OF OPERATING A PUBLIC UTILITY AND THE ASSETS OF THE FRANCHISEE REMAINS PRIVATE PROPERTY DESPITE THE EXPIRATION OF THE FRANCHISE. — [A] franchise only relates to the privilege of *operating* a public utility. The ownership over the assets used to operate the public utility, on the other hand, is an entirely different matter. The assets of the private corporation operating a public utility are private property, and ownership over these assets remains with the former franchise holder, notwithstanding the expiration of the franchise.

. . .

With the expiration of the franchise, what the former franchise holder surrenders is the right to use the property, and the right to enjoy income from it. What remains are: (1) the right to dispose of the property; as well as (2) the right to exclude others from its possession. Except, if as one of the terms of the grant of the franchise, the former franchise holder likewise surrendered these rights.

That a franchise holder owns the assets used to operate the public utility is precisely why there are eminent domain provisions in legislative franchises. Specifically for Panay Electric Company, among the terms of its franchise is that it surrender the equipment used for electricity distribution at fair market value, should the Government choose to operate and maintain for itself the electricity distribution system. Panay Electric Company's franchise expired without the Government exercising the privilege in Section 4 of Republic Act No. 5360. Therefore, Panay Electric Company remains the owner of the electricity distribution system it had established in Iloilo, with the concomitant right to dispose of or exclude others from possessing the electricity distribution system.

7. ID.; ID.; THE NEW FRANCHISE HOLDER CANNOT AUTOMATICALLY OPERATE THE POWER DISTRIBUTION SYSTEM OWNED BY THE FORMER FRANCHISEE FOR THERE IS NO COMPELLING STATE INTEREST THAT WILL BE SERVED IN PUTTING AN INEXPERIENCED ENTITY AS THE ONLY ELECTRICITY DISTRIBUTOR IN THE CITY. — [J]ust because More Electric is the current franchise holder, it does not automatically mean that it can operate the power distribution system unquestionably owned by another private entity. More Electric assumed wrongly that only it can operate the distribution system in Iloilo owned by Panay Electric Company.

All these show that there is no compelling state interest in granting benefits to a company that has neither the experience nor the expertise in electricity distribution. I cannot see how the interests of the electricity consumers in Iloilo City will be served by putting an inexperienced entity as the electricity distributor in the City, not to mention that it will be operating as a monopoly and, therefore, has little incentive to operate efficiently.

8. ID.; STATUTORY CONSTRUCTION; SECTION 10 OF RA NO. 11212 ALSO VIOLATES SECTION 9, ARTICLE III OF THE CONSTITUTION; THE EXPROPRIATION OF PECO'S BY MORE IS NOT FOR THE BENEFIT OF THE PUBLIC BUT FOR THE PRIVATE AND SOLE BENEFIT OF THE LATTER. — [A]rticle III, Section 9 is a restraint on the State's inherent and ultimate power of eminent domain, consistent with the purpose of the Constitution: to promote the stability of ownership of private property. Article III, Section 9 requires that the taking of private property be for public use; and that the owner of the private property sought to be expropriated be paid just compensation.

. . .

The State may delegate the exercise of the power of eminent domain to political units or agencies as well as public utilities. However, considering that the power is merely delegated, "[t]he authority to condemn is to be strictly construed in favor of the owner and against the condemnor." . . .

. . .

Considering that the power of eminent domain was merely delegated to More Electric, its authority to expropriate must be strictly construed against it.

It is settled that the business of electricity distribution is for a public purpose and is imbued with public interest. It is for this reason that the operation of an electricity distribution system requires a national franchise from Congress.

However, if private property is taken for the same public use to which the property was originally devoted, how the expropriator will serve the public purpose better than the former owner should be examined. For if the public is not better off with the taking of the property, then there is no true expropriation. There is only a transfer of property from one entity to another. All the exercise of eminent domain results in is a change in the "application of the profits," directly serving proprietary interests. Any public benefit is only pretended or, at best, incidental.

Here, the taking is for the exact same use to which the property sought to be expropriated was originally devoted. Keeping in mind that the expropriator will be monopolistically operating the electricity distribution system, the taking is not for the benefit

of the public, but for the private and sole benefit of the expropriator.

. . .

With no effect on the welfare of the consumers of electricity in Iloilo City, coupled with the lack of experience and monopolistic operation of More Electric, the direct *and only* beneficiary of the transfer is no other than More Electric, the new entity who will be receiving the profits from the operation of the electricity distribution set up by Panay Electric Company.

9. ID.; ID.; SECTION 10, RA NO. 11212 ENABLES THE UNJUST ENRICHMENT OF ONE PRIVATE ENTITY AT THE EXPENSE OF ANOTHER BY ALLOWING THE EXPROPRIATOR TO PAY THE ASSESSED VALUE OF THE PROPERTIES INSTEAD OF THEIR PRESENT VALUE; NO SOCIAL JUSTICE IS ACHIEVED IN THAT EXPROPRIATION AND ANY BENEFIT THE PUBLIC WILL OBTAIN IS ONLY INCIDENTAL. — More Electric unjustly enriches itself by illegally avoiding costs for constructing an electricity distribution infrastructure, as well as the costs of negotiations to buy the property in the open market. More Electric will only be paying the assessed value of these properties. Irrespective of the quality of service of Panay Electric Company through the years, it still owns the distribution facilities and made significant investments for its electricity distribution business. At the very least, Panay Electricity is entitled to the present value of the properties in which it had invested.

. . .

No social justice is achieved in More Electric expropriating the properties of Panay Electric Company. On the contrary, Section 10 of Republic Act No. 11212 enables the unjust enrichment of one private entity at the expense of another. Any benefit the public will obtain is only incidental, because the actual purpose of the transfer is to grant a private benefit.

10. ID.; EMINENT DOMAIN; CONSTITUTIONAL LAW; BILL OF RIGHTS; THIS IS A CLASSIC EXAMPLE OF ABUSE OF EMINENT DOMAIN AND A DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW. — The present case is a classic example of abuse of eminent domain powers and a deprivation of property without due process of law. Under a semblance of legitimacy, a private entity is allowed to take private property for its own proprietary interests. A

law was passed to mask a forced corporate takeover by a private entity. These practices should have no place in a fair and just society.

LAZARO-JAVIER, *J., dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; BILLS OF ATTAINDER; R.A. NO. 11212; SECTIONS 10 AND 17 OF R.A. NO. 11212 ARE BILLS OF ATTAINDER AND ARE, THEREFORE, UNCONSTITUTIONAL. — Sections 10 and 17 of Republic Act No. 11212 (RA 11212) (2019) are unconstitutional on their face. These provisions constitute **bills of attainder**. The **attained person** is PECO.

PECO is **singled out**. It is expressly identified as the **wrongdoer**. Upon it, **legislative punishment** as this was **historically understood** has been imposed. As well, the **non-punitive legislative purpose** has been **far outweighed** by the **legislative intent to punish** and the **legislative punishment accordingly exacted**. As clearly and succinctly recounted in the **congressional deliberations**, the **non-punitive legislative purpose arose only from** and **was the result only** of the **punishment** Sections 10 and 17 have envisioned to inflict.

The **punishment** is the **legislative determination** of **what otherwise** would have been a **judicial function** of the **propriety of confiscating** or **expropriating PECO's properties** resulting from the non-renewal of PECO's franchise and the **propriety** of **allowing such confiscation** or **expropriation** to favor the new franchise holder, MORE.

2. ID.; ID.; ID.; ID.; ESSENCE OF A BILL OF ATTAINDER. — The **essence o**f a bill of attainder is the **substitution of a legislative for a judicial determination of the legitimacy of a deprivation.** The constitutional ban against bills of attainder serves to implement the **principle of separation of powers** by **confining legislatures to rule-making** and thereby **forestalling legislative usurpation of the judicial function.**

. . . **[B]ills of attainder** were employed **to suppress government takings of life or property involving unpopular causes** and **political minorities,** and it is **against this evil** that the constitutional prohibition is directed. . . .

. . .

The protection against bills of attainder **primarily protected property rights**[.] . . . Individuals needed to be **protected from egregious takings** by the state – this **protection** was the **ban on bills of attainder,** which "restricted all legislative takings failing to meet the standards of due process, compensation, and public use." This protection was conceived to be a **judicial** one, a protection coming **from the courts.**

3. ID.; ID.; ID.; ID.; ELEMENTS OF A BILL OF ATTAINDER; TEST OF PUNISHMENT; PROPER PROCEDURE FOR THE TAKING OF PRIVATE PROPERTY. — The **elements of a bill of attainder** are: (i) the **singling out of a definite class,** (ii) the **imposition of a burden on it, without** or **far outweighing any non-punitive legislative purpose,** and **a legislative intent to do so,** and (iii) the **lack of judicial trial.** These elements **stigmatize** statute or any of its provisions as a **bill of attainder.**

i. Singling out of a definite class

If the statute sets forth a **generally applicable rule** decreeing that **any person** who commits certain acts or possesses certain characteristics shall not enjoy a right or a privilege, and **leaves to courts the task of deciding what persons** have committed the specified acts or possessed the specified characteristics, the statute is **valid.**

But if the statute ***designates in no uncertain terms the persons* who possess the feared characteristics** and **therefore cannot enjoy the right or privilege,** for example, members of the Communist Party, or here, respondent PECO, the **legislative act,** *no matter what its form,* that applies either to ***named individuals*** or ***easily ascertainable members* of a group** in such a way as to **deprive** these individuals or groups of **any right,** civil or political, **without judicial trial,** is a **bill of attainder** prohibited by the Constitution.

ii. Imposition of a burden, without or far outweighing any non-punitive legislative purpose, and a legislative intent to do so

. . .

. . . [T]he **test of punishment** involves two (2) steps. **First**, identify if the legislation **looks at past conduct as a wrongdoing**.

> **Second**, determine if the legislation **imposes burdens or deprivations** on that **past conduct**. To complete the second step in the test, **consider** the **three (3) factors** in resolving **whether the statute is punitive**: (a) whether it fell within the **historical meaning of legislative punishment**, (b) whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes, and (c) whether it evinced an **intent to punish**.
>
> . . .
>
> **iii. *Lack of judicial trial***
>
> To illustrate, the **proper** procedure for the taking of private property and the **improper** manner of doing it have been **spelled out,** as follows:
>
> > If a legislature or state agency wants to take property, the **proper** procedure entails **designating the property to be taken, filing a lawsuit identifying the property and its owners,** and **allowing the owners to contest the compensation** that the legislature or state agency offers. . . . **the entire procedure takes place in the judicial branch.**
> >
> > A **bill of attainder seeks to bypass** this procedure. It **identifies the property to be taken,** and then **brazenly takes it,** frequently with **the excuse that the legislature is merely punishing an unworthy individual or group.** No meaningful procedure is allowed for protest, and compensation is ignored. …

4. ID.; POWER OF EMINENT DOMAIN; LEGISLATIVE FRANCHISES; STATUTORY CONSTRUCTION; R.A. NO. 11212; WHERE THE LAW HAS ALREADY DETERMINED THE EXISTENCE OF ALL THE ELEMENTS JUSTIFYING THE APPROPRIATION AND THE PROPRIETY OF THE TAKING, THE JUDICIAL PROCEEDINGS FOR EXPROPRIATION WOULD BECOME A MERE CEREMONIAL PROCEDURE AND A *FAIT ACCOMPLI*. — The **texts** of Sections 10 and 17, together with the **deliberations** on these provisions, **have** already **decreed** the **presence** of all the **elements** for the **valid expropriation** of **PECO's properties**.

Congress has said that there is **public use** for the **confiscation** lock, stock and barrel of PECO's properties. The *ponencia* **echoes** this legislative determination. This contradicts the **doctrine** that **the determination of whether a given use is a public use is a judicial function**.

This **legislative** determination **disregards** the **crucial fact** that the **public use** would **NOT have** come about, or would **not** have arisen or **not** have been created, **but for** the **legislatively endorsed business plan of MORE** as the new franchise holder **simply to take over PECO's properties** as it did not have the facilities to **establish, operate**, and **maintain** its franchise.

Would **this type** of public use **legitimately fall** within the rubric of **public use** for eminent domain purposes, when **public use** was brought about by bringing in a new franchise holder that can discharge the franchise ***only by taking over*** the assets of the immediately preceding franchise holder? The fact is that **the courts have been boxed in** and **painted into a corner** to **acknowledge** and **affirm this type** of **public use** because of the urgency to provide continuity in the provision of electricity to the people in the franchise area.

So far as the element of **public use** is concerned, the **courts can no longer decide otherwise** when Congress **has resolved** the **presence** of this element. The **court proceedings for expropriation** have become a *fait accompli* with the outcome **already decided** by **legislative fiat**.

The **next element** already **resolved by Congress** to exist is **genuine public necessity**. Section 10 **expressly mentions** that the taking of PECO's properties is **actually necessary** for the **establishment**, **operation**, and **maintenance** of MORE's franchise.

. . .

Mere convenience for MORE is not what is required by law as the basis of **genuine public necessity**. Even in the face of necessity, **if it can be satisfied without expropriation**, the same should not be imposed. The **convenience of the condemning party has never been the gauge** for the exercise of eminent domain.

The true standard for **genuine public necessity** is **adequacy**. Hence, when there is **already an existing adequate alternatives**,

as in this case, even when the alternatives, for one reason or another, be inconvenient, the need to expropriate is **entirely unjustified**.

Lastly, Section 10 has as well **determined a presumptive amount for the just compensation to be paid** by MORE to PECO.

The deliberations have also **pegged an amount for just compensation**. . . .

Congress has to **peg the amount of just compensation** because this **amount** would be **added to MORE's billings** to its consumers as a means of **reimbursing itself** of such payment, and therefore, would ultimately **impact on** MORE's **viability** as a franchise.

. . .

RA 11212 has resolved the elements of public use and genuine public necessity, and the presumptive quantum of just compensation. Thus, the statute has rendered any court proceeding on expropriation to be merely ceremonial.

5. ID.; ID.; ID.; ID.; ID.; BILL OF ATTAINDER TEST; TESTS AND FACTORS TO CONSIDER IN DETERMINING WHETHER A STATUTE IS PUNITIVE. — [T]he element of **punishment** in the bill of attainder test **does not mean** that the legislature has to convict a person of a specified crime or to exact punishments of pain or death.

Burdens and deprivations upon targeted persons or entities, without any formal legislative pronouncement of moral blameworthiness or formal intent to punish, may **constitute punishment** depending on this **test — whether** the **legislation** has a **punitive objective *or*** a **legitimate non-punitive legislative purpose.**

Where the **legitimate legislative purpose** is **non-existent** or is **far out-weighed** by an **intention to cause deprivation**, it is **reasonable to conclude**, that **punishment of individuals disadvantaged** by the enactment was the **purpose** of the legislators.

. . . [T]he **test** involves two (2) steps. First, identify if the legislation **looks at past conduct as a wrongdoing**. Second, determine if the legislation **imposes burdens or deprivations**

upon that **past conduct**. To complete the second step in the test, **consider** the **three (3) factors** in resolving **whether the statute is punitive**:

(1) whether it fell within the **historical meaning of legislative punishment** (historical test),

(2) whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes (functional test), and

(3) whether it evinced an **intent to punish** (motivational test).

Here, Sections 10 and 17 of RA 11212 **originated from** the alleged **wrongdoings** of **PECO** as a franchise holder. Upon this alleged **past misconduct, burdens and deprivations** are imposed: the **non-renewal** of PECO's franchise, the **award** of the franchise to **MORE**, and the latter's **take-over** of PECO's properties through **expropriation** whose **propriety Congress has already determined** through the assailed provisions.

This **fulfils** the **first step** of the **test**.

As regards the **second step**, I first focus on the **historical meaning of legislative punishment** or the **historical test of punishment**. According to the **congressional deliberations** quoted below, the **legislative confiscation** of PECO's properties has been decreed to **eliminate harm to innocent third parties** and **to the viability of MORE as the new franchise holder**, i.e., the continuous supply of electricity to consumers by **MORE**. It may also be reasonably presumed that Congress wants to send a message *via* the legislated condemnation of properties to franchise holders to shape up or ship out, *i.e.*, **general** and **specific deterrence**. Together with the **protection of people and communities, deterrence** is the **traditional** and **historical justification** for **punishment**.

6. ID.; ID.; ID.; ID.; ID.; FUNCTIONAL TEST OF PUNISHMENT; SECTIONS 10 AND 17 OF R.A. NO. 11212 ARE DISPROPORTIONATELY SEVERE AND THUS PUNITIVE UNDER THE FUNCTIONAL TEST OF PUNISHMENT. –– I shift now to the **functional test of punishment** — whether, viewed in terms of the **type and**

severity of burdens imposed, it could **reasonably be said to further non-punitive** legislative purposes.

The **functional test of punishment** balances the backdrop of the **confiscatory nature** of RA 11212 against its **non-punitive purpose**. The **latter** refers to the **uninterrupted provision and distribution of electricity to consumers in the franchise area.**

Less burdensome alternatives, however, could have been resorted to by Congress **to achieve this non-punitive** objective. For one, it could have required the winning franchisee to **be ready with its own facilities;** for another, it could have left the determination of the propriety of **expropriation** to the courts, without having to determine by itself that expropriation is the key to **MORE's** assumption as franchise-holder and that **all the elements of expropriation** are already present *vis-a-vis* **PECO's** properties.

Indeed, while **I acknowledge that Congress has a legitimate interest** in ensuring the uninterrupted supply of electricity in the franchise area –

(i) the **specificity of the affected party** – PECO,

(ii) the **uniqueness of the congressional action** — as **admitted by the Energy Regulatory Commission** during the congressional deliberations, and

(iii) the **breadth of the restrictive action** in this case – **the wholesale condemnation of PECO's properties**, since these properties **are its only properties** and **will result in its bankruptcy** as a **business entity *regardless of the nature of its subsequent business or businesses*** PECO engages in, all these render Sections 10 and 17 disproportionately severe and thus punitive under the **functional test of punishment.**

Worse, the **public use** and **necessity** for the **confiscation** of PECO's properties **arose solely** from the **utter inability** of **MORE** as the new franchise holder **to provide the facilities and technical knowhow to establish, operate, and maintain** its franchise requirements. **But for this utter inability** of **MORE**, there would have been **NO non-punitive legislative purpose** for the legislative confiscation of PECO's properties for MORE's take-over, benefit, and use. The non-punitive legislative purpose was **a created or manufactured need** when Congress **allowed** a

non-equipped and ill-prepared entity to take-over the franchise and authorized a business plan that **plainly revolved around the take-over** of the existing franchise holder's properties.

7. ID.; ID.; ID.; ID.; ID.; BILL OF ATTAINDER; SECTIONS 10 AND 17 OF R.A. NO. 11212 EXHIBIT ALL THE ELEMENTS OF A BILL OF ATTAINDER. — The **legislative intent to punish** or the **motivational test of punishment** unearths Sections 10 and 17 as products of congressional deliberations which show the **intent** to **single out PECO, adjudge it as guilty of wrongdoings,** and **confiscate its properties for MORE's convenient takeover.**

The congressional deliberations **revolved around MORE's business plan** to **take over** the operations and properties of **PECO** — simply **because MORE has none of the facilities AND personnel to establish, operate and maintain its franchise.** The intent behind RA 11212 is to **impose burdens** and **deprivations** upon, and to **make a sacrifice** out of, **PECO.** Specifically:

1. Takeover by MORE of PECO's facilities once franchise is granted to the former since MORE does not have the facilities to operate its franchise:

. . .

2. ***Because PECO's facilities are already sufficient to run the distribution of electricity within the franchise area, the legislative intent is to determine with finality the existence of*** **public use** ***and*** **genuine public necessity,** ***regardless of the*** **presence of alternatives** ***to avoid the*** **manufactured** ***public use and necessity of expropriation.***

. . .

3. ***The*** **legislative intent** ***is to ascribe*** **public use** ***and*** **genuine public necessity** ***to the condemnation of PECO's properties and to peg the*** **amount of just compensation,** ***regardless of a court proceeding.***

. . .

4. MORE has **none of the technical people** ***to run the franchise, hence, it was*** **a** ***fait accompli*** **for MORE to condemn,** ***as Section 10 and Section 17*** **condemn** ***PECO's properties and*** **decree** ***the hiring of PECO's staff.***

. . .

5. *The* forced condemnation by legislation *of PECO's properties to* serve the business interests of MORE *as the new franchisee is* unprecedented *and the* first of its kind *in franchise law-making and regulation.*

. . .

6. *The* expropriation of PECO's assets *is* the only means for MORE *to be able* to establish and operate *its franchise. Congress* has determined *a priori, or prior to any court proceedings, that expropriation* must *take place so that MORE is able to establish and operate its franchise. Otherwise,* without PECO's assets in MORE's hands, *the people in the franchise area will have no electricity.*

8. ID.; ID.; ID.; ID.; ID.; EQUAL PROTECTION CLAUSE; SECTIONS 10 AND 17 VIOLATE EQUAL PROTECTION CLAUSE, AS THEY SINGLE OUT PECO FOR THE TAKE-OVER AND CONDEMNATION OF ITS PROPERTIES.— *Sections 10 and 17 violate the equal protection clause.*

. . .

. . . Sections 10 and 17 are directed **only** against respondent **PECO.** While the language of these provisions may be construed to refer to property owners other than **PECO,** the congressional deliberations **made it very clear and categorical** that **the take-over is solely with regard to PECO and its properties.** The **overriding intent** is the ***legislated*** **taking, condemnation of expropriation of PECO's assets** and **no other entity's properties,** because **this is petitioner MORE's business plan** as it has **none of the facilities** to establish and operate the distribution of electricity within its franchise area. This is the same **evil** that ***Biraogo*** has railed against, the **singling out** of a person for the **imposition of burdens** that and whenever **the singled out person is not willing to accept.**

Indeed, what **differentiates** respondent **PECO** from other property owners? **PECO** is **not the only entity** that has "*poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment.*". . .

Hence, there is **no basis** for Sections 10 and 17 to **single out** PECO for the **take-over** and **condemnation** of its properties and to drive it altogether from doing **other legitimate businesses** as regards its assets.

. . .

ACCORDINGLY, I vote to **DISMISS** the petitions and **AFFIRM** the trial court's Judgment dated July 1, 2019, declaring Sections 10 and 17 of Republic Act No. 11212 **UNCONSTITUTIONAL** for being bills of attainder and for being violative of the equal protection clause.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider and Santos for MORE.
Divina Law for PECO.
The Solicitor General for petitioner-oppositor.

D E C I S I O N

REYES, J. JR., *J.*:

The constitutional question before the Court is whether Sections 10 and 17 of Republic Act (R.A.) No. 11212[1] violate the constitutional guarantee of due process and equal protection by providing that the power and electricity distribution system in Iloilo City which is owned by the previous franchise holder Panay Electric Company, Inc. (PECO) may be acquired by the current franchise holder MORE Electric and Power Corporation (MORE), through the exercise of the right of eminent domain, and applied to the same public purpose of power distribution in Iloilo City.

This constitutional question is raised in the Petition for Review on *Certiorari*, docketed as G.R. No. 248061, filed by MORE against PECO from the July 1, 2019 Judgment[2] of the Regional Trial Court of Mandaluyong City, Branch 209 (RTC) in Civil

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[1] AN ACT GRANTING MORE ELECTRIC AND POWER CORPORATION A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN, FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS OF THE CITY OF ILOILO, PROVINCE OF ILOILO, AND ENSURING THE CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA, approved on February 14, 2019.

Case No. R-MND-19-00571-S, declaring that Sections 10 and 17 of R.A. No. 11212 are unconstitutional legislated corporate takeover of the private assets of respondent PECO by petitioner MORE. The same question is raised in a separate Petition for Review on *Certiorari*, docketed as G.R. No. 249406, filed by the Republic of the Philippines through the Office of the Solicitor General (OSG) from the same judgment and proceedings and involving the same facts and parties.

PECO filed a Motion for Consolidation of G.R. No. 248061 and G.R. No. 249406.[3] Thereafter, PECO filed an Urgent Omnibus Motion[4] urging the Court to consolidate the petitions and to resolve the same without further delay on the ground that the continuing dispute over possession of the distribution system twice plunged Iloilo City into darkness just when the city is struggling to deal with the current extreme public health emergency. Moreover, if the dispute will continue, electricity and power interruptions will recur to the prejudice of the health and safety of the residents of the city.

In view of the highest necessity to resolve the constitutional issue, the Court allows the consolidation of the two petitions and proceeds to resolve the same.

Antecedent Facts and Proceedings

R.A. No. 11212 grants to MORE a franchise to establish, operate and maintain an electric power distribution system in Iloilo City.[5] Under Section 10, MORE may "exercise the power of eminent domain" when necessary for the efficient establishment

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[2] Penned by Judge Monique A. Quisumbing-Ignacio; *rollo* (G.R. No. 248061), pp. 39-46.

[3] *Rollo* (G.R. No. 249406), pp. 11-15.

[4] Filed on May 27, 2020 *via* electronic mail pursuant to Section 3 (d) and Section 9, Rule 13 of the 2019 Amendments to the 1997 Rules on Civil Procedure (A.M. No. 19-10-20-SC), paragraph 8 of Supreme Court Administrative Circular No. 39-2020, due to the travel restrictions on account of COVID-19.

[5] Republic Act No. 11212 (2018), Sec. 1 and Sec. 11.

of its service. In particular, it may acquire a distribution system consisting of poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used x x x for the conveyance of electric power to end-users in its franchise area.[6]

The distribution system which is currently and actually being used in Iloilo City consists of "5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters."[7] It is owned by PECO, the holder of the franchise since 1922.[8] PECO's franchise expired on January 18, 2019,[9] and no new franchise has been issued to it since.[10] However, as MORE has yet to set up its service, Section 17 of R.A. No. 11212 allows PECO to operate the existing distribution system in the *interim*. PECO presently operates the system under a Provisional Certificate of Public Convenience and Necessity (CPCN) issued by the Energy Regulatory Commission (ERC) on May 21, 2019.[11]

At the same time, Section 17 of R.A. No. 11212 expressly provides that, even as PECO is operating the distribution system, this *interim* arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain.

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[6] Id. at Sec. 1.

[7] Comment, *rollo* (G.R. No. 248061), p. 439.

[8] Act No. 3035 (1922), Sec. 2.

[9] Petition, *rollo* (G.R. No. 248061), p. 7. It is noted that in ERC Order dated May 21, 2019, it stated that the PECO's franchise expired on January 19, 2019 (id. at 278).

[10] House Bill No. 6023, July 22, 2017 and House Bill No. 4101, August 22, 2019, favored the grant of a new franchise to PECO, but these bills were not acted upon.

[11] *Rollo* (G.R. No. 248061), p. 288. It is noted that in its Urgent Omnibus Motion, PECO alleged that MORE has obtained a writ of possession by the Iloilo City court and a provisional franchise by the ERC, and that on the bases of these issuances MORE has taken possession of the distribution system.

Thus, after R.A. No. 11212 took effect on March 9, 2019, MORE filed on March 11, 2019 a Complaint for Expropriation with the RTC of Iloilo City, Branch 37, over the distribution system of PECO in Iloilo City.[12]

Earlier, PECO filed on March 6, 2019 with the RTC a Petition[13] for Declaratory Relief assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212, on the ground that these provisions violate the constitutional guarantees of due process and equal protection. The RTC issued a Temporary Restraining Order[14] (TRO) on March 14, 2019 enjoining commencement of expropriation proceedings and takeover by MORE of PECO's distribution system in Iloilo City, as well as the issuance of a CPCN to MORE by the Department of Energy (DOE) and Energy Regulatory Commission (ERC). The RTC then rendered the assailed judgment on the pleadings, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring Sections 10 and 17 of [R.A.] No. 11212 void and unconstitutional for infringing on PECO's right to due process and equal protection of the law. Consequently, PECO has no obligation to sell and respondent has no right to expropriate PECO's assets under Sections 10 and 17 of [R.A.] No. 11212; and PECO's rights to its properties are protected against arbitrary and confiscatory taking under the relevant portions of Sections 10 and 17 of [R.A.] No. 11212.
>
> Finally, the Temporary Restraining Order dated 14 March 2019 insofar as it enjoins respondent MORE and/or any of its representatives from enforcing, implementing and exercising any of the rights and obligations set forth under [R.A. No.] 11212, including but not limited to commencing or pursuing the expropriation proceedings against petitioner PECO under the assailed provisions; and takeover by respondent MORE of petitioner PECO's distribution assets in the franchise area is hereby made permanent.

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[12] Id. at 334.

[13] Petition for Declaratory Relief, id. at 60-95.

[14] Id. at 155-156.

SO ORDERED.[15]

The RTC agreed with PECO that, by virtue of its provisional CPCN, PECO's distribution system is currently being devoted to the public use of electricity distribution; and that, as Sections 10 and 17 of R.A. No. 11212 provide that said distribution system will be expropriated by MORE and devoted to the very same public use, said law amounts to an unconstitutional legislated corporate takeover by MORE of the private property of PECO.[16] In effect, the expropriation will be nothing but a "corporate [takeover]" impelled by corporate greed rather than by public necessity.[17] Sections 10 and 17 violate the constitutional guarantees of due process by authorizing expropriation proceedings that do not serve a genuine public necessity.[18]

The RTC further relied on PECO's argument that Sections 10 and 17 of R.A. No. 11212 violate the constitutional guarantee of equal protection in that under these provisions MORE may exercise the power of eminent domain even at the stage of establishing its service. In contrast, other legislative franchises grant electric distribution utilities merely the right of eminent domain as may be reasonably necessary for the efficient "maintenance and operation of [their] services."[19]

The issues and arguments revolving around the foregoing ruling and reasoning of the RTC are both substantive and procedural.

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[15] Id. at 146.

[16] Id. at 44.

[17] Id., citing *Cary Library v. Bliss*, 151 Mass. 364 (1890) <http://law.justia.com/cases/massachusetts/supreme-court/volumes/151/151mass364.html/> (visited August 10, 2020) and *West River Company v. Dix*, 47 U.S. 507 (1848) <http://supreme.justia.com/cases/federal/us/47/507/> (visited August 10, 2020).

[18] *See* Petition for Declaratory Relief, *rollo* (G.R. No. 248061), pp. 79-82.

[19] Id. at 45, citing Republic Act Nos. 10890; 10795 and 9381; *see* Petition for Declaratory Relief, id. at 73-78.

Issues and Arguments

As defined in **G.R. No. 248061, the substantive issues are:**

(1) THE COURT *A QUO* HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT WHEN IT HELD THAT THERE IS NO "PUBLIC USE" IN THE EXPROPRIATION BY MORE OF THE DISTRIBUTION ASSETS IN ILOILO FROM PECO AS AUTHORIZED UNDER SECTIONS 10 AND 17 OF R.A. [No.] 11212.

(2) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECLARED THAT THE DISTRIBUTION ASSETS IN ILOILO CITY CANNOT BE SUBJECT OF EXPROPRIATION BY MORE AS THE NEW FRANCHISE HOLDER BECAUSE IT IS "ALREADY BEING DEVOTED TO PUBLIC USE."

(3) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DECLARED UNCONSTITUTIONAL THE PROVISIONS OF R.A. [No.] 11212 ALLOWING THE TRANSFER OF THE "DISTRIBUTION ASSETS IN THE FRANCHISE AREA" TO MORE BY EXPROPRIATION.

(4) THE COURT *A QUO* HAS DECIDED QUESTIONS OF SUBSTANCE NOT IN ACCORD WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT HELD THAT THE IMPLEMENTATION OR ENFORCEMENT OF SECTIONS 10 AND 17 OF R.A. [No.] 11212 VIOLATES PECO'S RIGHT TO EQUAL

PROTECTION UNDER THE LAW, DUE PROCESS, AND IS DISCRIMINATORY AND CONFISCATORY.[20]

The foregoing issues in **G.R. No. 248061** are clearly related. MORE argues that, contrary to the views of the RTC and respondent PECO, expropriation under Sections 10 and 17 of R.A. No. 11212 serves the distinct emergency public purpose of ensuring the continuous and uninterrupted supply of electricity to Iloilo City, as the city transitions from the old franchise holder to the new franchise holder. There is no prohibition to the application of PECO's distribution system to such distinct emergency public purpose, even as the property is already devoted to a related, but ordinary public purpose, which is the provision of power and electricity to the city.[21]

Moreover, Sections 10 and 17 of R.A. No. 11212 recognize that MORE is differently situated from other distribution utilities. For one, within the franchise area of MORE, there is an existing distribution system that continues to burden public space — that is, this distribution continues to occupy streets, lands and properties owned by the government.

Finally, "Iloilo end-users have paid for" charges to enable PECO to recover its investments in said distribution system; thus, these end-users are entitled to have the system continuously applied to a public use.[22] However, the system is owned by PECO which no longer holds a franchise and is therefore unable to apply the system to the public purpose for which it is intended. Ideally, MORE should dismantle the system to unburden public space and make way for a new distribution system; however, as acknowledged by R.A. No. 11212, the ensuing transition will spell extreme inconvenience to the end-users and ruinous disruption to the local economy. Thus, R.A. No. 11212 devised a means whereby MORE, as the new franchise holder, is

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[20] Petition, id. at 13-14.

[21] Id. at 17-21. *See also,* Complaint for Expropriation, id. at 343.

[22] Id. at 4, 21-23.

authorized to take over the distribution system and apply the same to the service of the public, after expropriation and payment of just compensation to PECO.

As defined in **G.R. No. 249406** the substantive issues are:

x x x x

III.

THE COURT *A QUO* GRAVELY ERRED WHEN IT DECLARED SECTIONS 10 AND 17 OF R.A. NO. 11212 UNCONSTITUTIONAL.

A. THE POWER OF EMINENT DOMAIN WAS VALIDLY DELEGATED BY THE LEGISLATURE TO DISTRIBUTION UTILITIES, INCLUDING MORE.

B. SECTIONS 10 AND 17 OF [R.A. NO.] 11212 SATISFY THE REQUISITES FOR VALID EXERCISE OF THE POWER OF EMINENT DOMAIN.

1. THERE IS GENUINE NECESSITY FOR THE TAKING OF PRIVATE PROPERTY UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212, AS REASONABLY AND ACTUALLY NECESSARY FOR THE REALIZATION OF THE PURPOSES FOR WHICH MORE'S FRANCHISE WAS GRANTED.

2. THE TAKING OF PROPERTY AUTHORIZED UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212 IS FOR PUBLIC USE.

3. THE REQUIREMENTS OF DUE PROCESS AND EQUAL PROTECTION ARE COMPLIED WITH UNDER SECTIONS 10 AND 17 OF [R.A. NO.] 11212.

IV.

THE COURT *A QUO* GRAVELY ERRED WHEN IT ENJOINED THE ENFORCEMENT, IMPLEMENTATION AND EXERCISE OF ANY OF THE RIGHTS AND OBLIGATIONS SET FORTH UNDER [R.A. NO.] 11212, DESPITE RULING VOID AND UNCONSTITUTIONAL ONLY SECTIONS 10 AND 17 THEREOF.[23]

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[23] Petition, *rollo* (G.R. No. 249406), pp. 33-34.

The OSG argues that R.A. No. 9136[24] delegated to public utilities like MORE the power of eminent domain to enable them to exercise their public function.[25] Section 17 of R.A. No. 11212 highlighted a specific public need, which is to ease the transition of operations from PECO to MORE by expressly providing that the right of MORE to expropriate the distribution system of PECO for the public purpose of electricity and power distribution system, will not be prejudiced or hampered by the *interim* authority given to PECO to continue to operate the said system for the very same purpose of power distribution.[26]

To summarize, the common substantive issues raised by MORE and the OSG boil down to whether the RTC erred in ruling that Sections 10 and 17 of R.A. No. 11212 are unconstitutional in that these provisions authorize MORE to expropriate the existing distribution system of PECO and apply it to the very same public use for which it is already devoted.[27]

In its Comment in **G.R. No. 248061,** PECO argues that the lack of franchise does not diminish its constitutional right to due process and equal protection against an illegal expropriation of its distribution system.[28] It reiterates that "property of a private corporation that is already devoted to public use cannot be taken for the same use, because no public use or necessity can be served by such a taking"; rather, such taking would be nothing but a corporate takeover for private greed.[29] Concretely, the expropriation of its distribution system by MORE could only

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[24] AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES, also known as the "ELECTRIC POWER INDUSTRY REFORM ACT OF 2001."

[25] Id. at Sec. 23.

[26] *Rollo* (G.R. No 249406), pp. 43-50.

[27] *Rollo* (G.R. No. 248061), p. 5.

[28] Comment, id. at 589-591.

[29] Id. at 593, 595-596, 597-598.

be intended to advance the latter's corporate interest rather than the public welfare.[30]

PECO further assails Sections 10 and 17 of R.A. No. 11212 for allowing MORE to exercise the power of eminent domain even at the stage of establishing its distribution system. Such authority is unprecedented in legislative franchises, and gives MORE an undue advantage in violation of the equal protection clause. What is more, the law even provides for immediate effect of the expropriation upon mere deposit of the assessed value, notwithstanding that issues about the legality of the expropriation might still be pending.[31]

To summarize, as defined by PECO, the substantive issue is whether the RTC correctly held that expropriation under Sections 10 and 17 of R.A. No. 11212 is nothing but an unconstitutional legislated takeover of the assets of PECO by MORE.[32]

Procedural issues also have been raised by the parties, and the Court addresses them here, but briefly.

MORE questions the decision of the RTC making permanent the "[TRO] dated 14 March 2019," even though this had long expired on April 4, 2019.[33] Respondent PECO clarified that this part of the judgment is meant to enjoin the very same acts that were restrained under the TRO.[34]

Indeed, it was careless of the RTC to describe the acts to be restrained by reference to a defunct TRO, when the RTC could just as easily have enumerated these acts. A TRO expires on its 20th day by sheer force of law.[35] There can be no extension

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[30] Id. at 597-599.

[31] Id. at 597-609.

[32] Id. at 445-447.

[33] Petition, id. at 26.

[34] Comment, id. at 609-610; Opposition, id. at 661-662.

[35] *Spouses Carbungco v. Court of Appeals*, 260 Phil. 331, 333 (1990).

of its life beyond 20 days by a mere order of the court granting a new TRO or even a decision declaring the old TRO permanent.[36]

The OSG also questioned the RTC's judgment on the pleadings without giving the OSG the opportunity to comment on the issue of the constitutionality of R.A. No. 11212.[37] Judgment on the pleadings was likewise improper as MORE's answer had tendered several legitimate issues.[38]

The Court considers the present petition of the OSG, G.R. No. 249406, as sufficient opportunity to be heard on the constitutional issue. Moreover, the issue on the propriety of the judgment on the pleadings can be resolved along with the merits of the petition.

On the part of respondent PECO, it sought the dismissal of the Petition, G.R. No. 248061, on the ground that MORE engaged in forum shopping by pursuing, simultaneously, a Petition before the Court, an expropriation proceeding in Iloilo City and a Motion for Reconsideration (through the OSG) before the RTC.[39]

The Court finds that this procedural point has been rendered moot by the Order[40] dated September 10, 2019 of the RTC denying the motion for reconsideration of the OSG, and the Order[41] dated November 18, 2019 of the court in Iloilo City suspending the expropriation proceedings.

The foregoing disposition of the procedural issues clears the way for the resolution of the substantive issues in these consolidated petitions. In the light of the foregoing arguments of the parties, the Court identifies the following underlying

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[36] *Beso v. Aballe*, 382 Phil. 862, 871 (2000).

[37] *Rollo* (G.R. No. 249406), pp. 34-36.

[38] Id. at 37-43.

[39] *Rollo* (G.R. No. 248061), pp. 585-588. Petitioner MORE did not file a motion for reconsideration.

[40] Id. at 530-532.

[41] Manifestation, *id.* at 896-899.

legal issues that must be resolved in order for the constitutional question to be addressed:

1. Whether or not the distribution system of PECO in Iloilo City can be subjected to expropriation for the same public purpose.

2. Whether or not expropriation of the distribution system under Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection.

The Court's Ruling

The Petitions are granted. The Decision dated July 1, 2019 of the RTC is reversed and set aside. Sections 10 and 17 of R.A. No. 11212 are declared constitutional.

Brief restatement of the general principle of law on the valid exercise of the right of eminent domain

The *Heirs of Suguitan v. City of Mandaluyong*[42] provides the most precise formulation of the general principle of law on the valid exercise of the power or right of eminent domain. The power is inherent in a sovereign State whose mandate is to promote public welfare, and to which end private property might be condemned to serve. Though inherent, the power is not absolute, but subject to limitations set out in the Constitution, notably in Section 3, Article III, that no person shall be deprived of property without due process of law, and Section 9, that private property shall not be taken for public use without just compensation.[43]

These constitutional limitations have been strictly interpreted by the Court, given the risk of impairment to the right of the individual to private property that might result from the exercise by the State of the power of eminent domain.[44] Strict

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[42] 384 Phil. 676 (2000).

[43] *Republic v. Jose Gamir-Consuelo Diaz Heirs Association, Inc.*, G.R. No. 218732, November 12, 2018.

[44] Id.

interpretation is warranted even more when a mere agent of the State, such as a public utility, exercises a delegated right of eminent domain.[45]

When the power of eminent domain is exercised by an agent of the State and by means of expropriation of real property,[46] further limitations are imposed by law,[47] the rules of court[48] and jurisprudence.[49] In essence, these requirements are:

1. A valid delegation to a public utility to exercise the power of eminent domain or pursue expropriation proceedings over a particular private property;
2. An identified public use, purpose or welfare for which eminent domain or expropriation is exercised;
3. Previous tender of a valid and definite offer to the owner of the property sought to be expropriated, but which offer is not accepted; and
4. Payment of just compensation.[50]

The resolution of the present petition turns on the first and second requirements. The third and fourth requirements are not at issue.

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[45] *Estate or Heirs of Ex-Justice Jose B. L. Reyes v. City of Manila*, 467 Phil. 165, 188-189 (2004); *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig*, 503 Phil. 845, 862-863 (2005).

[46] Other forms of the exercise of eminent domain include state infringement of intellectual property, such as on a pharmaceutical product, for a public purpose. *See* 28 U.S. Code § 1498. Patent and copyright cases *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*, 527 U.S. 627, 644 (1999) <http://supreme/justia.com/cases/federal/us/527/627/#tab-opinion-1960553> (visited August 10, 2020).

[47] *See* Republic Act No. 8974 (2000), Sec. 8, which requires an ecological impact assessment prior to expropriation.

[48] RULES OF COURT, Rule 67.

[49] *National Power Corporation v. Posada*, 755 Phil. 613, 623 (2015).

[50] *City of Manila v. Prieto*, G.R. No. 221366, July 8, 2019.

The general rule is that private property which is already devoted to a public use can be burdened by expropriation with a different public purpose,[51] provided it is expressly authorized by law[52] or necessarily implied in the law.[53] The underlying reason for this is that the power of eminent domain is an attribute of sovereignty which is not exhausted by use; otherwise, the promotion of the public good, which is the purpose of sovereignty, would be frustrated.[54]

Although public use or necessity is defined by legislation, the courts have the power to review whether such use or necessity is of a genuine and public character.[55] For this purpose, the court applies as standards of review the constitutional requirements of due process and equal protection.[56]

Applying the principles to the issues at hand, the Court holds that:

1. The legislative franchises of PECO declare its distribution system in Iloilo City as susceptible to expropriation for the same public purpose of power and electricity distribution.

2. The expropriation by MORE of the distribution system of PECO pursuant to Sections 10 and 17 of R.A. No. 11212 is in accordance with the constitutional requirements of due process and equal protection.

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[51] *City of Manila v. Chinese Community of Manila*, 40 Phil. 349, 373 (1919).

[52] *Chavez v. Public Estates Authority*, 451 Phil. 1, 50 (2003).

[53] *See* Republic Act No. 3003 (1960), which states under Sec. 9 that the electricity distribution system of Rafael Consing may also be used for police telephone and alarm system.

[54] *Heirs of Suguitan v. City of Mandaluyong*, supra note 42, at 687.

[55] *Lagcao v. Labra*, 483 Phil. 303, 312 (2004).

[56] Id. at 310.

Distribution system of PECO can be subjected to expropriation for the same public purpose

To recall, the first legal issue is whether the distribution system of PECO can be subjected to expropriation for the same public purpose of power distribution. To address this issue, it is necessary to ascertain the nature of the distribution system of PECO in Iloilo City. To this end, the history of the legislative franchises governing the distribution system is examined below.

In 1921, Act No. 2983 granted a 50-year franchise to Esteban dela Rama to "install, lay, and maintain on all the streets, public thoroughfares, bridges, and public places within said limits, poles, conductors, interrupters, transformers, cables, wires, and other overhead appliances, and all other necessary apparatus and appurtenances" for the operation of an electric, light, heat and power generation and distribution system (distribution system) in the municipalities of Iloilo, La Paz, Jaro and Arevalo, Province of Iloilo, for a period of 20 years.[57]

As the text indicates, the rights that are dependent on the franchise include not just maintenance and operation, but the very establishment and installation of the distribution system. In effect, the distribution system co-exists with the franchise. This explains why under Section 11 of Act No. 2983, upon termination of the franchise, "all property of the grantee used in connection with this franchise shall become the property of the Insular Government." This particular text in Section 11 can be found in various other legislative franchises in electricity distribution issued from 1914 through 1929.[58] An analogous provision can be found in public market franchises, which provides that upon expiration of the franchise, the market building constructed by the franchise holder automatically becomes property of the government.[59] The toll facilities franchise of Construction and Development Corporation of the Philippines

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[57] Act No. 2983 (1921), Sec. 1 and Sec. 17.

[58] Act No. 2392 (1914), Sec. 11, Act No. 3643 (1929), Sec. 10.

[59] *Pardo v. Municipality of Guinobatan*, 56 Phil. 574, 583 (1932).

also provides that toll facilities and equipment built to carry out the franchise become government property upon expiration of the franchise.[60]

Moreover, Section 17 of Act No. 2983 provides that at any time after 20 years, the national government or a political subdivision "to which the right may be assigned, may purchase, and the grantee shall sell thereto all of his plant, poles, wires, buildings, real estate, and all other property used in the enjoyment of this franchise, at a valuation." This particular text on the government's right of expropriation during the life of the franchise (but after 20 years thereof) can be found in various other franchises from 1914 through 1953.[61]

In 1922, Act No. 3035 authorized Esteban dela Rama (Dela Rama) to "transfer all rights and privileges to install, maintain, and operate an electric light, heat, and power plant" to PECO, subject to the terms and conditions of Act No. 2983, including Sections 11 and 17 thereof.[62] These terms and conditions were later amended by Act No. 3665, in that the franchise area was expanded to other areas beyond Iloilo, and the franchise period was extended to 50 years.[63] Act No. 3665 deleted the provision in Section 11 of Act No. 2983 on the transfer of the distribution system of PECO to the government upon termination of the franchise.[64] However, Act No. 3665 retained Section 17 of Act No. 2983 on the government's right to expropriate the distribution system, should it decide to take over the franchise.

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[60] Presidential Decree No. 1113 (1977), Sec. 2(e); Presidential Decree No. 1894 (1983), Sec. 4 (b).

[61] Act No. 2393 (1914), Sec. 17; Republic Act No. 971 (1953), Sec. 15.

[62] Act No. 3035 (1922), Sec. 2. This was amended by Act No. 3061 (1963), to clarify that the franchise area covers the municipalities of Iloilo, La Paz, Jaro, and Arevalo, Province of Iloilo.

[63] Act No. 3665 (1929), Sec. 1.

[64] Id. at Sec. 5.

Act No. 3665 also incorporated Act No. 3636,[65] which prescribes a template for legislative franchises in electric, light, heat and power generation and distribution.[66] Under Section 13 of Act No. 3636, upon termination or revocation of the franchise, all lands or right of use or occupation of lands and rights obtained by the grantee pursuant to the franchise shall revert to the national or local government that originally owned them. It is notable that Section 13 does not contain a provision similar to Section 11 of Act No. 2983 on the automatic transfer to the government of all properties of the franchise upon its expiration.

R.A. No. 5360 granted to PECO a franchise over Iloilo City and the municipalities of Santa Barbara and Pavia, Province of Iloilo, for a period of 25 years from the date of the law.[67] While R.A. No. 5360 expressly repealed Act No. 2983 and Act No. 3665[68] it retained the government's right of expropriation:

> SEC. 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.[69]

The foregoing text in Section 4 can be found in various other franchises issued from 1939 through 2000,[70] such as that of Davao Light and Power Company, Inc., which is valid up to 2025.[71]

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[65] Id. at Sec. 6.

[66] Act No. 3636 (1929), Sec. 1 Previously, Act No. 667 (1903), prescribed the provisions to be included in a legislative franchise.

[67] Id.

[68] Republic Act No. 5360 (1968), Sec. 6.

[69] Id. at Sec. 4.

[70] Commonwealth Act No. 487 (1939), Sec. 3; Republic Act No. 3245 (1961), Sec. 3; Republic Act No. 7606 (1992), Sec. 2.

[71] Republic Act No. 8960 (2000), Sec. 3.

Going back to the history of legislative franchises governing the distribution system in Iloilo City, the franchise of PECO under R.A. No. 5360 was extended for 25 years by virtue of a Decision dated January 19, 1994 of the National Electrification Commission.[72] No copy of this decision is available in the records. There is no evidence that the National Electrification Administration (NEA) Decision modified Section 4 of R.A. No. 5360.

While the particular provision in Act No. 2983, on outright government takeover of the distribution system, is no longer found in subsequent legislative franchises, there remained a provision on the right of the government to exercise eminent domain for the very same public purpose of electricity distribution. Under Section 17 of Act No. 2983, Act No. 3035 and Act No. 3665, the distribution system is susceptible to expropriation subject to the conditions that it is exercised 1) after the 20th year of the franchise; 2) by the national government or the local government to which the right has been assigned; and 3) upon payment of compensation. Section 4 of R.A. No. 5360 retained remnants of Section 17 of Act No. 2983 by providing that the government may exercise the right of expropriation should it "desire to operate and maintain" the system. In other words, under the foregoing legislative franchises, the distribution system of PECO in Iloilo City is susceptible to expropriation by the government for the very same public purpose of electricity distribution. There is no specific public necessity that can precipitate the exercise of eminent domain; mere desire to operate by the government or mere assignment of the right to operate to a local government or agency is sufficient. It is notable that, while these provisions can be found in PECO's own legislative franchises, PECO never questioned their constitutionality.

The foregoing history of the legislative franchise of PECO establishes that its distribution system in Iloilo City is no ordinary private property. To begin with, the very installation of the

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[72] *Rollo* (G.R. No. 248061), p. 63. No copy of this NEA Decision is available in the records.

distribution system depends on a franchise. Section 1, Act No. 2983, Section 2, Act No. 3035, Section 1, Act No. 3665 and Section 1 of R.A. No. 5360 all provide that the right to construct, install and establish a distribution system on public space in Iloilo City must be based on a franchise. Ownership was co-existent with the franchise. Moreover, the distribution system is burdened with public use even after the termination of the franchise either by expiration or decision of the government. This is evident in the original franchise under Section 11 of Act No. 2983 and Act No. 3035, which provides that upon expiration of the franchise, the distribution system automatically becomes the property of the government, without mention of payment of compensation to Dela Rama or PECO. Moreover, even before expiration of the franchise of PECO, its distribution system may be taken over by the government and put to the very same public use.

Expropriation by MORE of the distribution system of PECO is for a genuine public purpose

The next legal issue is whether expropriation by MORE of PECO's distribution asset under Sections 10 and 17 of R.A. No. 11212 is for a genuine public purpose. To reiterate, while it is the Congress that defines public necessity or purpose, the Court has the power to review whether such necessity is genuine and public in character, by applying as standards the constitutional requirements of due process and equal protection.[73]

In its assailed Decision, the RTC held that while R.A. No. 11212 authorizes MORE to expropriate the private property of PECO and to apply the same to the public purpose of power distribution, such identified public purpose is not genuine for ultimately it is the private interest of MORE that will be served by the expropriation. In other words, the expropriation is an ill-disguised corporate takeover.

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[73] *Lagcao v. Labra*, supra note 55.

The RTC relied on American jurisprudence, namely *Cary Library v. Bliss*[74] and *West River Company v. Dix*,[75] to hold that no genuine and public necessity will be served when private property that is already devoted to public use is expropriated for the very same public use, as such expropriation will amount to taking private property from A and giving it to B without due process.[76]

These American cases law, however, has since been qualified, for at present, taking for the same public purpose in favor of a local government[77] and taking for a similar, but not identical public use[78] are valid. The most relevant development in the jurisprudence of that jurisdiction is *Kelo v. City of New London*[79] and *Berman v. Parker*[80] which upheld the expropriation of private property to pave the way for economic development, even when ultimately such development will benefit private business. Other jurisdictions have upheld expropriation of private property for redevelopment and subsequent transfer to private developers.[81]

Even without these developments in Western jurisprudence, the genuineness of the public purpose of the expropriation of

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[74] 151 Mass. 364 (1890) <http://law.justia.com/cases/massachusetts/supreme-court/volumes/151/151mass364.html/> (visited August 10, 2020).

[75] 47 U.S. 507 (1848) <http://supreme.justia.com/cases/federal/us/47/507/> (visited August 10, 2020).

[76] *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420 (1837) <http://supreme.justia.com/cases/federal/us/36/420/#tab-opinion-1942465/> (visited August 10, 2020).

[77] *Long Island Water Supply Co. v. Brooklyn*, 166 U.S. 685 (1897) http://supreme.justia.com/cases/federal/us/166/685/> (visited August 10, 2020).

[78] *Eastern R. Co. v. Boston. R.*, 111 Mass. 125, 15 Am. Rep. 13.

[79] 545 U.S. 469 (2005), <http://supreme.justia.com/cases/federal/us/545/469/> (visited August 10, 2020).

[80] 348 U.S. 26 (1954), <http://supreme.justia.com/cases/federal/us/348/26/> (visited August 10, 2020).

[81] *(U.K.) Alliance Spring Co. Ltd. & Ors v. The First Secretary of State* (2005) EWHC 18; (Singapore) Amendments to the Land Titles Act.

the distribution system of PECO can be determined from R.A. No. 11212 itself.

Expropriation under Sections 10 and 17 of R.A. No. 11212 is not only for the general purpose of electricity distribution. A more distinct public purpose is emphasized: the protection of the public interest by ensuring the uninterrupted supply of electricity in the city during the transition from the old franchise to the new franchise. This distinct purpose has arisen because MORE is the new franchise holder in a city whose public space is already burdened by an existing distribution system, and that distribution system cannot continue to serve a public use for it is owned by the old franchise holder.

For purposes of clarity, the relevant portions of Sections 10 and 17 of R.A. No. 11212 are reproduced below:

> SEC. 10. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services x x x. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power.
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> x x x x
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> SEC. 17. *Transition of Operations*. — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the [*interim*] be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall

in no case exceed two (2) years from the grant of this legislative franchise.

x x x x

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act.

The public necessity of ensuring uninterrupted electricity is implicit in Section 10 of R.A. No. 11212, which authorizes MORE to expropriate the existing distribution system to enable itself to efficiently establish its service. This distinct public necessity is reiterated in Section 17 of R.A. No. 11212 under which MORE may initiate expropriation proceedings even as PECO is provisionally operating the distribution system. In fact, this distinct public necessity of ensuring uninterrupted electricity is the very rationale of the ERC in granting PECO a provisional CPCN.[82] The provisional CPCN is the legal basis of PECO's continued operation of the distribution system. PECO cannot deny that such distinct necessity to ensure uninterrupted electricity supply is public and genuine.

Moreover, under R.A. No. 9136, one recognized public purpose is the protection of "public interest as it is affected by the rates and services of electric utilities and other providers of electric power."[83] The Court has sustained the taking of private property to ensure uninterrupted supply of electricity in *National Electrification Administration v. Maguindanao Electric Cooperative, Inc.*[84] It recognized this authority in NEA which, under Presidential Decree No. 269, may order the transfer of the distribution assets of Maguindanao Electric Cooperative,

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[82] *Rollo* (G.R. No. 248061), p. 288.

[83] Republic Act No. 9136 (2001), Sec. 2 (f).

[84] G.R. Nos. 192595-96, April 11, 2018, 861 SCRA 1.

Inc. as the old franchise holder to Cotabato Electric Cooperative, Inc. as the new franchise holder.[85]

Furthermore, R.A. No. 11361[86] recently took effect declaring that the uninterrupted conveyance of electricity from generating plants to end-users is not just a matter of public interest, but already an elevated "matter of national security and is essential to sustaining the country's economic development."[87] Without a doubt, the provision of uninterrupted supply of electricity is a public purpose which is distinct from the general purpose of electricity distribution. Such distinct purpose is both public and genuine.

Finally, MORE points out that the end-users in Iloilo have a stake in the uninterrupted operation of the distribution system, for the charges they have been paying PECO include the cost of recovery of its investment. While it is unfortunate that MORE did not substantiate this important point with data on the structure of the distribution charges and the extent to which payment of these charges by the end-users in Iloilo City have allowed PECO to recover its investment in the distribution system, it remains

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[85] Presidential Decree No. 269 (1973). The pertinent provision reads:

Sec. 4. *NEA Authorities, Powers and Directives*. — [The NEA is specifically authorized:]

(m) To acquire, by purchase or otherwise (including the right of eminent domain, which is hereby granted to the NEA) x x x real and physical properties x x x whether or not the same be already devoted to the public use of generating, transmitting or distributing electric power and energy, upon NEA's determination that such acquisition is necessary to accomplish the purposes of this Decree and, if such properties be already devoted to the public use described in the foregoing, that such use will be better served and accomplished by such acquisition; Provided, That the power herein granted shall be exercised by the NEA solely as agent for and on behalf of one or more public service entities which shall timely receive, own and utilize or replace such properties for the purpose of furnishing adequate and dependable service on an area coverage basis, which entity or entities shall then be, or in connection with the acquisition shall become, borrowers from the NEA. x x x

[86] Approved on August 8, 2019.

[87] Id. at Sec. 2.

a valid expectation on the part of the end-users that they will enjoy uninterrupted supply of power and electricity during the transition from the old franchise holder to the new franchise holder. In sum, expropriation by MORE of the distribution system of PECO under Sections 10 and 17 of R.A. No. 11212 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the uninterrupted supply of electricity. The RTC erred in declaring these provisions unconstitutional.

Justice Leonen dissents on two grounds. First, Section 10 of R.A. No. 11212 is unconstitutional for it simultaneously favors MORE with unwarranted benefits that are not enjoyed by other public utilities that are similarly situated, and discriminates against PECO by allowing expropriation of its assets upon payment of the assessed value rather than the fair market value.[88]

The Dissenting Opinion reiterates the argument of PECO that, unlike other public utilities, MORE is accorded by law the privilege of expropriating the existing distribution system in the franchise area and immediately taking over the same upon deposit of the full amount of the assessed value. Other public utilities that are similarly situated, namely Mactan Electric Company, Inc. (MECO), Tarlac Electric, Inc. and Angeles Electric Corporation, have the power of expropriation, but not the power of immediate takeover.[89]

The conceptual premise of the argument is flawed, for which reason the conclusion is faulty. While all are public utilities, MORE is not similarly situated as MECO, Tarlac Electric, Inc. and Angeles Electric Corporation. The latter public utilities are existing franchise holders with existing and functioning distribution systems. MORE is a new franchise holder that is virtually deprived of the option to set up a new distribution system, not only because the existing public space is burdened with the distribution system of the old franchise holder, but

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[88] Dissenting Opinion, Associate Justice Marvic M.V.F. Leonen, p. 1.

[89] Id. at 4-5.

also because it must hit the ground running and ensure the uninterrupted and continuous supply of electricity to the city. MORE is therefore peculiarly and doubly burdened. It must not only supply electricity, it must also prevent any disruption that might arise from its takeover of the franchise.

The Dissenting Opinion adds that MORE is unusually favored with a monopolistic franchise even as it has no track record in the business of power distribution. The dismal performance of PECO as the old monopolistic franchise will not be undone by inflicting a novice public utility like MORE upon the residents of Iloilo City.[90] Unfortunately, the competence of this Court is limited to the determination of the constitutionality of R.A. No. 11212, and does not extend to the assessment of the expertise of MORE or any franchise holder. The ineptitude of the holder does not translate to the unconstitutionality of its franchise. The remedy for that is non-renewal or cancellation, not judicial review.

As compared to other franchise holders, PECO is not inordinately prejudiced. Its distribution system is no ordinary private property for it has been historically burdened with the public interest of electricity distribution. The distribution system was built on public spaces pursuant to the original franchise of Dela Rama, specifically Section 1 of Act 2983, as well as the transfer and continuation franchise of PECO, specifically Section 1 of R.A. No. 5360. Contrary to the Dissenting Opinion, the termination of the franchise of PECO did not mean that the public purpose for which the distribution system (including the public lands and spaces to which it is attached) was installed automatically ceased. Section 1 of R.A. No. 5360 granted to PECO "the right and privilege to install, lay and maintain on all streets, public thoroughfares, bridges and public places within said limits, poles, wires, transformers, capacitors, overhead protective devices, and pole line hardware, and other equipment necessary for the sale distribution of electric current to the public." Even maintaining possession of the distribution system

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[90] Id. at 6.

must be for the original public purpose for which the privilege of installing it was granted.

In her Dissenting Opinion, Justice Lazaro-Javier extends the concept of bill of attainder to cover Sections 10 and 17 of R.A. No. 11212 in that these legislations purportedly single out PECO and subject the latter to punishment without the benefit of trial.[91] This conception that bills of attainder is problematic for, as correctly pointed out by Justice Leonen in his dissent, a legislative franchise is not a right, but a special privilege the grant, amendment, repeal or termination of which is granted to Congress by no less than the Constitution.[92] Consequently, the termination of a franchise by its expiration is not a deprivation of a right or property that amounts to punishment.[93] There is no question that the franchise of PECO was allowed to lapse because of its failure to render competent public service. No prior judicial trial of the performance of PECO is required before the Congress may decide not to renew PECO's franchise. The power of this Court to subject to judicial review the constitutionality of a franchise legislation does not include the power to choose the franchise holder. That is not our place in the constitutional scheme of things.

The grant to MORE of the authority to initiate expropriation of the distribution assets of PECO is within the power of Congress to make, subject to the requirements of a valid expropriation. That the assets of PECO will be the subject of expropriation does not signify that it is being singled out. Only PECO has had a franchise over the same area. There is no other previous franchise holder. Only its assets continue to burden public space in the franchise area. If and when other distribution assets are allowed to be installed and to operate in the same franchise area, their expropriation by MORE is not precluded by Sections 10 and 17 of R.A. No. 11212.

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[91] Dissenting Opinion, Associate Justice Amy C. Lazaro-Javier.

[92] *Senator Jaworski v. Philippine Amusement and Gaming Corp.*, 464 Phil. 375, 385 (2004).

[93] *See* Anthony Dick, "The Substance of Punishment under the Bill of Attainder Clause," 63 Standford Law Review 1177.

Going back to the Dissenting Opinion of Justice Leonen, it is correct that the government could have availed of Section 4 to expropriate the distribution system during the term of the franchise. That the government let the franchise lapse without initiating expropriation directly or through an agent does not mean that it is no longer able to do so. There is no shelf-life to the power to expropriate. There is no prohibition against the government initiating expropriation of the distribution system for as long as all the requirements of a valid expropriation are met. In fact, a month after the expiration of the franchise of PECO, the government, through R.A. No. 11212, set into motion the expropriation of the distribution asset by authorizing MORE as its agent.

The Dissenting Opinion echoes the respondent that the authorization given to MORE to take over the distribution system upon deposit of the assessed value is discriminatory. Both fail to see that Section 17 of R.A. No. 11212 still requires payment of just compensation, even as, for the purpose of immediate takeover, it allows mere deposit of the assessed value. Deposit of the assessed value is without prejudice of the determination of just compensation by the RTC in the expropriation case. To reiterate, immediate takeover is warranted by the public necessity for and heightened security interest in the continued and uninterrupted supply of electricity.

In sum, being peculiarly situated, MORE was validly granted by Section 10 with a unique power of expropriation. Moreover, given that its distribution system is imbued with public interest, PECO was not unusually prejudiced by the reservation in Section 10 of R.A. No. 11212 to expropriate the property. Section 10 is no class legislation. It is constitutional.

The second ground cited in the Dissenting Opinion of Justice Leonen is that Section 17 of R.A. No. 11212 is unconstitutional for it authorizes an expropriation that serve no distinct public purpose and, as such, amounts to a taking without due process.[94]

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[94] Dissenting Opinion, Associate Justice Marvic M.V.F. Leonen, supra note 88.

The Dissenting Opinion overlooks that there are two distinct public purposes to be served by the expropriation clause in R.A. No. 11212. One public purpose is power distribution as ordinarily carried out by public electric utility on a day-to-day basis. Another is the public purpose and security interest of preventing any disruption in the supply of electricity during the period of takeover by the new franchise holder from the old franchise holder. No less than PECO invoked this second distinct public purpose when it applied for and operated the distribution system under a provisional CPCN following the expiration of its franchise. To emphasize, when PECO operated the distribution system under the provisional CPCN it did so, not for the ordinary public purpose of power distribution (which it could no longer fulfill), but for the distinct public purpose of forestalling a power interruption during the transition. It is this second distinct public purpose which impels immediate expropriation and takeover of the distribution asset of PECO pursuant to Section 17 of R.A. No. 11212.

It is true that ultimately MORE will benefit from the expropriation, just as PECO benefited from the grant of the privilege to install the distribution system on public space. However, the benefit to MORE does not detract from the distinct public necessity to be served by the expropriation, as such step would prevent massive and prolonged economic disruption in the city, not to mention oppressive discomfort by its residents.

Justice Lazaro-Javier argues that Sections 10 and 17 of R.A. No. 11212 virtually enable MORE to piggyback on PECO in order to establish and operate its franchise. Every legislative franchise enables the franchise holder to expropriate with the view of building its distribution system. Even PECO obtained the franchise from Dela Rama along with the authority to use public spaces for the installation of its distribution system. MORE is authorized to acquire the assets of PECO and any other assets of any other entity that might be available as these are necessary for the discharge of its public franchise.

Finally, the Dissenting Opinion of Justice Leonen misunderstood the import of the discussion on *Kelo v. City of London*. It is to

demonstrate that the RTC's reliance on *Cary Library v. Bliss* and *West River Company v. Dix* is misplaced for the jurisprudence in that foreign jurisdiction is still evolving. As summarized by the Court, the current state of that jurisprudence is that taking for the same public purpose, but in favor of a local government or for a similar, but not identical public purpose is valid. The Court need not borrow from this jurisprudence, as there is more than sufficient basis in the facts and law of this to uphold the constitutionality of Sections 10 and 17 of R.A. No. 11212.

WHEREFORE, the instant Petitions are **GRANTED**. The assailed Judgment dated July 1, 2019 is **REVERSED** and **SET ASIDE**. Sections 10 and 17 of Republic Act No. 11212 are **DECLARED CONSTITUTIONAL**.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, and *Delos Santos, JJ.*, concur.

Perlas-Bernabe and *Caguioa, JJ.*, see separate opinion.

Leonen and *Lazaro-Javier, JJ.*, see dissenting opinion.

Inting, Zalameda, Lopez, and *Gaerlan, JJ.*, join the dissent of *J. Leonen.*

Baltazar-Padilla, J., on sick leave.

SEPARATE OPINION

PERLAS-BERNABE, *J.*:

I concur in the result.

At the onset, it must be highlighted that this case stemmed from a Petition for Declaratory Relief[1] assailing the constitutionality of Sections 10 and 17 of Republic Act

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[1] See *ponencia*, pp. 3-4.

No. (RA) 11212;[2] this is not an appeal from a ruling made by the trial court in the expropriation proceedings proper, wherein the propriety of the taking's public use will still be put at issue. In *National Power Corporation v. Posada*[3] *(National Power Corp.)*, the Court described the two phases of expropriation proceedings as follows:

> Expropriation, the procedure by which the government takes possession of private property, is outlined primarily in Rule 67 of the Rules of Court. It undergoes two phases. The first phase determines the propriety of the action. The second phase determines the compensation to be paid to the landowner. x x x
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> > [In the first phase, the trial court] is concerned with **the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit**. It ends with an order, if not of dismissal of the action, "of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, **for the public use or purpose described in the complaint** x x x."
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> x x x x[4] (Emphases supplied)

Thus, it is not merely the amount of just compensation, **but the propriety of the taking itself**, which is up for judicial determination by the courts. Accordingly, the evaluation of the propriety of the taking is, in theory, a **judicial function**. As held in *National Power Corp.*:

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[2] Entitled "AN ACT GRANTING MORE ELECTRIC AND POWER CORPORATION A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN, FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE CITY OF ILOILO, PROVINCE OF ILOILO, AND ENSURING THE CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA," approved on February 14, 2019.

[3] 755 Phil. 613 (2015).

[4] Id. at 624.

> The power of eminent domain is an inherent competence of the state. It is essential to a sovereign. Thus, the Constitution does not explicitly define this power but subjects it to a limitation: that it be exercised only for public use and with payment of just compensation. **Whether the use is public or whether the compensation is constitutionally just will be determined finally by the courts**.[5] (Emphasis and underscoring supplied)

Generally, the propriety of an eminent domain taking is hinged on its "public use." This is implicit from Section 9, Article III of the 1987 Constitution which states that "**[p]rivate property shall not be taken for public use** without just compensation." The Court, however, reckoned that the exercise of the power of eminent domain is **also circumscribed by the due process clause of the Constitution**, *viz.*:

> In general, eminent domain is defined as "the power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community."
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> **The exercise of the power of eminent domain is constrained by two constitutional provisions: (1) that private property shall not be taken for public use without just compensation under Article III (Bill of Rights), Section 9 and (2) that no person shall be deprived of his/her life, liberty, or property without due process of law under Art. III, Sec. 1.**[6] (Emphasis supplied)

The term "public use" is undefined in the eminent domain clause of our Constitution. In this regard, the Court recognized that "there is no precise meaning of 'public use' and the term is susceptible of myriad meanings depending on diverse situations."[7]

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[5] Id. at 623.

[6] *Barangay Sindalan, San Fernando Pampanga, rep. by Brgy. Capt. Gutierrez v. Court of Appeals*, 547 Phil. 542, 551 (2007), citing 26 Am Jur 2d 638.

[7] Id.

Historically, there are two (2) views on this matter. The first is the narrow definition of public use — that is "**[t]he limited meaning attached to 'public use' is 'use by the public' or 'public employment,'** that 'a duty must devolve on the person or corporation holding property appropriated by right of eminent domain to furnish the public with the use intended, and that there must be a right on the part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public, to use the property after it is condemned."[8] However, this narrow definition of "public use" being equivalent to the "use of the public" has been later superseded by a more expansive definition of the term **equating "public use"** to **"public purpose."**

In the United States, where we have patterned our own Constitution, the Supreme Court (SCOTUS), in *Kelo v. New London*[9] *(Kelo)*, explained the evolution of the term "public use" as applied in eminent domain cases:

> [T]his "Court long ago rejected any literal requirement that condemned property be put into use for the general public." **Indeed, while many state courts in the mid-19th century endorsed "use by the public" as the proper definition of public use, that narrow view steadily eroded over time. Not only was the "use by the public" test difficult to administer (*e.g.*, what proportion of the public need have access to the property? at what price?), but it proved to be impractical given the diverse and always evolving needs of society. Accordingly, when this Court began applying the Fifth Amendment to the States at the close of the 19th century, it embraced the broader and more natural interpretation of public use as "public purpose."** Thus, in a case upholding a mining company's use of an aerial bucket line to transport ore over property it did not own, Justice Holmes' opinion for the Court stressed "the inadequacy of use by the general public as a universal test." *Strickley v. Highland Boy Gold Mining Co.*, 200 U.S. 527, 531 (1906). We have repeatedly and consistently rejected that narrow test ever since.[10] (Emphasis supplied)

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[8] Id. at 551-552.

[9] 545 U.S. 469 (2005).

[10] See id.

As stated in *Kelo*, the SCOTUS has embraced the broad interpretation of public use as "public purpose," reasoning that not only was the "use by the public" test difficult to administer, but it was also impractical "given the diverse and always evolving needs of society." Thus, the SCOTUS has "repeatedly and consistently rejected that narrow test ever since."

In our jurisdiction, this Court has acceded to "[t]he more generally accepted view [which] sees **'public use' as** '**public advantage, convenience, or benefit**, and that anything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the state, or which leads to the growth of towns and the creation of new resources for the employment of capital and labor, [which] contributes to the general welfare and the prosperity of the whole community.'"[11] In *Manapat v. Court of Appeals*,[12] this Court stated that "the 'public use' requisite for the valid exercise of the power of eminent domain is a flexible and evolving concept influenced by changing conditions. At present, it may not be amiss to state that **whatever is beneficially employed for the general welfare satisfies the requirement of public use**."[13]

However, it is well to point out that, at least in the United States, adherence to the expansive definition of "public use" as the standard for eminent domain takings has not gone without any strident dissent.

In the same case of *Kelo*, Justice Clarence Thomas (Justice Thomas) lamented that "[t]he Framers embodied that principle in the Constitution, **allowing the government to take property not for 'public necessity,' but instead for 'public use.'** Defying this understanding, the [SCOTUS] [has] replace[d] the Public Use Clause with a 'Public Purpose' Clause, (or perhaps the

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[11] *Barangay Sindalan, San Fernando Pampanga, rep. by Brgy. Capt. Gutierrez v. Court of Appeals*, supra note 6 at 552.

[12] 562 Phil. 31 (2007).

[13] Id. at 53, citing *Estate of Jimenez v. PEZA*, 402 Phil. 271, 291 (2001).

'Diverse and Always Evolving Needs of Society' Clause) x x x."[14]

In addition to defying the "most natural reading of the clause," Justice Thomas also forewarned of the danger of the government taking one's private property and giving it to another private individual, whereby the taking may be legitimized because of "**the incidental benefits that might accrue to the public from the private use**," *viz.*:

> **The most natural reading of the Clause is that it allows the government to take property only if the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever.** At the time of the founding, dictionaries primarily defined the noun "use" as "[t]he act of employing any thing to any purpose." 2 S. Johnson, A Dictionary of the English Language 2194 (4th ed. 1773) (hereinafter Johnson). The term "use," moreover, "is from the Latin *utor*, which means "to use, make use of, avail one's self of, employ, apply, enjoy, etc." J. Lewis, Law of Eminent Domain §165, p. 224, n. 4 (1888) (hereinafter Lewis). **When the government takes property and gives it to a private individual, and the public has no right to use the property, it strains language to say that the public is "employing" the property, regardless of the incidental benefits that might accrue to the public from the private use**. The term "public use," then, means that either the government or its citizens as a whole must actually "employ" the taken property. See *id.*, at 223 (reviewing founding-era dictionaries).[15] (Emphases supplied)

Parenthetically, Justice Thomas reasoned that by defying the natural import of the term "public use," "we are afloat without any certain principle to guide us" since there is "no coherent principle limits what could constitute a valid public use x x x." In contrast, "**[i]t is far easier to analyze whether the government owns or the public has a legal right to use the taken property than to ask whether the taking has a 'purely**

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[14] See Dissenting Opinion of Justice Thomas in *Kelo v. New London*, supra note 9.

[15] See id.

private purpose x x x.' Otherwise, "the Court [would] eliminate public use scrutiny of takings entirely."[16]

In the same vein, Justice Sandra Day O'Connor (Justice O'Connor), in *Kelo*, argued that by expanding the definition of "public use," the qualifying standard would lose any practical relevance since "**nearly any lawful use of real private property can be said to generate some incidental benefit to the public**."[17] Accordingly, there would be no more "constraint on the eminent domain power," *viz.*:

> In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. **It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public — such as increased tax revenue, more jobs, maybe even aesthetic pleasure**. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude any takings, and thus do not exert *any* constraint on the eminent domain power.[18] (Emphasis supplied)

In this relation, Justice O'Connor cautioned that this broad interpretation of "public use" allows one's property to be taken in favor of those "with disproportionate influence and power in the political process, including large corporations and development firms."[19] In the end, "**the government now has license to transfer property from those with fewer resources to those with more**."[20] This, to her, runs counter to the concept

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[16] See id.

[17] See Dissenting Opinion of Justice O'Connor in *Kelo v. New London*, supra note 9.

[18] See id.

[19] See id.

[20] See id.

of a just government "which *impartially* secures to every man, whatever is his *own*," *viz.*:

> Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. "[T]hat alone is a *just* government," wrote James Madison, "which *impartially* secures to every man, whatever is his *own*." For the National Gazette, Property, (Mar. 29, 1792), reprinted in 14 Papers of James Madison 266 (R. Rutland, et al. eds. 1983).[21]

While SCOTUS rulings, much less, opinions of dissenting US Justices, are not binding in our jurisdiction, they are nonetheless persuasive in shaping our own doctrinal bearings. As previously mentioned, this Court has subscribed to the doctrine equating "public use" to mere public interest, public purpose, or public advantage. Thus, as long as the taking of private property subserves some form of general welfare, the public use requisite of the eminent domain clause in our Constitution is met, leaving the amount of just compensation as the only remaining issue.

Notably, while this Court has held that "[t]he number of people is not determinative of whether or not it constitutes public use, **provided [that] the use is exercisable in common and is not limited to particular individuals**,"[22] still, **the *discernible divide* between a taking that subserves some public interest but at the same time, accommodates a clear private benefit, and which between the two in a particular case is a mere incidence, remain blurry subjects in our current body of jurisprudence**.

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[21] See id.

[22] *Barangay Sindalan, San Fernando Pampanga, rep. by Brgy. Capt. Gutierrez v. Court of Appeals*, supra note 6 at 552.

In *Vda. De Ouano v. Republic*,[23] cited in the 2015 case of *National Power Corp.*, the Court expressed that "the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws,"[24] *viz.*:

> *In esse*, expropriation is forced private property taking, the landowner being really without a ghost of a chance to defeat the case of the expropriating agency. In other words, in expropriation, the private owner is deprived of property against his will. Withal, the mandatory requirement of due process ought to be strictly followed, such that the state must show, at the minimum, a genuine need, an exacting public purpose to take private property, the purpose to be specifically alleged or least reasonably deducible from the complaint.
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> Public use, as an eminent domain concept, has now acquired an expansive meaning to include any use that is of "usefulness, utility, or advantage, or what is productive of general benefit [of the public]." If the genuine public necessity — the very reason or condition as it were — allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land. **The same legal situation should hold if the government devotes the property to another public use very much different from the original or deviates from the declared purpose to benefit another private person. It has been said that the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws**.
>
> A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor

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[23] 657 Phil. 391 (2011).

[24] Id. at 419, citing *Heirs of Moreno v. Mactan-Cebu International Airport Authority*, 503 Phil. 898, 912 (2005).

the judgment of expropriation. This is not in keeping with the idea of fair play.[25] (Emphasis supplied)

This notwithstanding, there is no clear and settled guidance in our cases so as to determine what is "predominant" use for another's own private gain. Rather, what is more compellingly abound in our jurisprudence is the doctrine that the public use requirement is satisfied by the taking being premised on some public advantage, convenience, or benefit.

However, it must be discerned that the grant of the authority to expropriate is different from the propriety of the expropriation itself. As initially mentioned, this case only concerns the issue of the constitutionality of Sections 10 and 17 of RA 11212, which provisions must be examined against the prevailing jurisprudential standard that public use is equal to "whatever is beneficially employed for the general welfare." In this regard, the propriety of the public use anent petitioner MORE Electric and Power Corporation's (MORE) taking of respondent Panay Electric Company, Inc.'s (PECO) specific properties is not yet at issue here. The assailed statutory provisions only accord eminent domain power in favor of MORE, but the actual exercise of such power is still subject to judicial scrutiny in the expropriation proceedings. Hence, perhaps in the proper case where the Court is called to examine the expansive/narrow scope of the public use concept in relation to a specific taking, the Court will be able to amply resolve this quandary. That case may well be the appeal to this Court from the expropriation proceedings involving PECO's properties.

Nonetheless, I already deem it proper to draw attention to the above divergence of opinions anent the interpretation of "public use" in order to magnify two points relevant to this case:

First, the broad definition of "public use" seems to create a practical conundrum as to whether or not the propriety of an exercise of eminent domain power, ***when delegated by the State***

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[25] Id. at 418-419; citations omitted.

to a franchisee, is still properly a judicial function, or just a matter of the judiciary confirming the determination already made by legislature.

To explain, implicit in the franchise grant is the advancement of public interest. Conceptually, franchisees are given statutory privileges to conduct the covered activities in their franchise for the benefit of the public. Thus, when a franchisee is concomitantly conferred with an eminent domain power to acquire private properties, any taking made under the legal cover of the grantee's franchise will theoretically satisfy the requirement of public use.

At this juncture, it may not be amiss to point out that while the statutory delegation of eminent domain power to franchisees does not dispense with the need of filing expropriation proceedings before the court, the practical effect, however, is that trial courts are put in an awkward position to defer to Congress' will, else it be accused of frustrating the pursuits of the franchisee who enjoys the imprimatur of the lawmaking body. In fact, it may also be argued that the franchisee's taking under the cover of its franchise will always carry some semblance of public benefit, ***regardless of the private benefit it will gain***.

To note, this scenario wherein private entities have been delegated eminent domain powers in their respective franchises is not only attendant to MORE, but also to other public utilities. To illustrate, Section 10 of MORE's franchise reads:

SECTION 10. *Right of Eminent Domain*. — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services**. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted** x x x: *Provided*, That proper condemnation proceedings shall have been instituted and just compensation paid[.]

x x x x x x x x x (Emphases supplied)

To name a few, the above provision is akin to the following eminent domain provisions in favor of electric distribution utilities embedded in their respective franchises:

Law	Franchisee	Franchise purpose	Eminent domain delegation
RA 11322 (April 17, 2019)	Cotabato Electric Cooperative, Inc.-PPALMA	SECTION 1. *Nature and Scope of Franchise.* — x x x to construct, install, establish, operate and maintain for public interest, a distribution system for the conveyance of electric power to the end users in the municipalities of Pikit, Pigcawayan, Aleosan, Libungan, Midsayap and Alamada, Province of Cotabato, and its neighboring suburbs.	SECTION 10. *Right of Eminent Domain.* — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services.** The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted**: *Provided*, That proper condemnation proceedings shall have been instituted and just compensation paid. (Emphases supplied)

RA 10637 (June 16, 2014)	Cotabato Light and Power Company	SECTION 1. *Nature and Scope of Franchise*. — x x x to construct, install, establish, operate and maintain for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to the end-users in the City of Cotabato and portions of the municipalities of Datu Odin Sinsuat and Sultan Kudarat, both in the Province of Maguindanao.	SECTION 9. *Right of Eminent Domain*. — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services.** The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted**: *Provided*, That proper condemnation proceedings shall have been instituted and just compensation paid. (Emphases supplied)
RA 10891 (July 21, 2016)	First Bay Power Corp.	SECTION 1. *Nature and Scope of Franchise*. — x x x to construct, install, establish, operate and maintain for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to the	SECTION 9. *Right of Eminent Domain*. — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services**. The grantee is authorized to

		end users in the Municipality of Bauan, Province of Batangas.	install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted**: *Provided*, That proper condemnation proceedings shall have been instituted and just compensation paid. (Emphases supplied)
RA 9381 (March 9, 2007)	Angeles Electric Corporation	SECTION 1. *Nature and Scope of Franchise*. — x x x to construct, operate and maintain in the public interest and for commercial purposes, a distribution system for the conveyance of electric power to the end-users in the City of Angeles, Province of Pampanga.	SEC. 10. *Right of Eminent Domain*. — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services**. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other

			similar property of the Government of the Philippines, its branches, or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted**: Provided, *That* proper condemnation proceedings shall have been instituted and just compensation paid. (Emphases supplied)
RA 10373 (March 1, 2013)	Olongapo Electricity Distribution Company, Inc.	SECTION 1. *Nature and Scope of Franchise*. — x x x to construct, install, establish, operate and maintain for commercial purposes and in the public interest, a distribution system for the conveyance of electric power to the end-users in the City of Olongapo and its suburbs.	SECTION 9. *Right of Eminent Domain*. — **Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services**. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches or any of its instrumentalities. **The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted**: Provided, *That* proper condemnation proceedings shall have been instituted and just compensation paid. (Emphases supplied)

To my mind, when the exercise of eminent domain is necessary to carry out the franchise, the taking is intermixed with the Congress' will. *As such, the judicial function of the courts in determining the propriety of expropriation is somewhat constrained by an attitude of legislative deference*. In *Kelo*, Justice Thomas especially criticized the "almost insurmountable deference to legislative conclusions that a use serves a 'public use,'" *viz.*:

A second line of this Court's cases also deviated from the Public Use Clause's original meaning by allowing legislatures to define the scope of valid "public uses." *United States v. Gettysburg Electric R. Co.*, 160 U.S. 668 (1896), involved the question whether Congress' decision to condemn certain private land for the purpose of building battlefield memorials at Gettysburg, Pennsylvania, was for a public use. *Id.*, at 679-680. Since the Federal Government was to use the lands in question, *id.*, at 682, there is no doubt that it was a public use under any reasonable standard. Nonetheless, the Court, speaking through Justice Peckham, declared that "**when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation**." *Id.*, at 680. As it had with the "public purpose" dictum in *Bradley*, *supra*, the Court quickly incorporated this dictum into its Public Use Clause cases with little discussion. See, *e.g.*, *United States ex rel. TVA v. Welch*, 327 U.S. 546, 552 (1946); *Old Dominion Land Co. v. United States*, 269 U.S. 55, 66 (1925).

There is no justification, however, for affording almost insurmountable deference to legislative conclusions that a use serves a "public use." To begin with, a court owes no deference to a legislature's judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property. Even under the "public purpose" interpretation, moreover, it is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights. We would not defer to a legislature's determination of the various circumstances that establish, for example, when a search of a home would be reasonable, see, *e.g.*, *Payton* v. *New York*, 445 U.S. 573, 589-590 (1980), or when a convicted double-murderer may be shackled during a sentencing proceeding without on-the-record findings, see *Deck* v. *Missouri*, 544 U.S. _____ (2005), or when state law creates a

property interest protected by the Due Process Clause, see, *e.g.*, *Castle Rock* v. *Gonzales*, *post*, at ___; *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564, 576 (1972); *Goldberg* v. *Kelly*, 397 U.S. 254, 262-263 (1970).

Still worse, it is backwards to adopt a searching standard of constitutional review for nontraditional property interests, such as welfare benefits, see, *e.g.*, *Goldberg*, *supra*, while deferring to the legislature's determination as to what constitutes a public use when it exercises the power of eminent domain, and thereby invades individuals' traditional rights in real property. The Court has elsewhere recognized "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic," *Payton*, *supra*, at 601, when the issue is only whether the government may search a home. Yet today the Court tells us that we are not to "second-guess the City's considered judgments," *ante*, at 18, when the issue is, instead, whether the government may take the infinitely more intrusive step of tearing down petitioners' homes. Something has gone seriously awry with this Court's interpretation of the Constitution. Though citizens are safe from the government in their homes, the homes themselves are not. **Once one accepts, as the Court at least nominally does, *ante*, at 6, that the Public Use Clause is a limit on the eminent domain power of the Federal Government and the States, there is no justification for the almost complete deference it grants to legislatures as to what satisfies it.**[26] (Emphases and underscoring supplied)

As Justice Thomas pointed out, with the prevailing legal regime, "when the legislature has declared the use or purpose to be a public one, **its judgment will be respected by the courts, unless the use be palpably without reasonable foundation**."[27] However, with our expansive definition of public use, where — in Justice O'Connor's words — "**nearly any lawful use of real property can be said to generate some incidental benefit to the public**,"[28] it would be quite difficult to tag any taking

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[26] See Dissenting Opinion of Justice Thomas in *Kelo v. New London*, supra note 9.

[27] See id.

[28] See Dissenting Opinion of Justice O'Connor in *Kelo v. New London*, supra note 9.

done under the cover of a franchise as "unreasonable." Most probably, it would only be in **extreme cases where the taking is completely and wantonly without any public purpose** that our courts can validly rule against the propriety of a franchisee's taking of another's private property. In so doing, for as long as this wanton and complete unreasonableness does not exist, a taking may be done to advance private benefit.

This brings me to my second and final point: the expansive definition of public use as mere taking for some public interest, purpose or benefit appears to legitimize the regime of allowing franchisees to take private properties, irrespective of the franchisee's private gain. As I have discussed, this Court has yet to draw any clear delineation between the commingling of private interests with public purposes when it comes to eminent domain takings. Neither has our Court prohibited the delegation of eminent domain powers to franchise holders albeit being private entities. In fact, the Court recognizes that the power of eminent domain may be delegated "even to private enterprises performing public services."[29]

In this case, Associate Justices Marvic M.V.F. Leonen and Amy C. Lazaro-Javier strikingly present the background facts which show that MORE was intentionally benefited by Congress to the prejudice of PECO. PECO, despite being the longstanding franchise holder of electric distribution in Iloilo City for 96 years, has now been ousted from its statutory privilege to so operate. *As to whether or not PECO deserves to continue its franchise or whether MORE is qualified as a new franchisee is clearly beyond the province of the Court as it is a pure political question left to the wisdom of Congress*. However, more than the stripping of PECO's franchise, PECO — it is claimed — stands to lose its entire operation system, goodwill, and even employees through an explicit statutory enactment which not only recognizes a new franchisee but also enables the latter to practically take over PECO's business at the cost of paying the fair market value of its assets. To this point, it may be posited

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[29] *Manapat v. Court of Appeals*, supra note 12, at 47.

that while PECO may be able to realize "just" compensation, it is effectively left as a shell corporation. Further, despite receiving the "fair market value" of its properties, PECO would get paid much less than if it openly deals with a buyer in the market. Unlike in judicial proceedings, business and trade acumen may be utilized when one sells assets in the open market. Also, it is pertinent to note that the "fair market value" of a former franchisee's assets may be diluted in value since some of them may prove to be un-utilizable by the owner considering that it had already been stripped of the franchise, and thus, diminishing their future utility. Hence, in the hands of the previous franchisee, the assets may be valued less at the time of the taking.

Nevertheless, in theory, PECO's precarious situation is actually legitimized by our prevailing framework on eminent domain. Hypothetically speaking, there is nothing legally prohibiting the government to delegate the eminent domain power to a private entity embedded in its franchise, and in so doing, allow the takeover of the properties of the previous franchisee upon the reason that the taking is — in the language of our numerous franchise laws — "actually necessary for the realization of the purposes for which this franchise is granted."

In fine, up until our current paradigm on "public use" *completely* or *partially shifts*, Section 10 — and its corollary provision,[30] Section 17[31] of RA 11212 — are in accord with

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[30] While Section 17 of RA 11212 is equally assailed in this petition, this provision merely provides for a transitory period for PECO to continue its operations so as to ensure the uninterrupted supply of electricity pending the takeover of MORE, as the new franchisee. To a certain extent, Section 17 is also an offshoot of Section 10 in that it expressly qualifies that the transitory period granted in favor of PECO "shall not prevent [MORE] from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act."

[31] Section 17. *Transition of Operations*. — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment

subsisting doctrine, and hence, constitutional. This pronouncement, however, is without prejudice to the outcome of the expropriation proceedings where the propriety of MORE's actual taking of PECO's properties, in relation to the jurisprudential parameters of public use (which may or may not be revisited), may be raised.

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or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

SEPARATE OPINION

CAGUIOA, ***J.*:**

Assailed before the Court are Sections 10 and 17 of Republic Act No. (R.A.) 11212,[1] which provide:

SEC. 10. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate

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[1] AN ACT GRANTING MORE ELECTRIC AND POWER CORPORATION A FRANCHISE TO ESTABLISH, OPERATE, AND MAINTAIN, FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST, A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE CITY OF ILOILO, PROVINCE OF ILOILO, AND ENSURING THE CONTINUOUS AND UNINTERRUPTED SUPPLY OF ELECTRICITY IN THE FRANCHISE AREA, February 14, 2019.

possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.

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SEC. 17. *Transition of Operations*. — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

Panay Electric Company, Inc. (PECO) argues in the main that the power of eminent domain delegated to More Electric and Power Corporation (MORE) amounts to a confiscatory, ill-disguised takeover of its corporate assets, and is therefore violative of PECO's constitutional rights to due process and equal protection.

I concur with the *ponencia* that this argument does not hold water. I furthermore agree with the *ponencia's* holding that the aforementioned provisions which authorize the grantee, MORE, to expropriate the existing distribution assets of PECO at the franchise area, and provide for transition of operations, respectively, pass constitutional muster.

The power of eminent domain, essentially legislative in nature, may be validly delegated to local government units, other public entities, and public utilities, such as MORE, an electric power distribution utility. The scope of this delegated legislative power is narrower than that of the delegating authority and may only be exercised in strict compliance with the terms of the delegating law.[2]

But for all its primacy and urgency, the power of expropriation is by no means absolute.[3] The limitation is found in Section 9,

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[2] See *Heirs of Alberto Suguitan v. City of Mandaluyong*, G.R. No. 135087, March 14, 2000, 328 SCRA 137, 145-146.

[3] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744 and 79777, July 14, 1989, 175 SCRA 343, 376.

Article III of the 1987 Constitution, which provides that: "Private property shall not be taken for public use without just compensation." Clearly, the two essential limitations on the power of eminent domain are that: (1) the purpose of taking must be for public use; and (2) just compensation must be given to the owner of the private property.[4] These constitutional safeguards serve as a check on the possible abuse of this power and circumscribe the excessive encroachment on the property rights of the individual.

For this purpose, the Court has recognized that the term "public use," which traditionally was limited to actual use by the public, has evolved in this jurisdiction to include "whatever is beneficially employed for the community."[5] Conversely, when the taking is for a *purely* private purpose, such that there is no perceptible benefit flowing to the public, the taking ought to be struck down for being unconstitutional. It is repugnant to our laws to use the power of eminent domain over private property *predominantly* for purposes of another citizen's private gain.[6] The Court has hewed to this principle, which was first enunciated in the old American case of *Charles River Bridge v. Warren Bridge*,[7] that notwithstanding the inherent power of the State to expropriate all property, the Constitution does not sanction the taking of a private party for the *sole purpose* of transferring it to another private party, even when there is payment of just compensation.[8]

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[4] *Apo Fruits Corporation, Inc. v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 739.

[5] *Manosca v. Court of Appeals*, G.R. No. 106440, January 29, 1996, 252 SCRA 412, 421, citing *Seña v. Manila Railroad Co.*, 42 Phil. 102, 105 (1921).

[6] See *National Power Corporation v. Posada*, G.R. No. 191945, March 11, 2015, 752 SCRA 550, 579, citing *Vda. de Ouano v. Republic*, G.R. Nos. 168770 & 168812, February 9, 2011, 642 SCRA 384, 409.

[7] 36 US 420 (1837) cited in *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, March 22, 2007, 518 SCRA 649, 665.

[8] See *Kelo v. New London*, 545 US 469 (2005).

At the same time, the right to take private property for public purposes must necessarily originate from "the necessity" and the taking must be limited to such necessity.[9] The burden of proving the necessity is borne by the State, which takes precedence before resolving any issue involving just compensation.[10] The necessity need not be absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with such benefit.[11] If genuine public necessity is absent or eventually ceases, the expropriation of the private property cannot continue.[12]

In this regard, it is my view that despite the enormous power of eminent domain, the constitutional limitations on its exercise is an explicit recognition of the protection accorded to one's right to property.[13] The power affects an individual's right to private property, a constitutionally-protected right necessary for the preservation and enhancement of personal dignity and intimately connected with the rights to life and liberty. As such, the need for a circumspect operation of this exercise cannot be overemphasized.[14] The Court, under its expanded power of judicial review, retains the authority to determine whether there is grave abuse of discretion in the exercise of the power of eminent domain. The Court's judicial function is not stymied by the expanded definition of public use, especially when the purported public use is merely incidental or pretextual, thereby

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[9] *Masikip v. City of Pasig*, G.R. No. 136349, January 23, 2006, 479 SCRA 391, 401.

[10] *National Power Corporation v. Posada,* supra note 6, at 579.

[11] *Masikip v. City of Pasig,* supra note 9, at 402.

[12] *National Power Corporation v. Posada,* supra note 6, at 579, citing *Vda. de Ouano v. Republic,* supra note 6, at 409.

[13] See *Masikip v. City of Pasig,* supra note 9, at 403.

[14] See *Heirs of Alberto Suguitan v. City of Mandaluyong,* supra note 2, at 145.

serving as a guise to favor private interests.[15] In other words, the elements of public purpose and genuine necessity must be clearly shown. A bare invocation that the taking is for a public purpose or is attended with genuine necessity should never serve as an automatic and absolute guarantee to the Court that the taking is legal.

Taking all the foregoing limits on the exercise of the power of eminent domain in consideration, I agree with the *ponencia* that the assailed provisions of R.A. 11212 do not suffer from constitutional infirmities.

The authority granted to MORE under Sections 10 and 17 of R.A. 11212 is reasonably necessary for the exercise of its franchise

A careful examination of the limits of the power of eminent domain under the peculiar factual circumstances of this case yields to the conclusion that the grant to MORE of the delegated power was imperative for the urgent and important public purpose that MORE was tasked to undertake under its franchise. Prior to the award of the legislative franchise to MORE, PECO was the lone electric power distribution utility in Iloilo City for 96 years, or close to a century. This rather distinct situation, in my view, was a crucial factor in the legislative decision to craft Sections 10 and 17 of R.A. 11212.

From 1923 until January 18, 2019, PECO was a holder of a franchise to establish, operate, and maintain a distribution system for the conveyance of electric power to end-users in Iloilo City. Since its franchise was granted, PECO established a distribution system consisting of 5 sub-transmission line substations, 450 kilometers of electrical lines, 20,000 poles, 1,300 transformers and 64,000 electrical meters. Personnel under its employ numbered to around 400.[16] For the longest time, the residents of Iloilo City

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[15] See Concurring Opinion of Justice Kennedy in *Kelo v. New London*, 545 US 469 (2005).

[16] *Rollo* (G.R. No. 248061), pp. 62-63; *rollo* (G.R. No. 249406), pp. 106-107.

were exclusively[17] serviced by PECO, the sole franchise holder for the operation of an electric power distribution utility.

Its position as the sole operator of the electric power distribution utility in Iloilo City is typical in the industry, as the energy distribution sector has always been a natural monopoly. Since the operation of an electric power distribution utility involves extremely high-fixed costs, it would be more efficient if only one producer services the community.[18] Hence,

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[17] R.A. 5360, AN ACT GRANTING A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM TO PANAY ELECTRIC CO., INC., IN THE CITY OF ILOILO, AND IN THE MUNICIPALITIES OF SANTA BARBARA AND PAVIA, BOTH IN THE PROVINCE OF ILOILO, June 15, 1968. Section 2 reads: "In the event that the National Power Corporation shall have established its line in the areas adjacent to or over the territory covered by this franchise, the National Power Corporation may make available its power and heat only after negotiations with and through or with the authority and consent of the grantee, which shall be the exclusive distributor of whatever power the aforenamed corporation may make available adjacent to or within the territory covered by this franchise."

[18] [MR. GREG L. OFALSA (Director, Legal Service, Energy Regulatory Commission):]

We go now to scenario number three where PECO['s] franchise is renewed and [MORE] is granted a franchise covering the same franchise area as that of PECO. A DU is a natural monopoly. Allowing more than one DU within the same geographical area will result to a higher electricity rates *(sic)* for consumers within that geographical area.

A natural monopoly is a monopoly in an industry in which high infrastructural cost and other barriers to entry relative to the size of the market gives the largest suppliers in an industry[,] often the first supplier in the market[,] an overwhelming advantage over potential competitors. x x x

Let's assume that we have two distribution utilities, namely: Blue DU and Red DU. Blue DU is the old distribution utility while Red is the new distribution utility. Both DUs are operating [in] Color Cloud Town[.] Color Cloud Town has 50 electric consumers. All 50 electric consumers are originally consumers of Blue DU. Blue DU has a capital investment of 100. Blue's distribution charge is determined by dividing its capital with the number of its consumers as follows: 100 divided by 50 is equivalent to two. Number two represents the distribution charge for all 50 consumers of Blue at that time [as] the sole DU in Color Cloud Town. After some time, Red entered the

the assailed provisions, which purportedly granted MORE "unwarranted benefits" and "discriminate" against PECO,[19] should be appreciated in light of these unique factual circumstances. MORE, as a new player in the electric power distribution sector, naturally needs to **establish**, as opposed to merely maintain, its services.

In this regard, it is inaccurate to compare the franchise of MORE with other electric power distribution utilities, as Associate Justice Marvic Leonen would have it,[20] because these comparisons stand on unequal footing. The other electric power distribution utilities cited in the Dissenting Opinion of Justice Leonen have franchises which were renewed, extended, or granted due to their having previously operated in the area covered by their new franchises. Thus:

1. Mactan Electric Company, Inc. started its initial operations in 1967. Per its website, it was issued a franchise to operate an electric light and power for 25

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electric distribution market and began building [its] own distribution facility. Red's initial capital is 30 and was able to convince 10 electric consumers in Color Cloud Town to change its electric distribution's service [provider]. Similar to Blue, Red['s] distribution [charge] is determined by dividing its capital with the number of its consumers as follows: 30[,] the investment[,] divided by 10[,] the number of consumers[,] is equivalent to three. Three represents the distribution charge for the first 10 electric consumers of Red. On the other hand, as Blue's consumers decrease, its distribution charge is recomputed x x x by dividing its capital with the number of its consumers x x x [which] is equivalent to 2.5, the 2.5 represents the distribution charge for the remaining electric consumers x x x of Blue.

As provided in the above illustration, an increase in the number of DUs operating in the market, will ultimately result to higher distribution rates chargeable not only by the new DU but also by the previously existing DU because of the reduction in the number of consumers sharing the capital cost." (House of Representatives, Committee on Legislative Franchises, September 26, 2018 Hearing, pp. 14-15).

[19] Dissenting Opinion of Justice Marvic M.V.F. Leonen, p. 1.

[20] Id. at 5-6.

years from 1973 until 1991.[21] It obtained a congressional franchise in 2016 through R.A. 10890.[22]

2. The franchise subject of R.A. 10795[23] clearly states in its title that it is an extension of the franchise of Tarlac Electric, Inc., previously covered by R.A. 7606.[24]

3. R.A. 9381[25] also clearly states in its title that it is an extension of the franchise of Angeles Electric Corporation issued under R.A. 2341.[26]

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[21] Mactan Electric Company, Inc. About Us, Historical Profile, at <http://www.mecomactan.com/about/> (last accessed on September 25, 2020).

[22] AN ACT GRANTING THE MACTAN ELECTRIC COMPANY, INC. (MECO) A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE CITY OF LAPU-LAPU AND THE MUNICIPALITY OF CORDOVA, PROVINCE OF CEBU, July 17, 2016.

[23] AN ACT EXTENDING FOR A PERIOD OF TWENTY-FIVE (25) YEARS THE TERM OF THE FRANCHISE GRANTED TO TARLAC ELECTRIC, INC. (FORMERLY KNOWN AS TARLAC ENTERPRISES, INC.) TO CONSTRUCT, OPERATE, AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE CITY OF TARLAC, PROVINCE OF TARLAC, PROVIDED UNDER REPUBLIC ACT NO. 7606, May 10, 2016.

[24] AN ACT GRANTING TARLAC ENTERPRISES, INC. A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF TARLAC, PROVINCE OF TARLAC, FOR A PERIOD OF TWENTY-FIVE (25) YEARS, AND FOR OTHER PURPOSES, June 4, 1992.

[25] AN ACT FURTHER AMENDING THE FRANCHISE OF ANGELES ELECTRIC CORPORATION GRANTED UNDER REPUBLIC ACT NO. 2341, AS AMENDED, TO CONSTRUCT, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END-USERS IN THE CITY OF ANGELES, PROVINCE OF PAMPANGA AND RENEWING/EXTENDING THE TERM OF THE FRANCHISE TO ANOTHER TWENTY-FIVE (25) YEARS FROM THE DATE OF APPROVAL OF THIS ACT, March 9, 2007.

[26] AN ACT GRANTING THE ANGELES ELECTRIC CORPORATION A FRANCHISE FOR AN ELECTRIC LIGHT, HEAT AND POWER SYSTEM IN THE MUNICIPALITY OF ANGELES, PROVINCE OF PAMPANGA, June 20, 1959.

4. While COTELCO-PPALMA operates under a new franchise (*i.e.*, R.A. 11322[27]), it appears from its website that it was operating under COTELCO's franchise even before it was granted its own franchise in 2019.[28]

To be sure, Congress should not be deprived of the authority to grant new franchise holders with the power to expropriate necessary assets. To hold otherwise would effectively constrain Congress to continuously renew the existing franchise of the current operator despite its sub-par service, until another prospective operator has built its own capital assets. However, given the high-fixed costs and other barriers to entry, few players, if any, will even attempt to enter the industry without first securing a franchise.

Neither is MORE given unwarranted benefits when Section 10 of R.A. 11212 granted it the authority to take possession of expropriated properties after the payment of a provisional amount based on their *assessed value*.[29] True, had the government proceeded to expropriate PECO's assets pursuant to its legislative franchise under R.A. 5360, the government is obliged to pay the *fair market value* of PECO's properties.[30] But textually, Section 4 of R.A. 5360 reveals that the provision contemplates

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[27] AN ACT GRANTING A LEGISLATIVE FRANCHISE TO COTABATO ELECTRIC COOPERATIVE, INC.-PPALMA (COTELCO-PPALMA) TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO THE END USERS IN THE MUNICIPALITIES OF PIKIT, PIGCAWAYAN, ALEOSAN, LIBUNGAN, MIDSAYAP AND ALAMADA, PROVINCE OF COTABATO, AND ITS NEIGHBORING SUBURBS, April 17, 2019.

[28] Cotabato Electric Cooperative, Inc.-PPALMA, About, at <https://www.ppalmacotelco.com> (last accessed on September 25, 2020).

[29] Dissenting Opinion of Justice Marvic M.V.F. Leonen, pp. 4-5.

[30] R.A. 5360, Sec. 4, reads: "It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value."

a government takeover during the lifetime of PECO's franchise. By virtue of this provision, the government is granted the option to operate the electric power distribution system itself, cutting short PECO's franchise without requiring the prior deposit or payment of any provisional value before the government enters the property expropriated. Thus, the fair market value on which the payment of just compensation is based pertains to the final amount that the government would have paid had it proceeded to take over PECO's operations. In contrast, the assessed value referred to in Section 10 of R.A. 11212 is the provisional amount that MORE should deposit in order to immediately possess the property being expropriated.[31] It is not the final amount of compensation contemplated in Section 4 of R.A. 5360.

The payment of a provisional amount less than the fair market value, in order to possess the property expropriated, is also not a unique requirement applicable to MORE alone. The payment of the assessed value of the property is likewise provided in Section 2,[32] Rule 67 of the Rules of Court.[33] Upon the deposit of this provisional amount, the issuance of the writ of possession

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[31] In determining the assessed value, Section 10 provides that the court "may consider tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated."

[32] SEC. 2. *Entry of plaintiff upon depositing value with authorized government depositary*. — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

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[33] N.B. For national government infrastructure projects, Section 6 of R.A. 10752 (The Right-of-Way Act [March 7, 2016]) requires the implementing agency to immediately deposit 100% of the zonal value of the property.

is a ministerial duty on the part of the trial court.[34] Also, under R.A. 7160[35] or the Local Government Code, the LGU may enter the property expropriated upon the deposit of 15% of the fair market value based on the current tax declaration of the property to be expropriated.[36] Clearly, MORE was not granted unwarranted economic benefits by Section 10.

At any rate, Section 10 does not, by any means, foreclose or limit the payment of just compensation on the basis of the assessed value as this is, again, merely a provisional amount. MORE is still liable for the full amount of just compensation to be determined during the expropriation proceedings on the basis of, among other things, the market value of the property.

Certainly, after MORE takes possession of the expropriated property belonging to PECO, PECO is entitled to the payment of the full amount of just compensation, which is the full and fair equivalent of the loss incurred by the affected owner.[37] In determining the amount of just compensation, the trial court is bound to consider the market value of the property and the current value of like property, among other things. In addition, interest would be awarded as an indispensable part of just compensation, in order "to ensure that the owner is fully placed in a position as whole as he was before the taking occurred."[38] In other words, in compliance with the constitutional mandate on eminent domain and as a basic measure of fairness,[39] the

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[34] *Biglang-Awa v. Bacalla*, G.R. Nos. 139927 and 139936, November 22, 2000, 345 SCRA 562, 577.

[35] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, October 10, 1991.

[36] R.A. 7160, Book I, Title I, Chapter I, Sec. 19.

[37] See *Republic v. Spouses Bunsay*, G.R. No. 205473, December 10, 2019, p. 8.

[38] See *J.* Caguioa, Separate Opinion in *National Power Corporation v. Serra Serra*, G.R. No. 224324, January 22, 2020, p. 3, citing *Republic v. Decena*, G.R. No. 212786, July 30, 2018, 874 SCRA 408, 431. Emphasis omitted.

[39] See *Secretary of the Department of Public Works and Highways v. Spouses Tecson*, G.R. No. 179334, April 21, 2015, 756 SCRA 389, 422.

State would be required to pay interest to compensate PECO for the opportunity cost of immediately losing its property without receiving immediate full payment therefor.[40] As such, PECO would be entitled to receive the real, substantial, full and ample equivalent of the properties lost.[41]

In this light, Section 10 of R.A. 11212 does not serve to narrow the court's parameters in determining just compensation by limiting it to the assessed value only. It is therefore erroneous to compare the assessed value in Section 10 of R.A. 11212 on the one hand, and the fair market value in Section 4 of R.A. 5360 on the other, in order to arrive at a conclusion that MORE received an unusual economic benefit by virtue of its franchise.[42] Ultimately, the determination of just compensation in expropriation cases always factors in the fair market value of the property.

Given that proper expropriation proceedings would still be, as they have in fact already been, instituted,[43] as provided for under Section 10, there is likewise no merit to the observation of Associate Justice Amy Lazaro-Javier that the provision has effectively rendered judicial proceedings for the expropriation of PECO's properties as a mere ceremonial procedure.[44] Section 10 is a provision of delegation by Congress to the grantee, which merely gives it the authority to exercise the power of eminent domain. Section 10 relevantly and explicitly provides that the exercise would be subject to the limitations and procedures prescribed by law, that proper expropriation proceedings shall be instituted, and that just compensation shall be paid therefor.

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[40] *See J.* Caguioa, Separate Opinion in *National Power Corporation v. Serra Serra*, supra note 38, at 2.

[41] See *Republic v. Spouses Bunsay*, supra note 37, at 9.

[42] Dissenting Opinion of Associate Justice Marvic M.V.F. Leonen, pp. 4-5.

[43] *Rollo* (G.R. No. 248061), pp. 6, 288 and 331.

[44] Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 19.

As constructed, nothing in Section 10 shows that judicial proceedings for expropriation would be but an empty exercise. In fact, it sets out a restriction against expropriation to what may be *reasonably* necessary for the general purposes of the services of PECO. This includes the "efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services." For the specific purpose of "*acquiring* private property, such as poles, wires, cables, transformers, and other machinery and equipment," the language of the provision even shifts significantly from a mere reasonable necessity to one of being "*actually* necessary for the realization of the purpose for which [R.A. 11212] is granted." This, to my mind, provides a guide to and a standard for the court to follow during the trial for the expropriation proceedings that have been instituted. With this language, the safeguard afforded by the legislature against any abuse of the delegated right of eminent domain to MORE is, at once, evident.

In sum, while the exercise of the power of eminent domain over the electric power distribution facilities of PECO may garner benefits in favor of MORE, this would be but incidental. Notably, its duties as a public utility would nonetheless remain regulated by the government. At the end of the day, at the proper expropriation proceedings instituted for the purpose, the abiding reality would be for the court to be satisfied with evidence proffered by MORE — that its intended taking would invariably be for the good of the public, is actually necessary, and that there is just compensation therefor.

The authority granted to MORE under Sections 10 and 17 is not meant to punish PECO without a judicial trial

It must be borne in mind that this case involves the expiration of the exclusive franchise of a previous grantee and the subsequent act of Congress of granting a franchise to another applicant which has satisfactorily shown its capacity to carry the work, not only for commercial purposes, but for the public interest of ensuring the continuous and uninterrupted supply

of electricity in the franchise area.[45] This is the proper context by which this case should only be viewed. As it stands, as well, the petition itself does not challenge either the legislative act of granting the franchise to MORE or the denial of PECO's application for extension.

Accordingly, R.A. 11212, particularly Sections 10 and 17, cannot be validly characterized as a bill of attainder, as Justice Lazaro-Javier advances in her Dissenting Opinion.[46] A bill of attainder is a legislative act which inflicts punishment on individuals or members of a particular group without judicial trial. For a law to be considered a bill of attainder, it must be shown to contain all of the following: (a) a specification of certain individuals or a group of individuals; (b) the imposition of a punishment, penal or otherwise; and (c) the lack of judicial trial.[47] For the second element, Justice Lazaro-Javier cites

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[45] Parenthetically, a new applicant for franchise application has to submit the following documentary requirements to the Committee on Legislative Franchises in Congress:

a. Copy of the House Bill for the grant of franchise.
b. Certificate of Registration from the Securities and Exchange Commission or Department of Trade and Industry.
c. Articles of Incorporation and By-Laws of the applicant corporation.
d. Articles of Incorporation and By-Laws of a holding company which owns the applicant, if any.
e. Articles of Incorporation and By-Laws of the corporate stockholder of the applicant, if any.
f. Latest General Information Sheet of the applicant and the corporate stockholder/holding company of the applicant, if any.
g. Resume of major stockholders/officers of the applicant, including their income tax returns for the last three (3) years.
h. Market feasibility study, five-year development plan, and plans and designs for the project.

There is no showing, much less any specific allegation, that MORE failed in the fulfillment of these requirements.

[46] Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 1.

[47] *Fuertes v. The Senate of the Philippines*, G.R. No. 208162, January 7, 2020, pp. 29-30.

American jurisprudence in laying down the three factors in determining whether the statute was punitive: (a) whether it fell within the historical meaning of legislative punishment; (b) whether, viewed in terms of the type and severity of burdens imposed, it could reasonably be said to further non-punitive legislative purposes; and (c) whether it evinced an intent to punish.[48] None of these factors are evident here.

R.A. 11212 cannot be classified as a bill of attainder simply because Sections 10 and 17 do not constitute "punishments" in the sense of the bill of attainder clause as it has been interpreted. To suggest that R.A. 11212 was enacted for the purpose of punishing PECO is, to say the least, an overstretch and a diminution of the legitimate purpose and intent of Congress behind the enactment of the law. R.A. 11212 involves a grant of a franchise to MORE and nothing else. It bears stressing that the grant of a franchise is not a right but a mere privilege, and to construe the non-renewal of PECO's franchise as a punishment is wholly baseless and completely unwarranted.

Moreover, a review of the deliberations, as cited by Justice Lazaro-Javier, shows that Congress was not motivated by an intent to punish PECO. The explanatory note of House Bill No. (HB) 8132, the precursor bill to the legislative franchise of MORE, stated that the quality of service of PECO had been wanting over the years. Among the complaints against it were: overbilling or overcharging, poor customer relations, distributor-related power outages, inadequately maintained lines, inadequate investment in distribution facilities, and inordinate delay in the restoration of power services. The explanatory note stated further that PECO's historical abuse and inefficiency pose as obstructions to the economic growth of Iloilo City and to its people's welfare, health, and well-being. These findings were confirmed by a representative from the Energy Regulatory Commission during the legislative hearing for HB 8132, in addition to the findings on the dismal financial condition of

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[48] Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, pp. 6-10.

PECO.[49] It has been repeatedly stated in these deliberations that the legislature's primary concern has been to secure the continuous and efficient supply of electricity in Iloilo City.

Consequently, the identification of PECO's shortcomings, which eventually led to the non-renewal of its franchise, was not meant to inflict any punishment against PECO so as to consider R.A. 11212 as a bill of attainder. Contrary to Justice Lazaro-Javier's claim, PECO was not being "singled out" for being "expressly identified as the wrongdoer."[50] Rather, it was simply part and parcel of the whole legislative process in the grant or renewal of franchises. Necessarily, as PECO was the previous franchise holder for close to a century and the issue concerned the renewal or grant of said franchise, there was a need to examine the performance of PECO. This was not done to punish PECO but to determine whether its franchise should be renewed. It was but natural and reasonable to expect that an evaluation of PECO's performance as the existing franchise holder would come into play.

Thus, given PECO's track record of inefficiency and shortcomings in providing public service to the residents of Iloilo City, the legislature found it wise to discontinue its franchise and to grant the authority instead to MORE. The expiration then of PECO's franchise, coupled with its distinct position as the only existing electric power distribution utility in Iloilo City, demonstrates that legitimate reasons impelled Congress to bestow on MORE the authority to expropriate distribution facilities existing in the franchise area and to provide for a smooth transition of PECO's operations.

In the same manner, the fact that MORE is a new player in the industry and that there is no guarantee that it will be able to serve the public better than the former owner is not enough

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[49] Congressional Records, Committee on Legislative Franchises, September 18, 2018.

[50] Dissenting Opinion of Associate Justice Amy C. Lazaro-Javier, p. 1.

reason to invalidate Section 10.[51] The Constitution does not require, for a valid exercise of the power of eminent domain, that the public is served in an "ideal" way. It suffices that the power is exercised for public use which, to reiterate, covers "whatever is beneficially employed for the community."

In fine, I remain convinced that Sections 10 and 17, viewed as integral parts of the grant of franchise in R.A. 11212, are constitutional. The rationale of these provisions cannot be overturned by potential unconstitutional effects resulting from a distrustful reading. It must be underscored that the grant of a franchise is constitutionally committed to the Legislative department. This has to be considered with the presumption of constitutionality "rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law."[52] The Court can go no further than to inquire whether Congress had the power to enact a law. It cannot delve into the wisdom of policies Congress adopts or into the adequacy under existing conditions of measures it enacts. The equal protection clause is not a license for the courts "to judge the wisdom, fairness, or logic of legislative choices."[53]

Consonant with this principle is another deep-rooted doctrine that on the side of every law lays the presumption of constitutionality.[54] This strong predilection for constitutionality takes its bearings on the idea that it is forbidden for one branch

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[51] Dissenting Opinion of Associate Justice Marvic F. Leonen, p. 11.

[52] *Cawaling, Jr. v. Commission on Elections*, G.R. Nos. 146319 & 146342, October 26, 2001, 368 SCRA 453, 456-457.

[53] *J.* Panganiban, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299, 445.

[54] *Alvarez v. Guingona, Jr.*, G.R. No. 118303, January 31, 1996, 252 SCRA 695, 706.

of the government to encroach upon the duties and powers of another. If there is any reasonable basis upon which the legislation may firmly rest, the courts must assume that the legislature is ever conscious of the borders and edges of its plenary powers, and has passed the law with full knowledge of the facts and for the purpose of promoting what is right and advancing the welfare of the majority.[55]

The presumption of constitutionality may, of course, be challenged. Challenges, however, shall only be sustained upon a clear and unequivocal showing of the bases for invalidating a law and not merely a doubtful, speculative, or argumentative one.[56] In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.[57] In this regard, I find no invalidity or unreasonableness that appears on the face of the assailed provisions, or is established by proper evidence which could rebut the presumption.

Finally, the wisdom of the grant of franchise to MORE should not be determinative of the constitutionality of Sections 10 and 17.[58] The Court cannot look into allegations that R.A. 11212,

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[55] *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 430-431.

[56] See *Barangay Association for National Advancement and Transparency (BANAT) Party-List v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 487.

[57] *Cawaling, Jr. v. Commission on Elections*, supra note 52, at 457.

[58] See *Lim v. Pacquing*, G.R. Nos. 115044 & 117263, January 27, 1995, 240 SCRA 649. The Court held in this case:

> ADC questions the motive for the issuance of PD No. 771. Clearly, however, this Court cannot look into allegations that PD No. 771 was enacted to benefit a select group which was later given authority to operate the jai-alai under PD No. 810. The examination of legislative motivation is generally prohibited. (*Palmer v. Thompson*, 403 U.S. 217, 29 L. Ed. 2d 438 [1971], per Black, J.) *There is, in the first place, absolute lack of evidence to support ADC's allegation of improper motivation in the issuance of PD No. 771. In the second place, as already averred, this Court cannot go behind the expressed and proclaimed purposes of PD No. 771, which are reasonable and even laudable.*

specifically its Sections 10 and 17, was enacted solely to benefit MORE to the prejudice of PECO. The delegated power of eminent domain under Section 10 is authorized by Section 23[59] of the EPIRA.[60] It is also not limited for the sole purpose of expropriating PECO's properties, and like any other franchise holder delegated with the power of eminent domain, its exercise is subject to constitutional and statutory requirements. On the other hand, Section 17 on the transition of operations between MORE and PECO can reasonably be read as impelled by public interest in preventing interruptions in the distribution of electric power in Iloilo City, and as a measure of social justice in favor of the displaced PECO employees. Both of these reasons are within the Legislative department's power to provide. Beyond these expressed purposes are speculations that the Court should not consider.

WHEREFORE, I concur with the majority decision to **GRANT** the petitions and to declare Sections 10 and 17 of Republic Act No. 11212 as **NOT UNCONSTITUTIONAL**.

It should also be remembered that PD No. 771 provides that the *national government* can subsequently grant franchises "upon proper application and verification of the qualifications of the applicant." ADC has not alleged that it filed an application for a franchise with the national government subsequent to the enactment of PD No. 771; thus, the allegations abovementioned (of preference to a select group) are based on conjectures, speculations and imagined biases which do not warrant the consideration of this Court. (Id. at 677-678.)

[59] SEC. 23. *Functions of Distribution Utilities.* — x x x

x x x x

Distribution utilities may exercise the power of eminent domain subject to the requirements of the Constitution and existing laws.

[60] R.A. 9136, AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES or the "Electric Power Industry Reform Act of 2001," June 8, 2001.

DISSENTING OPINION

LEONEN, ***J.*:**

I dissent.

Section 10 of Republic Act No. 11212,[1] which grants More Electric and Power Corporation (More Electric) the right of eminent domain, constitutes class legislation proscribed by the equal protection clause. Section 10 confers unwarranted benefits to a specific corporation, i.e., More Electric — benefits that are not conferred to other public utilities similarly situated to it. Equally, Section 10 burdens and discriminates against a specific corporation, Panay Electric Company, Inc. (Panay Electric Company), by deeming the latter's assets subject to expropriation and acquirable by the payment of the assessed value of the properties, a mere percentage of what could be the negotiated price payable to Panay Electric Company, had it and More Electric dealt in the open market.

Furthermore, the taking allowed under Section 10 is not for public use. Section 10 permits the taking of private property already devoted to the same public purpose by an entity with no experience whatsoever in electricity distribution, and who will be operating as a monopoly; therefore, there will be no benefit to the public. The taking serves nothing but private interests. Section 17 of Republic Act No. 11212, in turn, enables the application of Section 10 by legislatively mandating the corporate takeover of Panay Electric Company by More Electric. This is not a case of a true expropriation, but rather a confiscation of property and a shameless violation of Article III, Sections 1 and 9 of the Constitution. Sections 10 and 17 of Republic Act No. 11212 must be struck down.

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[1] An Act Granting MORE Electric and Power Corporation a Franchise to Establish, Operate, and Maintain, for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to the End Users in the City of Iloilo, Province of Iloilo, and Ensuring the Continuous and Uninterrupted Supply of Electricity (2019).

I

The Constitution in Article III, Section 1 provides that "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." The equal protection clause mandates that "all persons under similar circumstances . . . must be treated in the same manner . . . both in the privileges conferred and the liabilities imposed."[2] Consequently, class legislation, or a law that discriminates against some, but favors others, is prohibited.[3]

The prohibition on class legislation does not mean that valid classifications cannot be created by law. However, to be valid, the classification must — at the very least — conform to the traditional standard of reasonableness. A reasonable classification is that which is: (1) "based on substantial distinctions"; (2) "germane to the purposes of the law"; (3) "[applies] equally to all the members of the class"[;] and (4) not "limited to existing conditions only[.]"[4]

The rational basis test — that a statute must reasonably relate to the purpose of the law — is said to be the least intensive of the three (3) levels of tests developed to decide equal protection cases. The rational basis test is applied if the case does not involve a classification historically characterized as suspect, such as race or nationality, or a fundamental right protected by the Constitution.[5]

If an equal protection case involves quasi-suspect classifications, such as sex or illegitimacy, the intermediate scrutiny test or the middle-tier judicial scrutiny is applied. To be a valid

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[2] *Lopez, Jr. v. Commission on Elections*, 221 Phil. 321, 331 (1985) [Per J. Fernando, En Banc].

[3] *People v. Chan*, 65 Phil. 611, 613 (1938) [Per J. Concepcion, First Division].

[4] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808 (1989) [Per J. Cruz, En Banc].

[5] *British American Tobacco v. Camacho*, 584 Phil. 489, 524-525 (2008) [Per J. Ynares-Santiago, En Banc].

classification under the immediate scrutiny test, the classification "must serve important governmental objectives and must be substantially related to [the] achievement of those objectives."[6]

The most intensive of these levels of scrutiny is the strict scrutiny test, applied when the case involves a suspect classification, such as race or nationality, or a fundamental right protected by the Constitution.[7] It requires that the classification "serve a compelling state interest and is necessary to achieve such interest."[8]

Determining the right involved in this case determines what level of scrutiny this Court should apply. Here, the challenged provision is Section 10 of Republic Act No. 11212, which delegates to More Electric Power Corporation the right of eminent domain. Eminent domain, or the State's inherent power to forcibly acquire private property for public use upon payment of just compensation,[9] necessarily involves the right to property. In turn, the right to property is a fundamental right protected by the Constitution, specifically under Article III, Section 1, and Article III, Section 9, among others. Therefore, We must apply the strict scrutiny, or the compelling state interest test, in resolving the present case.

Section 10 of Republic Act No. 11212, particularly states:

SECTION 10. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably

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[6] *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 586 (2004) [Per J. Puno, En Banc].

[7] Id.

[8] *See* J. Leonardo-de Castro's Concurring Opinion in *Garcia v. Judge Drilon, et al.*, 712 Phil. 44, 124 (2013), *citing Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 583-584 (2004).

[9] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989) [Per J. Cruz, En Banc].

necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its branches, or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the full amount of the assessed value of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value. (Underscoring provided)

As worded in the provision, More Electric may:

[A]cquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, for the operation of a distribution system for the conveyance of electric power to end users in its franchise area[.]

Furthermore, upon notice to the owner of the properties and upon deposit of the full amount of their assessed value, the provision entitles More Electric to immediately take over the properties sought to be expropriated. While nowhere named in Section 10, Panay Electric Company is implicitly referred to in the provision, it being the owner of the private property "previously, currently or actually used" in the distribution of electricity in Iloilo.

To my mind, Section 10 grants unwarranted benefits to More Electric — benefits that are not granted to other public utilities similarly situated to it. Section 10 is an example of class legislation proscribed by the equal protection clause.

When read in isolation, Section 10 appears to be consistent with the Constitution, law, and judicial prerogatives. Section 10 requires that the provisional amount equivalent to the assessed value of the property be paid upon entry to the property sought to be expropriated, consistent with Rule 67, Section 2[10] of the Rules of Court on expropriation. Section 10 even speaks of a "final determination of the amount of just compensation to be paid[,]" again, seemingly consistent with Article III, Section 9[11]

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[10] RULES OF COURT, Rule 67, Sec. 10 provides:

SECTION 2. *Entry of Plaintiff upon Depositing Value with Authorized Government Depositary*. — Upon the filing of the complaint or at any time thereafter and after due notice to the defendant, the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. Such deposit shall be in money, unless in lieu thereof the court authorizes the deposit of a certificate of deposit of a government bank of the Republic of the Philippines payable on demand to the authorized government depositary.

If personal property is involved, its value shall be provisionally ascertained and the amount to be deposited shall be promptly fixed by the court.

After such deposit is made the court shall order the sheriff or other proper officer to forthwith place the plaintiff in possession of the property involved and promptly submit a report thereof to the court with service of copies to the parties.

[11] CONST., Art. III, Sec. 9 provides:

of the Constitution, and that the determination of just compensation is an exclusively judicial function as held in *Export Processing Zone Authority v. Dulay*[12] and *National Power Corporation v. Spouses Zabala*,[13] among others.

However, when read in conjunction with the legislative franchises of other public utilities, Section 10 clearly gives More Electric undue benefits.

Section 10 allows More Electric to immediately take possession, control, and even demolish, the properties expropriated upon payment of the assessed value of the properties. This amount is significantly lower than that payable to Panay Electric Company, had the government — during the 95-year effectivity of Panay Electric Company's franchise — chosen to expropriate the latter's properties. To recall, More Electric's franchise requires it to deposit an amount equivalent

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SECTION 9. Private property shall not be taken for public use without just compensation.

[12] In *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 326 (1987) [Per J. Gutierrez, Jr., En Banc], this Court said:

The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.

[13] In *National Power Corporation v. Spouses Zabala*, 702 Phil. 491, 500 (2013) [Per J. Del Castillo, Second Division], this Court said:

The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government." Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof. (Citations omitted)

to the full amount of the assessed value of the properties sought to be expropriated.

In contrast, Panay Electric Company's legislative franchise, Republic Act No. 5360, provided that the government must pay Panay Electric Company the fair market value of its properties, had the government chosen to operate the electricity distribution system for itself. In other words, Panay Electric Company's franchise required that the full amount of just compensation required under the law be paid before the Government can take Panay Electric Company's properties.[14] Section 4 of Republic Act No. 5360 provided:

> SECTION 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.

By definition, the assessed value of a piece of property is that determined by a local government unit for purposes of real property taxation. It is a mere percentage[15] and therefore,

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[14] *See Association of Small Landowners v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 818 (1989) [Per J. Cruz, En Banc], where this Court equated just compensation to the fair market value of the property taken, thus:

> In *J.M. Tuason & Co. v. Land Tenure Administration*, this Court held:
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> It is well-settled that just compensation means the equivalent for the value of the property at the time of its taking. Anything beyond that is more, and anything short of that is less, than just compensation. It means a fair and full equivalent for the loss sustained, which is the measure of the indemnity, not whatever gain would accrue to the expropriating entity. The market value of the land taken is the just compensation to which the owner of condemned property is entitled, the market value being that sum of money which a person desirous, but not compelled to buy, and an owner, willing, but not compelled to sell, would agree on as a price to be given and received for such property. (Citation omitted)

[15] LOC. GOV. CODE, Sec. 199 (h) provides:

> SECTION 199. Definition of Terms. — When used in this Title, the term:
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> . . . .

necessarily lower, than the fair market value or "the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy[.]"[16] This is a marked difference in the amount payable upon immediate taking, and is one clear economic benefit to More Electric; a grant that, in my view, serves no compelling state interest. That the government has delegated the power of eminent domain to other electric distribution utilities *without the same benefit* emphasizes that the benefits granted to More Electric Power are unwarranted.

Mactan Electric Company, Inc. [Republic Act No. 10890 (2016)]	**Tarlac Electric, Inc. [Republic Act No. 10795 (2016)]**	**Angeles Electric Corporation [Republic Act No. 9381 (2007)]**
SECTION 9. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves and other	SECTION 9. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires, and other facilities over and across public property, including streets, highways, forest reserves and other similar property of the Government of the Philippines, its branches	SEC. 10. *Right of Eminent Domain*. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the right of eminent domain insofar as it may be reasonably necessary for the efficient maintenance and operation of services. The grantee is authorized to install and maintain its poles, wires and other facilities over and across public property, including streets, highways, forest reserves and

(h) "Assessed Value" is the fair market value of the real property multiplied by the assessment level. It is synonymous to taxable value[.]

[16] LOC. GOV. CODE, Sec. 199 (l).

similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That proper expropriation proceedings shall have been instituted and just compensation paid.	or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That proper expropriation proceedin gs shall have been instituted and just compensation paid.	other similar property of the Government of the Philippines, its branches or any of its instrumentalities. The grantee may acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted: *Provided*, That proper condemnation proceedings shall have been instituted and just compensation paid.

Furthermore, the legislative franchises of other electricity distribution utilities similarly situated to More Electric do not contain a provision allowing it to hire the employees of a competitor. Indeed, More Electric Company will operate the electricity distribution system by acquiring the assets, even the workforce of Panay Electric Company, as shown by Section 17 of Republic Act No. 11212.

SECTION 17. *Transition of Operations*. — In the public interest and to ensure uninterrupted supply of electricity, the current operator, Panay Electric Company, Inc. (PECO), shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall grant PECO the necessary provisional certificate of public convenience and necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its

expiration on January 18, 2019, and it shall not prevent the grantee from exercising the right of eminent domain over the distribution assets existing at the franchise area as provided in Section 10 of this Act. During such interim period, the ERC shall require PECO to settle the full amount which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, accord preference to hiring former employees of PECO upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

However, it must be stressed that *More Electric never ventured in electricity distribution*. As alleged by Panay Electric Company, an allegation More Electric did not controvert, More Electric was originally named "MORE Minerals Corporation" and was engaged in mining activities.[17] More Electric's application to operate the power distribution utility in Iloilo was embodied in House Bill 6023, entitled "Granting MORE Minerals Corporation a Franchise to Establish, Operate and Maintain for Commercial Purposes and in the Public Interest, a Distribution System for the Conveyance of Electric Power to End Users in the City of Iloilo, Province of Iloilo."[18] It was only during the pendency of its application to operate the electricity distribution

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[17] *Rollo* (G.R. No. 248061), p. 607. Comment.

[18] Id. at 578.

system in Iloilo that More Electric changed its corporate name and amended its Articles of Incorporation to reflect electric power distribution as its primary corporate purpose.[19] Further, during the Senate hearings on its version of House Bill 6023, the following exchange transpired between Senator Francis Escudero and More Electric Representatives, Mr. Roel Castro and Atty. Silverio Benny J. Tan:

SEN. ESCUDERO:

And that's what you intend to do if you are granted the franchise. You will file a case, deposit 15 percent of the assessed value of the poles, the wires and everything and take over.

MR. CASTRO:

Yes, Your Honor, because that is provided by law.

SEN. ESCUDERO:

Wala pang law. Hindi pa namin kayo binibigyan ng eminent domain.

MR. CASTRO:

If ever, if ever.

SEN. ESCUDERO:

If you are given eminent domain.

MR. CASTRO:

Yes, sir.

SEN. ESCUDERO:

If we do not give you the power of eminent domain, how will you go about it?

MR. TAN:

Your Honor, sir, it cannot be done if there is no eminent domain unless [Panay Electric Company] agrees to sell to us. I'd like to say, sir, that eminent domain is an integral part of all franchises for

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[19] Id. at 579.

distribution utilities. The only difference here is the specification that it will cover poles and the distribution assets.[20]

All these, to my mind, show that unwarranted privileges were given to a corporation that has never ventured in the business of electricity distribution.

Conversely, Section 10 of Republic Act No. 11212 violates the equal protection clause because it discriminates against a particular entity, *i.e.*, Panay Electric Company. Nowhere does Section 10 mention Panay Electric Company, at least directly. However, the provision cannot be read in any other way except that More Electric will conduct its business *at the expense of Panay Electric Company*.

To recall, Section 10 enables More Electric to "acquire such private property as is actually necessary for the realization of the purposes for which this franchise is granted, including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment *previously, currently or actually used*, or intended to be used, or have been abandoned, unused or underutilized."

Further, the owner of these distribution facilities "previously, currently or actually used" is no other than Panay Electric Company, it being the previous franchise holder that had exclusive authority to operate an electricity distribution facility in Iloilo City. While Section 10 seemingly allows More Electric to expropriate property other than those owned by Panay Electric Company, still, More Electric could operate an electricity distribution business and prevent further brownouts in Iloilo *only* by forcefully acquiring Panay Electric Company's assets.

In its Petition for Review on Certiorari, More Electric repeatedly averred that Panay Electric Company's franchise had already expired, and More Electric, being the current franchise holder, has the sole authority to operate the power distribution system in Iloilo.[21] It is true that a power distribution

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[20] Id. at 603-604.

[21] *Rollo* (G.R. No. 248061), p. 15.

system is a public utility that may be operated only with a legislative franchise. Furthermore, there cannot be any vested right in the continued grant of a franchise, a franchise being a mere privilege that is always subject to amendment or even repeal by the State.[22]

Nevertheless, a franchise only relates to the privilege of *operating* a public utility.[23] The ownership over the assets used to operate the public utility, on the other hand, is an entirely different matter. The assets of the private corporation operating a public utility are private property, and ownership over these assets remains with the former franchise holder, notwithstanding the expiration of the franchise.

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[22] CONST., Art. XII, Sec. 11 provides:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

See The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[23] CONST., Art. XII, Sec. 11 provides:

SECTION 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the

The right of ownership is composed of a bundle of rights.[24] These rights include, firstly, the right to enjoy the thing owned, or *jus utendi*, which further includes the right to receive from the thing what it produces.

Second, the owner of a thing also has the right to consume it by its use, otherwise called *jus abutendi*.

Third, the right to dispose, or *jus disponendi*, is also included in this bundle of rights.

Finally, an owner has the right to exclude others from the possession of the thing or *jus vindicandi*.[25]

With the expiration of the franchise, what the former franchise holder surrenders is the right to use the property, and the right to enjoy income from it. What remains are: (1) the right to dispose of the property; as well as (2) the right to exclude others from its possession. Except, if as one of the terms of the grant of the franchise, the former franchise holder likewise surrendered these rights.

That a franchise holder owns the assets used to operate the public utility is precisely why there are eminent domain provisions in legislative franchises. Specifically for Panay Electric Company, among the terms of its franchise is that it surrender the equipment used for electricity distribution at fair market value, should the Government choose to operate and maintain for itself the electricity distribution system.[26] Panay

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governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[24] *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 291-292 (2014) [Per J. Leonen, Third Division].

[25] Id. *See* footnote 50 for the discussion on the bundle of rights.

[26] Republic Act No. 5360 (1968), Sec. 4 provided:

SECTION 4. It is expressly provided that in the event the Government should desire to operate and maintain for itself the system and enterprise herein authorized, the grantee shall surrender its franchise and will turn over to the government all equipment therein at fair market value.

Electric Company's franchise expired without the Government exercising the privilege in Section 4 of Republic Act No. 5360. Therefore, Panay Electric Company remains the owner of the electricity distribution system it had established in Iloilo, with the concomitant right to dispose of or exclude others from possessing the electricity distribution system.

Consequently, just because More Electric is the current franchise holder, it does not automatically mean that it can operate the power distribution system unquestionably owned by another private entity. More Electric assumed wrongly that only it can operate the distribution system in Iloilo owned by Panay Electric Company.

All these show that there is no compelling state interest in granting benefits to a company that has neither the experience nor the expertise in electricity distribution. I cannot see how the interests of the electricity consumers in Iloilo City will be served by putting an inexperienced entity as the electricity distributor in the City, not to mention that it will be operating as a monopoly and, therefore, has little incentive to operate efficiently.

All told, Sections 10 and 17 of Republic Act No. 11212 violate the equal protection clause.

II

Apart from being a form of class legislation, Section 10 of Republic Act No. 11212 violates Article III, Section 9 of the Constitution, which provides:

> SECTION 9. Private property shall not be taken for public use without just compensation.

As it is worded, Article III, Section 9 is a restraint on the State's inherent and ultimate power of eminent domain,[27]

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[27] *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845, 862 (2005) [Per J. Callejo, Sr., Second Division], *citing Heirs of Alberto Suguitan v. City of Mandaluyong*, 384 Phil. 676 (2000) [Per J. Gonzaga-Reyes, Third Division].

consistent with the purpose of the Constitution: to promote the stability of ownership of private property.[28] Article III, Section 9 requires that the taking of private property be for public use; and that the owner of the private property sought to be expropriated be paid just compensation.

We deal here with the requirement of "public use." In its traditional and literal sense, "public use" means "public employment or the actual use by the public[.]"[29] There is no question that the taking of private property for the building of roads, schools, or hospitals for the use of the public falls under this notion of actual use. "Public use," however, evolved to mean "public purpose[,]"[30] "public advantage or benefit[,]"[31] and even "public welfare."[32] It is under this expanded meaning of public use that expropriations for agrarian reform[33] and urban development[34] were allowed by this Court.

The State may delegate the exercise of the power of eminent domain to political units[35] or agencies[36] as well as public

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[28] *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 114 [Per J. Leonen, En Banc].

[29] *Republic v. Court of Appeals*, 433 Phil. 106, 119 (2002) [Per J. Vitug, First Division].

[30] Id.

[31] Id.

[32] *Manosca v. Court of Appeals*, 322 Phil. 442, 451 (1996) [Per J. Vitug, First Division].

[33] *See Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

[34] *See Sumulong v. Hon. Guerrero*, 238 Phil. 462 (1987) [Per J. Cortes, En Banc].

[35] LOC. GOV. CODE, Book 1, Title 1, Chapter 1, Sec. 19 provides:

SECTION 19. *Eminent Domain.* — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: *Provided, however*,

utilities.[37] However, considering that the power is merely delegated, "[t]he authority to condemn is to be strictly construed in favor of the owner and against the condemnor."[38] As explained in *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*:[39]

> *Strict Construction and Burden of Proof*
>
> The exercise of the right of eminent domain, whether directly by the State or by its authorized agents, is necessarily in derogation of private rights. It is one of the harshest proceedings known to the law. Consequently, when the sovereign delegates the power to a political unit or agency, a strict construction will be given against the agency asserting the power. The authority to condemn is to be strictly construed in favor of the owner and against the condemnor. When the power is granted, the extent to which it may be exercised is limited to the express terms or clear implication of the statute in which the grant is contained.
>
> Corollarily . . . the condemnor, has the burden of proving all the essentials necessary to show the right of condemnation. It has the burden of proof to establish that it has complied with all the

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That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: *Provided, further*, That the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated: *Provided, finally*, That, the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value at the time of the taking of the property.

[36] *See Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845 (2005) [Per J. Callejo, Sr., Second Division].

[37] *See for instance Manila Electric Company v. Pineda*, 283 Phil. 90 (1992) [Per J. Medialdea, First Division].

[38] *See Jesus is Lord Christian School Foundation, Inc. v. Municipality (now city) of Pasig, Metro Manila*, 503 Phil. 845, 874 (2005) [Per J. Callejo, Sr., Second Division].

[39] Id.

requirements provided by law for the valid exercise of the power of eminent domain.[40] (Citations omitted)

Considering that the power of eminent domain was merely delegated to More Electric, its authority to expropriate must be strictly construed against it.

It is settled that the business of electricity distribution is for a public purpose and is imbued with public interest.[41] It is for this reason that the operation of an electricity distribution system requires a national franchise from Congress.

However, if private property is taken for the same public use to which the property was originally devoted, how the expropriator will serve the public purpose better than the former owner should be examined. For if the public is not better off with the taking of the property, then there is no true expropriation. There is only a transfer of property from one entity to another. All the exercise of eminent domain results in is a change in the "application of the profits,"[42] directly serving proprietary interests. Any public benefit is only pretended or, at best, incidental.

Here, the taking is for the exact same use to which the property sought to be expropriated was originally devoted. Keeping in mind that the expropriator will be monopolistically operating the electricity distribution system, the taking is not for the benefit of the public, but for the private and sole benefit of the expropriator.

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[40] Id. at 862-863.

[41] Republic Act No. 9136 (2001), Sec. 29 partly provides:

SECTION 29. Supply Sector. — The supply sector is a business affected with public interest. Except for distribution utilities and electric cooperatives with respect to their existing franchise areas, all suppliers of electricity to the contestable market shall require a license from the ERC.

[42] *See* Concurring Opinion of J. McLean in *The West River Bridge Company v. Dix, et al.*, 47 U.S. 507, 537 (1848) [Per J. Daniel, Supreme Court of the United States].

It is undisputed that More Electric will be distributing electricity in Iloilo City, the same public use for which Panay Electric Company (the owner of the properties More Electric sought to expropriate) operated the electricity distribution system. In addition, More Electric has no experience in electricity distribution and has no assets of its own to distribute electricity in Iloilo City. With mining being its business,[43] it was only during the pendency of its application for a franchise to operate an electricity distribution system in Iloilo City did it change its name from "MORE Minerals Corporation" to the present "More Electric Power Corporation."[44]

Moreover, its primary corporate purpose was only recently changed to electricity distribution.[45] On its application for a franchise to operate the electricity distribution system in Iloilo City — and as unabashedly admitted by its representatives during the Congressional hearings — More Electric will primarily rely, as it has begun to rely, on the eminent domain provisions of its franchise to operate Panay Electric Company's distribution system.[46]

Furthermore, like Panay Electric Company, More Electric would still be operating as a monopoly. Thus, the disadvantages of a monopoly, including having a captive market for electricity consumption and the disincentive to operate efficiently, will persist in Iloilo City. These show that the transfer of ownership over the electricity distribution assets from Panay Electric Company to More Electric Power is not for the benefit of the public. The transfer of ownership will only change who gets the profits from operating the electricity distribution system in Iloilo City.

With no effect on the welfare of the consumers of electricity in Iloilo City, coupled with the lack of experience and

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[43] *Rollo* (G.R. No. 248061), p. 578. Comment.

[44] Id.

[45] Id. at 579.

[46] Id. at 603-604.

monopolistic operation of More Electric, the direct *and only* beneficiary of the transfer is no other than More Electric, the new entity who will be receiving the profits from the operation of the electricity distribution set up by Panay Electric Company.

Worse, More Electric unjustly enriches itself by illegally avoiding costs for constructing an electricity distribution infrastructure, as well as the costs of negotiations to buy the property in the open market. More Electric will only be paying the assessed value of these properties. Irrespective of the quality of service of Panay Electric Company through the years, it still owns the distribution facilities and made significant investments for its electricity distribution business. At the very least, Panay Electricity is entitled to the present value of the properties in which it had invested.

The present case is nothing like the exercise of eminent domain for the distribution of land to landless farmers in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*[47] or for urban renewal and distribution of low-cost housing to the poor in *Sumulong v. Hon. Guerrero*.[48] The exercise of eminent domain in these cases were done to promote social justice and implement the following provisions of the Constitution:

ARTICLE XII

National Economy and Patrimony

SECTION 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.

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[47] 256 Phil. 777 (1989) [Per J. Cruz, En Banc].

[48] 238 Phil. 462 (1987) [Per J. Cortes, En Banc].

ARTICLE XIII
Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

. . . .

Agrarian and Natural Resources Reform

SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

. . . .

Urban Land Reform and Housing

SECTION 9. The State shall, by law, and for the common good, undertake, in cooperation with the public sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centers and resettlements areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

No social justice is achieved in More Electric expropriating the properties of Panay Electric Company. On the contrary, Section 10 of Republic Act No. 11212 enables the unjust enrichment of one private entity at the expense of another. Any

benefit the public will obtain is only incidental, because the actual purpose of the transfer is to grant a private benefit.

The cases cited by More Electric to justify its exercise of eminent domain are inapplicable here. In *City of Manila v. Chinese Community of Manila*,[49] where this Court upheld the expropriation of parts of the Manila Chinese Cemetery, the expropriation was done to extend Rizal Avenue. This is a public purpose different from maintaining a public cemetery, unlike here where expropriation was resorted to for the exact same public use to which the properties were originally devoted.

In *Municipality of Paete v. National Waterworks and Sewerage Authority*,[50] the right of eminent domain was exercised by the National Waterworks and Sewerage Authority, an instrumentality of the national government, over the waterworks system owned by Municipality of Paete, a local government unit. In *Municipality of Paete*, the ownership over the waterworks system remained with the public, unlike in the present case where the transfer is from one private entity to another.

In *Republic v. Mupas*,[51] the transfer of the Ninoy Aquino International Airport-Terminal III was to the National Government, not to a private entity. Furthermore, the Ninoy Aquino International Airport-Terminal III was built under a build-operate-transfer scheme, which commanded a payment more than the assessed value of the property expropriated.

For its part, the majority cites the American cases of *Long Island Water Supply Co. v. Brooklyn*,[52] *Eastern Railroad Company v. Boston and Maine Road*,[53] and the highly criticized

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[49] 40 Phil. 349 (1919) [Per J. Johnson, First Division].

[50] 144 Phil. 180 (1970) [Per J. Dizon, En Banc].

[51] 769 Phil. 21 (2015) [Per J. Brion, En Banc].

[52] 166 U.S. 685 (1897) [Per J. Brewer, United States Supreme Court].

[53] 111 Mass. 125 (1872) [Per J. Colt, Massachusetts Supreme Judicial Court].

cases of *Berman v. Parker*[54] and *Kelo v. City of New London*[55] to rule that a taking for the same public purpose is valid.[56] The majority adds that expropriation of private property is valid, even if a private entity benefits, so long as it is for economic development.[57]

To say the least, these cases are foreign jurisprudence and are not binding in this jurisdiction. The facts of these cases are not even on all fours with the facts of the present case. These American cases, therefore, are inapplicable here.

Long Island Water Supply Co. v. Brooklyn,[58] decided in 1897, involved a water supply company organized by residents of New Lots in Long Island, New York. The State of New York then passed a statute annexing the town of New Lots to the City of Brooklyn. The same statute allowed the City of Brooklyn to expropriate the properties of the water company, specifically its water reservoir. Long Island Water Supply Co. questioned the expropriation, arguing that it impaired its contract with New Lots, which allowed the water company to collect a certain amount per water hydrant for 25 years. The United States Supreme Court then upheld the expropriation, ruling that the supply of water to a city is for public use.

Hence, *Long Island Water Supply Co.*[59] is inapplicable because ownership over the water reservoir went to the public, unlike here where the transfer of ownership would be from one private entity to another.

Eastern Railroad Company v. Boston & Maine Railroad[60] was decided by the Massachusetts Supreme Judicial Court in

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[54] 348 U.S. 26 (1954) [Per J. Douglas, United States Supreme Court].

[55] 545 U.S. 469 (2005) [Per J. Stevens, United States Supreme Court].

[56] *Ponencia*, p. 15.

[57] Id.

[58] 166 U.S. 685 (1897) [Per J. Brewer, United States Supreme Court].

[59] Id.

[60] 111 Mass. 125 (1872) [Per J. Colt, Massachusetts Supreme Judicial Court].

1872. It involved the expropriation of a piece of land by Eastern Railroad Company for the statutory purpose of "increasing the terminal facilities and affording convenient access to the passenger depot[.]"[61] Boston and Maine Railroad, also a railroad company and the owner of the land sought to be expropriated, had been using it for the delivery of bricks under a contract. The Massachusetts Supreme Judicial Court upheld the expropriation of the land, ruling that the power of eminent domain is inherent and immense that it may be exercised to expropriate property devoted to a public use similar to which the property was originally devoted.

Further, in *Eastern Railroad Company*, the initial public use was for the delivery of bricks. Eastern Railroad Company expropriated the property for a similar but nonetheless different public use: to increase the facilities in its passenger depot, i.e., for the transport of passengers.

Like *Long Island Water Supply Co.*, the case of *Eastern Railroad Company* cannot be applied here. As conceded by the majority in the *ponencia*, what *Eastern Railroad Company* allowed was the expropriation of private property for a "similar but not identical public use."[62] Here, Section 10 of Republic Act No. 11212 allows for the taking of private property for the exact same public use to which the property was originally devoted.

The 1954 case of *Berman v. Parker*[63] involved the redevelopment of a blighted portion of Washington, D.C. that required the expropriation of the properties located in the area. Among the properties sought to be condemned was a department store. Its owner then questioned the expropriation because: (1) the department store was not itself blighted; and (2) "to develop a better balanced, more attractive community" was not for public use.[64]

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[61] Id. at 125.

[62] *Ponencia*, p. 15.

[63] 348 U.S. 26 (1954) [Per J. Douglas, United States Supreme Court].

[64] Id. at 31.

Rejecting the argument, the United States Supreme Court upheld the expropriation, deferring to the legislature as the "main guardian of the public needs to be served by social legislation."[65] Ultimately, it held that the department store may be validly expropriated because "[i]t is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[66]

In 2005, the United States Supreme Court decided the now infamous *Kelo v. The City of New London*.[67] *Kelo* involved the expropriation of houses in Fort Trumbull, New London City, Connecticut for the area's redevelopment into a state park and Pfizer research facility. The New London Development Corporation, a private and nonprofit entity, undertook to facilitate the redevelopment project, which the city legislature expected "to create in excess of 1,000 jobs"[68] and would allegedly "increase tax and other revenues, and . . . revitalize [the] economically distressed city including its downtown and waterfront areas."[69]

The owners of the houses, including Susette Kelo, who had been living in her home since 1997, and Wilhelmina Dery, who was born in her home in 1918 and had lived there all her life, questioned the purpose of the expropriation. They argued that the proposed use of the area does not satisfy the public use requirement under the Fifth Amendment.

In a 5-4 decision, the United States Supreme Court[70] upheld the expropriation, adopting the *Berman* ruling and deferring to

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[65] Id. at 32.

[66] Id. at 33.

[67] 545 U.S. 469 (2005) [Per J. Stevens, United States Supreme Court].

[68] Slip opinion of *Kelo v. The City of New London*, p. 1, available at < https://www.law.cornell.edu/supct/pdf/04-108P.ZO> (Last visited on August 17, 2020).

[69] Id.

[70] Justice Stevens delivered the opinion of the Court and was joined by Justices Kennedy, Souter, Ginsburg, and Breyer.

the City's legislative judgment of public use. It was in *Kelo* where the United States Supreme Court held that private property may be taken for purposes of "economic development," the promotion of which "is a traditional and long accepted function" of government.[71]

Strong dissents were registered in *Kelo*. In Justice Sandra Day O'Connor's dissenting opinion, she decried that:

> [u]nder the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public — in the process.[72]

Chief Justice William Rehnquist joined her in her dissent, along with Justices Antonin Scalia and Clarence Thomas.

Expounding further on why "economic development" is too vague to be considered as "public use" within the meaning of the Fifth Amendment, she said:

> In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public — such as increased tax revenue, more jobs, maybe even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude *any* takings, and thus do not exert

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[71] Slip opinion of *Kelo v. The City of New London*, p. 14, available at <https://www.law.cornell.edu/supct/pdf/04-108P.ZO> (Last visited on August 17, 2020).

[72] Slip opinion of J. O'Connor's Dissent in *Kelo v. The City of New London*, p. 1, Available at <https://www.law.cornell.edu/supct/pdf/04-108P.ZD> (Last visited on August 17, 2020).

any constraint on the eminent domain power.[73] (Emphasis in the original)

Justice O'Connor warned that under the *Kelo* ruling, only those with significant influence and power in the political process will be benefited by "economic development" takings:

> Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. "[T]hat alone is a *just* government," wrote James Madison, "which *impartially* secures to every man, whatever is his *own*."[74] (Emphasis in the original)

Justice Thomas agreed with Justice O'Connor, but went further to say that the United States Supreme Court had unduly expanded the meaning of "public use." Thus, he recommended that "public use" be narrowly reinterpreted to mean "use by the public," the way the Framers of the Constitution of the United States had intended it to be.

> "When we depart from the natural import of the term 'public use,' and substitute for the simple idea of a public possession and occupation, that of public utility, public interest, common benefit, general advantage or convenience . . . we are afloat without any certain principle to guide us." . . . Once one permits takings for public purposes in addition to public uses, no coherent principle limits what could constitute a valid public use. . . It is difficult to imagine how a court could find that a taking was purely private except by determining that the taking did not, in fact, rationally advance the public interest. . . The Court is therefore wrong to criticize the "actual use" test as "difficult to administer." . . . It is far easier to analyze whether the government owns or the public has a legal right to use the taken property than

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[73] Id. at 8-9.

[74] Id. at 12-13.

to ask whether the taking has a "purely private purpose" — unless the Court means to eliminate public use scrutiny of takings entirely.[75]

Further, Justice Thomas said that the courts are not duty-bound to defer to legislative determinations of public use:

> There is no justification, however, for affording almost insurmountable deference to legislative conclusions that a use serves a "public use." To begin with, a court owes no deference to a legislature's judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property. Even under the "public purpose" interpretation, moreover, it is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provisions of the Bill of Rights.[76]

The foregoing discussions of *Berman* and *Kelo* show that the cases do not apply here. The properties were expropriated in *Berman* and *Kelo* for a public use different from that to which they were initially devoted to. Besides, More Electric sought to expropriate Panay Electric Company's properties, not for economic development, but supposedly for the uninterrupted supply of electricity in Iloilo.

Further, diametrically opposed to the rulings in *Berman* and *Kelo*, this Court's 1919 ruling in *City of Manila v. Chinese Community of Manila*[77] remains true: whether a taking under the power of eminent domain is for public use is a judicial question. In *City of Manila v. Chinese Community of Manila*:[78]

> It is true that many decisions may be found asserting that what is a public use is a legislative question, and many other decisions declaring with equal emphasis that it is a judicial question. But, as long as

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[75] Slip opinion of J. Thomas' Dissent in *Kelo v. The City of New London*, pp. 16-17, Available at <https://www.law.cornell.edu/supct/pdf/04-108P.ZD1> (Last visited on August 17, 2020).

[76] Id. at 13-14.

[77] 40 Phil. 349 (1919) [Per J. Johnson, First Division].

[78] Id.

there is a constitutional or statutory provision denying the right to take land for any use other than a public use, it occurs to us that the question that whether any *particular use* is a public one or not is ultimately, at least, a judicial question. The legislature may, it is true, in effect declare certain uses to be public, and, under the operation of the well-known rule that a statute will not be declared to be unconstitutional except in a case free, or comparatively free, from doubt, the courts will certainly sustain the action of the legislature, unless it appears that the particular use is clearly not of a public nature. The decisions must be understood with this limitation; for, certainly, no court of last resort will be willing to declare that any and every purpose which the legislature might happen to designate as a public use shall be conclusively held to be so, irrespective of the purpose in question and of its manifestly private character. Blackstone in his Commentaries on the English Law remarks that, so great is the regard of the law for private property that it will not authorize the least violation of it, even for the public good, unless there exists a very great necessity therefor.[79] (Emphasis in the original)

The present case is a classic example of abuse of eminent domain powers and a deprivation of property without due process of law. Under a semblance of legitimacy, a private entity is allowed to take private property for its own proprietary interests. A law was passed to mask a forced corporate takeover by a private entity. These practices should have no place in a fair and just society.

ACCORDINGLY, I vote to **DENY** the Petitions for Review on Certiorari. The July 1, 2019 Judgment of the Regional Trial Court, Branch 209, Mandaluyong City in Civil Case No. R-MND-19-00571 must be **AFFIRMED**. Sections 10 and 17 of Republic Act No. 11212 are **UNCONSTITUTIONAL.**

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[79] Id. at 364-365.

DISSENTING OPINION

LAZARO-JAVIER, *J.*:

Eminent Domain Wolves in Sheep's Clothing: Private Benefit Masquerading as Classic Public Use[1]

Today the Court abandons this long-held, basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded — i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public — in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property — and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment. Accordingly, I respectfully dissent.

. . . .

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result.[2]

I dissent.

Summary

First. Sections 10 and 17 of Republic Act No. 11212 (RA 11212) (2019) are unconstitutional on their face. These provisions constitute **bills of attainder**. The **attainted person** is PECO.

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[1] This epigraph is from the title of a law journal article authored by Prof. Carol L. Zeiner and published in 28 Va. Envtl. L.J. 1 (2010).

[2] Dissent, Justice Sandra Day O'Connor, *Kelo v. City of New London*, 545 U.S. 469 (U.S. June 23, 2005).

PECO is **singled out**. It is expressly identified as the **wrongdoer**. Upon it, **legislative punishment** as this was **historically understood** has been imposed. As well, the **non-punitive legislative purpose** has been **far outweighed** by the **legislative intent to punish** and the **legislative punishment accordingly exacted**. As clearly and succinctly recounted in the **congressional deliberations**, the **non-punitive legislative purpose arose only from** and **was the result only** of the **punishment** Sections 10 and 17 have envisioned to inflict.

The **punishment** is the **legislative determination** of **what otherwise** would have been a **judicial function** of the **propriety of confiscating** or **expropriating PECO's properties** resulting from the non-renewal of PECO's franchise and the **propriety** of **allowing such confiscation** or **expropriation** to favor the new franchise holder, MORE.

Second. Sections 10 and 17 violate the **equal protection of the laws**. They have been **tailored to target** and **single out** PECO and its properties. Sections 10 and 17 apply to **no other entity but** PECO and its facilities. ***Biraogo v. The Philippine Truth Commission of 2010***[3] supports my claim.

Third. As my reply to Justice Caguioa's well-meaning Opinion will show, the assailed provisions betray a **mere incidental and pretextual public use and necessity** to the taking of PECO's properties.

I. Sections 10 and 17 are bills of attainder.

The challenged provisions read:

SECTION 10. Right of Eminent Domain. — Subject to the limitations and procedures prescribed by law, the grantee is authorized to exercise the power of eminent domain insofar as it may be reasonably necessary for the efficient establishment, improvement, upgrading, rehabilitation, maintenance and operation of its services. The grantee is authorized to install and maintain its poles wires, and other facilities over, under, and across public property, including streets, highways, parks, and other similar property of the Government of the Philippines, its

[3] 651 Phil. 374 (2010).

branches, or any of its instrumentalities. **The grantee may acquire such private property *as is actually necessary* for the *realization of the purposes* for which this franchise is granted, *including, but not limited to poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment* previously, currently or actually used, or intended to be used, or have been abandoned, unused or underutilized, or which obstructs its facilities, *for the operation of a distribution system* for the conveyance of electric power to end users *in its franchise area***: Provided, That proper expropriation proceedings shall have been instituted and just compensation paid:

Provided, further, That upon the filing of the petition for expropriation, or at any time thereafter, and after due notice to the owner of the property to be expropriated and the deposit in a bank located in the franchise area of the **full amount of the assessed value** of the property or properties, the grantee shall be entitled to immediate possession, operation, control, use and disposition of the properties sought to be expropriated, including the power of demolition, if necessary, notwithstanding the pendency of other issues before the court, including the final determination of the amount of just compensation to be paid. The court may appoint a representative from the ERC as a trial commissioner in determining the amount of just compensation. The court may consider the tax declarations, current audited financial statements, and rate-setting applications of the owner or owners of the property or properties being expropriated in order to determine their assessed value.

. . . .

SECTION 17. Transition of Operations. — In the public interest and to ensure uninterrupted supply of electricity, **the current operator, Panay Electric Company, Inc. (PECO)**, shall in the interim be authorized to operate the existing distribution system within the franchise area, as well as implement its existing power supply agreements with generation companies that had been provisionally or finally approved by the ERC until the establishment or acquisition by the grantee of its own distribution system and its complete transition towards full operations as determined by the ERC, which period shall in no case exceed two (2) years from the grant of this legislative franchise.

Upon compliance with its rules, the ERC shall **grant PECO the necessary provisional certificate of public convenience and**

necessity (CPCN) covering such interim period. The applicable generation rate shall be the provisional or final rate approved by the ERC.

This provisional authority to operate during the transition period shall not be construed as extending the franchise of PECO after its expiration on January 18, 2019, and **it shall not prevent the grantee from exercising the right of eminent domain over *the distribution assets existing at the franchise area as provided in Section 10 of this Act***. During such interim period, the ERC shall **require PECO to settle the full amount** which the ERC has directed to refund to its customers in connection with all the cases filed against it.

To reduce the length of the transition period, the ERC and all agencies issuing the requisite licenses shall prioritize all applications relevant to the establishment and operation of the distribution system under its franchise.

The grantee shall, as far as practicable and subject to required qualifications, **accord preference to hiring former employees of PECO** upon commencement of business operations.

An information dissemination campaign regarding public services and operations of the grantee shall be made to all end-users in the franchise area.

The grantee and PECO shall jointly ensure that employees not hired by the grantee shall receive all separation and/or retirement benefits they are entitled to in accordance with applicable laws.

The DOE shall, during the transition, ensure that there will be uninterrupted supply of electricity in the existing franchise area.

A. Essence of a bill of attainder

Bills of attainder have often been associated with criminal statutes. There is however **no reason not to use** the proscription against them to **civil statutes** that mirror what bills of attainder do in the criminal setting. Functionally and traditionally, bills of attainder as well as ex post facto laws have been invoked to nullify civil statutes or regulations.[4]

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[4] *United States v. Certain Funds Contained in Account No. 600-306211-066, 1993 U.S. Dist. LEXIS 21006,* *64-65 (E.D.N.Y. November 12, 1993):

The **essence** of a bill of attainder is the **substitution of a legislative for a judicial determination of the legitimacy of a deprivation**. The constitutional ban against bills of attainder serves to implement the **principle of separation of powers** by **confining legislatures to rule-making** and thereby **forestalling legislative usurpation of the judicial function**.

History in perspective, **bills of attainder** were employed **to suppress government takings of life or property involving unpopular causes** and **political minorities**, and it is **against this evil** that the constitutional prohibition is directed. Thus:

> ON reviewing the U.S. Constitution, **it is easy to assume that the document contained no takings protection language prior to the addition of the Fifth Amendment**, as part of the Bill of Rights. **In reality, however, a takings protection was inserted directly into the body of the Constitution in 1787. This was the ban on bills of attainder**, found in Article I, Sections 9 and 10. **A bill of attainder is an egregious taking of life or property by an arbitrary legislative act, and the ban on bills of attainder was primarily meant to protect the people from such arbitrary takings by the government**. During the antebellum period, construing the ban on bills of attainder as a takings protection was well known, and lawyers and judges frequently referred to this ban. It was only after the Civil War that this commonly understood takings protection faded gradually into disuse, primarily because of the Fourteenth Amendment's incorporation doctrine. Today, this protection is all but forgotten.
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> **Recognizing the ban on bills of attainder as a takings protection greatly aids in understanding several constitutional issues that have otherwise not been fully understood.** For example, seeing the ban on bills of attainder as a takings protection helps in understanding

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"The Constitution makes no civil or criminal distinction for determining the applicability of the Ex Post Facto Clauses. Further, an analysis of the historical background of the Ex Post Facto Clauses suggests that the framers intended the clauses reach all retrospective laws, regardless of whether they were deemed purely criminal in nature. See Jane H. Aiken, Ex Post Facto in the Civil Context, 81 Ky. L.J. 323-32 (1993)"; Notes and Comments: The Bounds of Legislative Specification: A Suggested Approach to the Bill of Attainder Clause, The Yale Law Journal (1962) 330; Ex Post Facto in the Civil Context: Unbridled Punishment, Jane H. Aiken, Kentucky Law Journal (1992) 323.

why the Eleventh Amendment's passage was in large measure a reaction to potential attainder lawsuits against the states. We also better understand why the ban on *ex post facto* laws only needed to apply to criminal matters, and **more clearly see how takings law/attainders were a driving force for separating governmental powers, particularly between the legislature and the judiciary.** Finally, we can better understand why many of the founders — particularly James Madison — so greatly feared factions as the greatest threat to the new republic. In short, the ban on bills of attainder illuminates the early workings of the new constitutional republic in America.

This article mostly draws from the founders' comments at the Constitutional Convention and the antebellum case law that treats the ban on bills of attainder as a takings protection. The jurists' and practitioners' statements in these early cases — including comments from such luminaries as John Marshall and Daniel Webster — demonstrate their understanding of the ban on bills of attainder as a takings protection, independent of the Fifth Amendment or any other state takings language. Likewise, their statements about the ban on bills of attainder clarify the other constitutional doctrines discussed in this article.

Even though the antebellum era has long since passed, the concept that the ban on bills of attainder is a takings protection and its clarification of other constitutional doctrines has value for us today. There is no compelling reason why the antebellum understanding of bills of attainder is any less legitimate now than back then. To be sure, the Fifth Amendment protections now apply to state takings due to the Fourteenth Amendment's incorporation doctrine. But this application in no way negates the ongoing potential effectiveness of using the ban on bills of attainder in the Constitution as a takings protection. **Indeed, there will be times that the ban on bills of attainder will be a better fit for a particular judicial problem than the Fifth or Fourteenth Amendments. Examples could include legislation targeting** unpopular groups or **groups holding property which the government wants**. **Accordingly, courts today should consider applying this provision of the Constitution as a takings protection, just as the courts formerly did.** If they do, the courts will discover that it will not only serve to protect the innocent from arbitrary takings, but that it will also help clarify constitutional doctrines today as it did in former times. Indeed, this is one of the greatest benefits that can come from using the ban on bills of attainder as a

takings protection, since many constitutional doctrines today are often confused and misunderstood.[5]

The provision against bills of attainder **came about** in this historical factual context — the American revolutionary war needed funding and legislation provided that **funding by taking the property of named persons as wrongdoers**.[6] The drafters of the American Constitution were aware that these legislations were "arbitrary and represented a **dangerous power of government to take land**, and wanted to ensure that such wholesale takings did not occur in the future. Hence, the Constitutional Convention adopted the ban on bills of attainder without dissent."[7]

The protection against bills of attainder **primarily protected property rights**, which had been greatly abused by such wartime enactments.[8] Individuals needed to be **protected from egregious takings** by the state — this **protection** was the **ban on bills of attainder**, which "restricted all legislative takings failing to meet the standards of due process, compensation, and public use."[9] This protection was conceived to be a **judicial** one, a protection coming **from the courts**.[10]

In the United States of America, bills of attainder, including bills of pains and penalties, are constitutionally prohibited under Article I, Sections 9 and 10 of its *Constitution*.

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[5] Duane Ostler, "The Forgotten Constitutional Spotlight: How Viewing the Ban on Bills of Attainder as a Takings Protection Clarifies Constitutional Principles," 42 U. Tol. L. Rev. 395, 395 at Lexis Advance Singapore Research, https://advance.lexis.com/document/?pdmfid=1522471&crid=c9e9433a-d581-4959-adc9-58aae2d19815&pddocfullpath=% 2Fshared% 2F document %2 Fanalytical-materials%2Furn%3AcontentItem%3A53DS-K060-00CV-N0FX-00000-00& pdcontentcomponentid= 12162&pdteaserkey= sr0& pdics featureid= 1517130& pditab=allpods &ecomp=gd3Jk &earg= sr0& prid= 3548c525-b477-4a9b-9e1a-6019ca35b64f.

[6] *Ibid*.

[7] *Ibid*.

[8] *Ibid*.

[9] *Ibid*.

[10] *Ibid*.

B. Elements of a Bill of Attainder

The **elements of a bill of attainder** are: (i) the **singling out of a definite class**, (ii) the **imposition of a burden on it, without** or **far outweighing any non-punitive legislative purpose**, and **a legislative intent to do so**, and (iii) the **lack of judicial trial**.[11] These elements **stigmatize** statute or any of its provisions as a **bill of attainder**.

i. Singling out of a definite class

If the statute sets forth a **generally applicable rule** decreeing that **any person** who commits certain acts or possesses certain characteristics shall not enjoy a right or a privilege, and **leaves to courts the task of deciding what persons** have committed the specified acts or possessed the specified characteristics, the statute is **valid**.

But if the statute ***designates in no uncertain terms the persons* who possess the feared characteristics** and **therefore cannot enjoy the right or privilege**, for example, members of the Communist Party, or here, respondent PECO, the **legislative act**, *no matter what its form*, that applies either to ***named individuals*** or ***easily ascertainable members* of a group** in such a way as to **deprive** these individuals or groups of **any right**, civil or political, **without judicial trial**, is a **bill of attainder** prohibited by the Constitution.

ii. Imposition of a burden, without or far outweighing any non-punitive legislative purpose, and a legislative intent to do so

In ***Cummings v. Missouri***,[12] the United States Supreme Court held that **depriving** or **confiscating one's property** has been **understood historically** as **punishment**.

Presently, in the United States, there is **no longer a requirement for the legislature to convict a person of a**

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[11] *Acorn v. United States*, 618 F. 3d 125 (2010, CA 2nd circuit).

[12] 71 U.S. 277 (1867).

specified crime or **to inflict the historical punishments of pain and/or death** in order for a statute to constitute a bill of attainder. American law has **never precluded** the possibility that **new burdens and deprivations might be legislatively fashioned** that are inconsistent with the bill of attainder guarantee; there is as well **no more need** for the **offending statute** to **include** any ***formal* legislative pronouncement** of **moral blameworthiness** or ***formal* intent to punish** the **targeted individual, group, or corporation**.[13] The **question is whether the legislation has** a **punitive objective *or*** a **legitimate, non-punitive, legislative purpose**. Where such **legitimate legislative purposes** do **not** appear or are **far out-weighed** by an **intention to cause deprivation**, it is **reasonable to conclude** that **punishment of individuals disadvantaged** by the enactment was the **purpose** of the decision makers.[14]

Consolidated Edison Co. of N.Y., Inc. v. Pataki[15] held that "[w]here such legitimate legislative purposes do **not** appear," it is already "reasonable to conclude that punishment of individuals disadvantaged by the enactment was the purpose of the decision makers," there are **nonetheless several other tests** set out in American jurisprudence for determining **whether a statute is punitive or non-punitive**. Therefore, if one follows American jurisprudence, one **must** also **consider whether** the provision **could still be construed as amounting** to a legislative determination of guilt and punishment.

In ***Consolidated Edison Co. of N.Y., Inc.***, a public utility **wished to pass on the costs of a power outage** to the consumers. A replacement generator had been purchased fifteen (15) years

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[13] *Nixon v. Administrator of General Services, et al.*, 433 U.S. 425 [1977] Singapore LEXIS 24 (U.S. June 28, 1977) at pp. 26, 29; *Consolidated Edison Co. of N.Y., Inc. v. Pataki*, 292 F. 3d 338, [2002] Singapore LEXIS 10762 (2nd Cir. June 5, 2002), at p. 10; *United States v. Lovett*, 328 U.S. 303, 1946 Singapore LEXIS 2280 (U.S. June 3, 1946), at pp. 2-3.

[14] *Nixon, ibid.* at 26.

[15] 292 F. 3d 338, [2002] Singapore LEXIS 10762 (2nd Cir. June 5, 2002), at hn 15.

prior to the outage, but was not installed until the defective generator finally failed. A prior agreement was in place whereby Consolidated Edison could **pass certain costs on to its ratepayers in the form of temporary rate increases** subject to statutory review by the New York Public Service Commission. The Assembly and Senate, however **passed a bill** without amendment, thus:

> §1. . . . By continuing to operate steam generators known to be defective, and thereby increasing the risk of a radioactive release and/or an expensive plant outage, the **Consolidated Edison Company failed to exercise reasonable care on behalf of the health, safety and economic interests** of his customers. **Therefore it would not be in the public interest for the company to recover from ratepayers any costs** resulting from the February 15, 2000 outage at the Indian Point 2 Nuclear Facility.

The prohibition on recovering the cost extended to base rates "or any other rate recovery mechanism."

The appellate court stated that an **indispensable element** of a bill of attainder is the fact that **it defines past conduct as wrongdoing** and then **imposes punishment on that past conduct**. The court considered **three (3) factors** in determining **whether the statute was punitive**:

(1) whether it fell within the **historical meaning of legislative punishment**,

(2) whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes, and

(3) whether it evinced an **intent to punish**.

The court focused on the last two (2) criteria, finding that **eliminating harm to innocent third parties** is a **purpose consistent with punishment**, and that **general and specific deterrence** are **traditional justifications for punishment**. The court determined that a **quite substantial proportion of the costs** in question **could have been passed on unchallenged in a routine** generator replacement. **Nothing but punishment could**

justify preventing Consolidated Edison from **passing these costs** on to ratepayers. The court also found that the **legislative history clearly evinced an intent to punish**.

Consolidated Edison is also **remarkable** in the **clearly punitive intentions** voiced by the **legislators themselves** and the **inference** which can be **drawn from the language** of the provision itself. Clearly, the court in that case was of the view that **the legislature had concluded** that the **act of the public utility in failing to replace the generator was worthy of sanction**, and **viewed the legislation as imposing that sanction**.

United States v. Lovett,[16] concerned a provision which decreed that **no salary or other compensation was to be paid to certain employees** of the Government, **specified by name**, unless they were again appointed by the President with the advice and consent of the Senate. The individuals in question allegedly had communist leanings. The court found that the **purpose of the legislation** was **permanently to bar** those individuals **from government service because of** what Congress thought about **their political beliefs**. The court further stated that **the provision achieved the same purpose as would a statute which designated the conduct as criminal**. The court, too, rejected the argument that the section did not provide for the dismissal of the individuals, but merely forbade governmental agencies to compensate them for any work.

Lovett is notable because **the subjects of the provision were singled out from other government employees because of their political views**, and **were publicly blacklisted**. There was sufficient evidence to conclude that the **legislative intention** was **to punish the subjects for their beliefs** and **to make an example of them in order to deter others**.

In the same vein, ***Acorn v. United States*** mentioned that the element of **punishment** involved the consideration of **three (3) interdependent factors**:

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[16] 328 U.S. 303, 1946 Singapore LEXIS 2280 (U.S. June 3, 1946).

(1) whether the challenged statute falls within the **historical meaning of legislative punishment (historical test of punishment)**; (2) whether the statute, "viewed in terms of **the type and severity of burdens imposed, reasonably can be said to further nonpunitive legislative purposes**" **(functional test of punishment)**; and (3) whether **the legislative record "evinces a [legislative] intent to punish" (motivational test of punishment)**. Selective Serv. Sys., 468 U.S. at 852, 104 S.Ct. 3348. All three factors need not be satisfied to prove that a law constitutes "punishment"; rather, "th[e] factors are the evidence that is weighed together in resolving a bill of attainder claim." Con. Edison, 292 F.3d at 350.

According to ***Acorn***, "the Supreme Court has recognized that certain types of punishment are 'so **disproportionately severe** and so **inappropriate to nonpunitive ends** that they **unquestionably have been held** to fall within the proscription of the [Bill of Attainder Clause].'" **Confiscation of one's property** is one that has **long been recognized** as a type of punishment.

The **functional test of punishment** looks at the **type and severity of the burdens imposed**. Essentially, it answers the **question**, *what will happen to the attainted entity, will it close shop and eventually be driven out of any business whatsoever and into bankruptcy?* Thus:

"A **grave imbalance or disproportion between the burden and the purported nonpunitive purpose suggests punitiveness, even where** the statute bears **some minimal relation** to nonpunitive ends." Id.; accord Con. Edison, 292 F.3d at 350 ("Where a statute establishing a punishment declares and imposes that punishment on an identifiable party . . . we look beyond simply a **rational relationship** of the **statute to a legitimate public purpose** for **less burdensome alternatives** by which the **legislature could have achieved** its **legitimate nonpunitive objectives**."

The **motivational test of punishment** examines the **intent of the legislators** in enacting the statute — upon the **legislature's determination** that the **attainted entity** was **guilty of abusive and fraudulent** practices. This test looks for the **declaration of guilt** of the attainted entity **by the legislature during its deliberations** or **in the statute itself** and a **congressional trial**

to determine such guilt. The **standard of proof** is **clear legislative intent to punish**.

To summarize, the **test of punishment** involves two (2) steps. **First**, identify if the legislation **looks at past conduct as a wrongdoing**. **Second**, determine if the legislation **imposes burdens or deprivations** on that **past conduct**. To complete the second step in the test, **consider** the **three (3) factors** in resolving **whether the statute is punitive**: (a) whether it fell within the **historical meaning of legislative punishment**, (b) whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes, and (c) whether it evinced an **intent to punish**.

Lastly, in ***Cummings v. Missouri***,[17] it was held that a legislation is nonetheless a bill of attainder **even if** the persons or entities are **singled out** and **punished only indirectly**, that is, the punishment does **not directly follow** from the ascription of wrongdoing in the legislation. Thus:

> **If the clauses** of the second article of the constitution of Missouri, to which we have referred, **had in terms declared that Mr. Cummings was guilty**, or should be held guilty, of having been in armed hostility to the United States, or of having entered that State to avoid being enrolled or drafted into the military service of the United States, **and, therefore, should be deprived** of the right to preach as a priest of the Catholic Church, or to teach in any institution of learning, there could be **no question** that the clauses would constitute a **bill of attainder** within the meaning of the Federal Constitution. **If these clauses**, instead of mentioning his name, **had declared that all priests and clergymen within the State of Missouri were guilty of these acts, or should be held guilty of them, and hence be subjected to the like deprivation, the clauses would be equally open to objection**. And, **further, if these clauses had declared that all such priests and clergymen should** be so held guilty, and **be thus deprived, provided they did not**, by a day designated, **do certain specified acts, they would be no less within the inhibition** of the Federal Constitution.

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[17] Supra note 12.

In all these cases there would be the **legislative enactment creating the deprivation without any of the ordinary forms and guards provided for the security of the citizen in the administration of justice** by the established tribunals.

The results which would follow from clauses of the character mentioned do follow from the clauses actually adopted. The difference between the last case supposed and the case actually presented is one of form only, and not of substance.

The **existing clauses presume the guilt** of the priests and clergymen, **and adjudge the deprivation** of their right to preach or teach **unless the presumption be first removed by their expurgatory oath** — in other words, **they assume the guilt** and **adjudge the punishment conditionally**. The clauses supposed differ only in that **they declare the guilt instead of assuming it**. **The deprivation is effected with equal certainty** in the one case as it would be in the other, **but not with equal directness**. The **purpose of the lawmaker in the case supposed would be openly avowed; in the case existing it is only disguised. The legal result must be the same, for what cannot be done directly cannot be done indirectly.** The Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name. It intended that the **rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised.** If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding.

iii. Lack of judicial trial

To illustrate, the **proper** procedure for the taking of private property and the **improper** manner of doing it have been **spelled out**, as follows:

If a legislature or state agency wants to take property, the **proper** procedure entails **designating the property to be taken, filing a lawsuit identifying the property and its owners**, and **allowing the owners to contest the compensation** that the legislature or state agency offers. This procedure essentially refers the consummation of **the taking to the judiciary**. This process happens all the time today and is relatively well understood. Other than the initial designation of land to be taken, **the entire procedure takes place in the judicial branch**.

A **bill of attainder seeks to bypass** this procedure. It **identifies the property to be taken**, and then **brazenly takes it**, frequently with **the excuse that the legislature is merely punishing an unworthy individual or group**. No meaningful procedure is allowed for protest, and compensation is ignored. A structural check on legislative aggrandizement is the very heart and soul of the ban on bills of attainder and the essence of the separation of powers. As Justice Chase said in *Calder v. Bull*:

These **acts [of attainder] were legislative judgments**; and **an exercise of judicial power** . . . The **ground** for the **exercise of such legislative power** was this, that **the safety of the kingdom depended on the death, or other punishment, of the offender**: as if traitors, when discovered, could be so formidable, or the government so insecure! With very few exceptions, the advocates of such laws were stimulated by ambition, or personal resentment, and vindictive malice. To prevent such, and similar, acts of violence and injustice, I believe, the Federal and State Legislatures, were prohibited from passing any bill of attainder.

Justice Chase's articulation corresponded with the understanding of his fellow jurists and practitioners during the antebellum period. Attorneys making arguments to the courts during this time often identified **the ban on bills of attainder** as a **legislative intrusion into the judicial sphere**, and as a **takings protection**.

C. Application of the Bill of Attainder test to Sections 10 and 17 of RA 11212

Here, we **have exactly in the assailed provisions the objectionable** bills of attainder.

> ***First, the language of Sections 10 and 17 and legislative history of RA 11212* single out PECO *as a* wrongdoer *for the* confiscation *of its properties by* MORE *for the latter's* take-over *and* immediate benefit and use*, despite the* availability of other means and properties *for this purpose and* bypassing existing regulations *that address concerns about allegedly mismanaged organizations*.**

***Second, through Sections 10 and 17 and its deliberations, Congress has* already determined:**

> **(i) the existence of all the elements justifying the expropriation of PECO's properties *by* MORE,**

(ii) ***as well as*** **the propriety of MORE's take-over** ***and*** **immediate use of and benefit from these properties,**

and thus, has **made the judicial proceedings for expropriation** ***by MORE against PECO a*** **mere ceremonial procedure.**

Third, the **legislative confiscation** ***of PECO's properties for*** **MORE's take-over** ***and*** **immediate benefit and use** ***is the*** **punishment** ***for PECO's alleged wrongdoings,*** **which in turn** ***is a*** **direct outcome** ***of the non-renewal of its franchise and the award of the franchise to MORE.***

Fourth, the **non-punitive legislative purpose** ***for the legislative confiscation of PECO's properties for MORE's take-over, benefit and use*** **is far-outweighed** ***by the*** **legislative intent to deprive PECO of its properties.**

For one, the **public purpose for the confiscation** ***arose*** **solely** ***from the*** **utter inability** ***of MORE as the new franchise holder*** **to provide the facilities and technical knowhow** ***to*** **establish, operate,** ***and*** **maintain** ***its franchise requirements.***

But for ***this*** **utter inability of MORE,** ***there would have been*** **NO non-punitive legislative purpose** ***for the legislative confiscation of PECO's properties for MORE's take-over, benefit, and use. The non-punitive legislative purpose*** **was a created or manufactured need** ***when Congress*** **allowed** ***a*** **non-equipped and ill-prepared entity to take-over the franchise** ***and*** **authorized** ***a*** **business plan** ***that*** **plainly revolved around the take-over** ***of the*** **existing franchise holder's properties.**

As a result, ***it is*** **reasonable to conclude** ***that the*** **punishment of PECO** ***as the entity disadvantaged by RA 11212 is the*** **legislation's only preponderant purpose.**[18]

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[18] *Consolidated Edison Co. of N.Y., Inc. v. Pataki,* supra note 15.

***Equally important, the* condemnation of PECO's properties *lock, stock, and barrel, is* clearly overbroad in relation to the purported legitimate purpose of RA 11212 *as it* unnecessarily precludes PECO from using its properties for other business purposes.**

***Fifth, the* congressional deliberations *on the precursors of RA 11212* make it crystal clear *that* Sections 10 *and* 17 exhibit all the elements *of a* bill of attainder.**

***First, the language of Sections 10 and 17 and legislative history of RA 11212* single out PECO *as a* wrongdoer *for the* confiscation *of its properties by* MORE *for the latter's* take-over *and* immediate benefit and use.**

The *Explanatory Note* for the precursor of RA 11212, House Bill No. 8132, **identifies** PECO as a **wrongdoer** in this manner:

> The **quality of service of PECO has been wanting**. Among the **complaints against PECO** are: overbilling/overcharging, arrogant personnel/poor customer relations, distributor related outages, inadequately maintained lines, inadequate investment in distribution facilities, and inordinate delay in the restoration of power services, among others.

Section 10 refers to the institution of expropriation proceedings and does **not expressly** identify PECO as the object of the confiscation. That **PECO** however is the **object of Section 10** is **clarified by Section 17** when it referred to PECO and its facilities. Besides, Section 10's **reference to** MORE's **franchise area** means **no other than PECO and its properties**.

Quoted below extensively, the **deliberations** on RA 11212 make it **clear** as day that **PECO's properties** are the **object of the legislated confiscation** for MORE's **take-over** and **immediate benefit and use**.

Of late, Senator William Gatchalian's statements have c**onfirmed the singling out** of franchise holders for the

imposition of penalties against them for **alleged past infractions**. He was quoted to have said:

> In fact, he said, any legislator could seek a review of Meralco's franchise as part of Congress' oversight authority even before the power distributor could apply for an extension.
>
> "Based on our experience with ABS-CBN, the sins of the past can come and haunt you. In other words, during the deliberations of its franchise, this type of violation can be a basis for the revocation or non-extension of (Meralco's) franchise," Gatchalian said.
>
> "This could be a 'bad record' against (Meralco) . . . It could be a hindrance (for securing a new franchise)," he cautioned.[19]

***Second, through Sections 10 and 17 and its deliberations, Congress has* already determined:**

(i) the existence of all the elements justifying the expropriation of PECO's properties *by* MORE,

(ii) *as well as* the propriety of MORE's take-over *and* immediate use of and benefit from these properties,

***and thus, has* made the judicial proceedings for expropriation *by MORE against PECO a* mere ceremonial procedure.**

The **texts** of Sections 10 and 17, together with the **deliberations** on these provisions, **have** already **decreed** the **presence** of all the **elements** for the **valid expropriation** of **PECO's properties**.

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[19] Philippine Daily Inquirer at Read more: https://newsinfo.inquirer.net/1329086/gatchalian-meralco-may-also-lose-franchise#ixzz6WeGn3oEg last accessed August 31, 2020.

Congress has said that there is **public use** for the **confiscation** lock, stock and barrel of PECO's properties. The *ponencia* **echoes** this legislative determination. This contradicts the **doctrine** that **the determination of whether a given use is a public use is a judicial function**.[20]

This **legislative** determination **disregards** the **crucial fact** that the **public use** would **NOT have** come about, or would **not** have arisen or **not** have been created, **but for** the **legislatively endorsed business plan** of **MORE** as the new franchise holder **simply to take over PECO's properties** as it did not have the facilities to **establish, operate,** and **maintain** its franchise.

Would **this type** of public use **legitimately fall** within the rubric of **public use** for eminent domain purposes, when **public use** was brought about by bringing in a new franchise holder that can discharge the franchise ***only by taking over*** the assets of the immediately preceding franchise holder? The fact is that **the courts have been boxed in** and **painted into a corner** to **acknowledge** and **affirm this type** of **public use** because of the urgency to provide continuity in the provision of electricity to the people in the franchise area.

So far as the element of **public use** is concerned, the **courts can no longer decide otherwise** when Congress **has resolved** the **presence** of this element. The **court proceedings for expropriation** have become a *fait accompli* with the outcome **already decided** by **legislative fiat**.

The **next element** already **resolved by Congress** to exist is **genuine public necessity**. Section 10 **expressly mentions** that the taking of PECO's properties is **actually necessary** for the **establishment, operation,** and **maintenance** of MORE's franchise.

Section 10 lists PECO's "*poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment*," as **being actually necessary** for

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[20] *Southwestern Ill. Dev. Auth. v. Nat'l. City Envtl., L.L.C.*, 199 Ill. 2d 225, 237, 768 N.E.2d 1, 8, 2002 Ill. LEXIS 299, *17, 263 Ill. Dec. 241, 248 (I11. April 4, 2002).

the alleged public use the franchise is supposed to realize. Section 17 **reinforces** this **determination** of **genuine public necessity** when it **mentions PECO** and **authorizes** the **expropriation** of properties within the franchise area **that are actually necessary** for the franchise, namely, those mentioned in Section 10.

So did the **congressional deliberations** quoted below, which **confirmed** that the **only way for MORE** to **establish, operate,** and **maintain** its franchise is **for it to take over PECO's properties**.

What is problematic about Section 10 and Section 17 is the **preclusion** of any debate on the **genuine public necessity** of **expropriating** PECO's "*poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment*." Section 10 is categorical — it **mentions** the foregoing properties as examples of those properties that are "**actually necessary** for the realization of the purposes for which this franchise is granted." Section 10 and Section 17 **forestall a judicial determination** as to the **genuine public necessity** for the taking of these properties.

In ***Vanhorne's Lessee v. Dorrance***,[21] the public **necessity** warranting the transfer of properties from one private owner to another private owner, as in the present case, **must be nothing short** of "**urgent cases**, or **cases of the first necessity**." This **type of condemnation cannot be likened** "to the case of personal property taken or used in time of war or famine, or other extreme necessity[, or] to the temporary possession of land itself, on a pressing public emergency, or the spur of the occasion. In the latter case there is no change of property." Hence, **condemnation** of one's property **ought to be a remedy of last resort**.

De la Paz Masikip v. The City of Pasig[22] explains that the requisite of **genuine public necessity** is defeated by the **existence**

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[21] 2 U.S. 304 (1795), 2 U.S. 304 (F Cas) 2 Dall. 304.

[22] 515 Phil. 364, 374-376 (2006).

of properties and **remedies other than** or **alternative to expropriation**:

In this case, petitioner contends that respondent City of Pasig failed to establish a **genuine necessity** which **justifies the condemnation** of her property. While she does not dispute the intended public purpose, nonetheless, she insists that **there must be a genuine necessity for the proposed use and purposes**. According to petitioner, **there is already an established sports development and recreational activity center** at Rainforest Park in Pasig City, **fully operational and being utilized by its residents**, including those from Barangay Caniogan. Respondent does not dispute this. **Evidently, there is no "genuine necessity" to justify the expropriation**.

The right to take private property for public purposes necessarily originates from "the necessity" and the taking must be limited to such necessity. In *City of Manila v. Chinese Community of Manila*, we held that the very foundation of the right to exercise eminent domain is a genuine necessity and that necessity must be of a public character. Moreover, **the ascertainment of the necessity must precede or accompany and not follow, the taking of the land**. In *City of Manila v. Arellano Law College*, we ruled that "**necessity within the rule that the particular property to be expropriated must be necessary**, does not mean an absolute but only a reasonable or practical necessity, **such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner** consistent with such benefit."

Applying this standard, we hold that respondent City of Pasig has **failed to establish that there is a genuine necessity to expropriate** petitioner's property. Our scrutiny of the records shows that the Certification issued by the Caniogan Barangay Council dated November 20, 1994, the basis for the passage of Ordinance No. 42, s. 1993 authorizing the expropriation, indicates that the intended beneficiary is the Melendres Compound Homeowners Association, a private, non-profit organization, not the residents of Caniogan. It can be gleaned that the members of the said Association are desirous of having their own private playground and recreational facility. **Petitioner's lot is the nearest vacant space available.** The purpose is, therefore, not clearly and categorically public. **The necessity has not been shown, especially considering that there exists an alternative facility for sports development and community**

recreation in the area, which is the Rainforest Park, available to all residents of Pasig City, including those of Caniogan.

The right to own and possess property is one of the most cherished rights of men. It is so fundamental that it has been written into organic law of every nation where the rule of law prevails. **Unless the requisite of genuine necessity for the expropriation of one's property is clearly established, it shall be the duty of the courts to protect the rights of individuals to their private property.** Important as the power of eminent domain may be, the inviolable sanctity which the Constitution attaches to the property of the individual requires not only that the purpose for the taking of private property be specified. **The genuine necessity for the taking, which must be of a public character, must also be shown to exist.**

Sections 10 and 17 are **all-encompassing** in that they already ***a priori* authorize** the condemnation of "*poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment*" even during the *transition period* **without any showing** of a **genuine public necessity** in that **there are no alternatives** to taking them.

PECO's situation is **akin to** those early cases that litigated the **ban against bills of attainder**:

Daniel Webster was one of the most articulate critics in **opposing legislative attempts to justify bills of attainder with the claim that whatever the legislature did satisfied due process or the law of the land**. Webster gave his views on this issue in the **cases involving Dartmouth College**. Webster acted as counsel for the college in arguments before both the New Hampshire Supreme Court in 1817 and on appeal to the U.S. Supreme Court in 1819. As described in ***Trustees of Dartmouth College v. Woodward***, the **New Hampshire legislature passed a law that fundamentally altered the college's corporate form**. It is significant that **this was not a state college, but a wholly private one**. The **legislature expanded the number of trustees from 12 to 21, transferred college property to the new trustees**, and **authorized the treasurer to retain and hold college property against the will of the original trustees**. Webster decried the legislation as unauthorized. He noted that **in passing this bill, the legislature had targeted a single entity for improper treatment, passing sentence upon the college as if the legislature were a court promulgating a judgment**. Webster alluded to Blackstone, noting

that the New Hampshire acts "have no relation to the community in general, and which are rather sentences than laws."

In response to New Hampshire's claim that its acts satisfied due process because the legislature created the law of the land, Webster noted:

Everything which may pass under the form of an enactment, is not, therefore, to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees and forfeitures, in all possible forms, would be the law of the land. Such a strange construction would render constitutional provisions, of the highest importance, completely inoperative and void. It would tend directly to establish the union of all powers in the legislature.

Therefore, when the legislature acts in a judicial capacity and passes a bill of attainder taking private property, and then seeks to proclaim itself above challenge in doing so, the legislature denies due process and engages in the most egregious of takings. The ban on bills of attainder was designed specifically to protect private property from such an eventuality. For Webster, New Hampshire's actions in respect to the college and the taking of its property constituted a due process/law of the land violation, and defied the separation of powers precisely because the legislature exceeded its authority and acted as a judicial body.

The 1838 Maryland case Regents of the ***University of Maryland v. Williams*** forcefully restated this point. In this case, the court decried **state legislation whereby the university's property was taken and given to a new board of trustees**, just as in Dartmouth College. The court commented on the **legislature's improper intrusions on judicial power** in these words:

If the transferring one person's property to another, by a special and particular act of the legislature, is a [sic] depriving him of his property, by or according to the law of the land, then any legislative judgment or decree, in any possible form, would be according to the law of the land, although there existed at the time no law of the land upon the subject, and that too by a tribunal possessing no judicial power, and to which all such power is denied by the constitution. Such a construction would tend to the union of all the powers of the government in the legislature, and to impart the attribute of

omnipotency to that department, contrary to the genius and spirit of all our institutions; and the office of courts would be not to declare the law or to administer the justice of the country, but to execute legislative judgments and decrees, not authorized by the constitution.[23]

. . . .

In sum, the ban on bills of attainder is, in many ways, the quintessential declaration of the need for a separation of powers. If bills of attainder are allowed, then the legislature is supreme, and neither the judiciary nor any other body can question or set aside the legislature's acts. The ban on bills of attainder bridged the gap between the separation of powers embodied by the Constitution's framework and takings law as described in the Fifth Amendment. **Bills of attainder are judicial acts by the legislature, in which the legislature defies takings law by taking property without following the proper method. A taking needs to be consummated in a certain way, and a bill of attainder is the wrong way.** A legislature may not sit as a judicial body and declare whatever it does as satisfying due process or the law of the land. Hence, a proper understanding of the intent and scope of the ban on bills of attainder clarifies the separation of powers and increases an understanding of its true meaning as an unbreachable dividing line separating the reach of the different branches of government.[24]

There are **existing alternatives** for the properties **already adjudged** by RA 11212 as being **"actually necessary."** To be sure, MORE can obtain **buildings** other than PECO's to establish and run its franchise. This is **also true** for PECO's *poles, wires, cables, transformers, switching equipment and stations, infrastructure, machineries and equipment*. There is **no conclusive showing** of **genuine public necessity** to expropriate these items — yet Sections 10 and 17 have already determined that they are **actually necessary** for expropriation.

As MORE admitted during the Committee Hearings (see below for a more extensive treatment):

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[23] Duane Ostler, supra note 5 at 420-422.

[24] *Id.* at 423.

"Well, the other option is definitely MORE Power is ready to build its own distribution assets, 'no. We can provide our own personnel and, well, again, as also mentioned during the last, I think, during the last two hearings, 'no, we were saying that personnel is not really that difficult to source, 'no, since it is readily available in the market."

MORE also acknowledged that it can allegedly build its facilities and operate the franchise in **only a year's time**: *". . . since I think capital is not a problem for us, if let's say, we're given at least a year, I mean I think we can . . . we can actually come up with the system. Because like, let's say, substations, there are mobile standby substations that we can use immediately, deploy immediately while, let's say, building the permanent substations, 'no. So, I guess, again, I mean, since capital is not a problem for us then, I think at least a year would be more or less right. . ."*

This shows the **lack of genuine public necessity** for the taking, which Sections 10 and 17 **have unfortunately already adjudged to be present** to justify the condemnation.

Mere convenience for MORE is not what is required by law as the basis of **genuine public necessity**. Even in the face of necessity, **if it can be satisfied without expropriation**, the same should not be imposed. The **convenience of the condemning party has never been the gauge** for the exercise of eminent domain.

The true standard for **genuine public necessity** is **adequacy**. Hence, when there is **already an existing adequate alternatives**, as in this case, even when the alternatives, for one reason or another, be inconvenient, the need to expropriate is **entirely unjustified**.

Lastly, Section 10 has as well **determined** a **presumptive amount for the just compensation to be paid** by MORE to PECO.

The deliberations have also **pegged an amount for just compensation** (see below).

Congress has to **peg the amount of just compensation** because this **amount** would be **added to MORE's billings** to its consumers as a means of **reimbursing itself** of such payment, and therefore, would ultimately **impact on** MORE's **viability** as a franchise.

Reducing the judicial expropriation proceedings to a mere ceremonial function

What is clear from both the language of Sections 10 and 17 and the legislative intent as expressed during the Committee Hearings is the **singling out of PECO** and the **determination by legislative fiat of the presence of all the elements to validate the taking of its properties**.

RA 11212 has resolved the elements of public use and genuine public necessity, and the presumptive quantum of just compensation. Thus, the statute has rendered any court proceeding on expropriation to be merely ceremonial.

***Third, the* legislative confiscation *of PECO's properties for* MORE's take-over *and* immediate benefit and use *is the* punishment *for PECO's alleged wrongdoings,* which in turn *is a* direct outcome *of the non-renewal of its franchise and the award of the franchise to MORE*.**

To stress, the element of **punishment** in the bill of attainder test **does not mean** that the legislature has to convict a person of a specified crime or to exact punishments of pain or death.

Burdens and deprivations upon targeted persons or entities, without any formal legislative pronouncement of moral blameworthiness or formal intent to punish, may **constitute punishment** depending on this **test — whether** the **legislation** has a **punitive objective *or*** a **legitimate non-punitive legislative purpose**.

Where the **legitimate legislative purpose** is **non-existent** or is **far out-weighed** by an **intention to cause deprivation**, it is **reasonable to conclude**, that **punishment of individuals disadvantaged** by the enactment was the **purpose** of the legislators.

As stated, the **test** involves two (2) steps. First, identify if the legislation **looks at past conduct as a wrongdoing**. Second, determine if the legislation **imposes burdens or deprivations** upon that **past conduct**. To complete the second step in the test, **consider** the **three (3) factors** in resolving **whether the statute is punitive**:

(1) whether it fell within the **historical meaning of legislative punishment** (historical test),

(2) whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes (functional test), and

(3) whether it evinced an **intent to punish** (motivational test).

Here, Sections 10 and 17 of RA 11212 **originated from** the alleged **wrongdoings** of **PECO** as a franchise holder. Upon this alleged **past misconduct, burdens and deprivations** are imposed: the **non-renewal** of PECO's franchise, the **award** of the franchise to **MORE**, and the latter's **take-over** of **PECO's** properties through **expropriation** whose **propriety Congress has already determined** through the assailed provisions.

This **fulfils** the **first step** of the **test**.

As regards the **second step**, I first focus on the **historical meaning of legislative punishment** or the **historical test of punishment**. According to the **congressional deliberations** quoted below, the **legislative confiscation** of PECO's properties has been decreed to **eliminate harm to innocent third parties** and **to the viability of MORE as the new franchise holder**, *i.e.*, the continuous supply of electricity to consumers by **MORE**. It may also be reasonably presumed that Congress wants to send a message *via* the legislated condemnation of properties to franchise holders to shape up or ship out, *i.e.*, **general** and

specific deterrence. Together with the **protection of people and communities, deterrence** is the **traditional** and **historical justification** for **punishment**.

As borne by the **congressional deliberations** (see below), **routine expropriation clauses** in franchise grants do **not** function as the **principal and primary backbone** for the establishment, operation, and maintenance of a franchise. This type of clause does **not** settle the propriety of expropriation and allows **courts to determine** the propriety of expropriation. But **routine expropriation clauses** are **unlike Sections 10** and **17** of RA 11212 where **Congress has already put the bind on courts to complete the expropriation of PECO's properties** to ensure the supply of electricity in the franchise area. **Nothing but punishment justifies** the **compulsion** and **urgency** to expropriate **PECO's** properties.

I will also quote Senator William Gatchalian's statements which **confirm** the claim that **PECO** has been punished not only through the non-renewal of its franchise (which Congress admittedly has the constitutional authority) but also through the **expropriation of PECO's properties** *via* Sections 10 and 17. The Honorable Senator is quoted to have said:

> As of March, Meralco had 6.4 million residential accounts, or 92 percent of the total in its franchise area in Metro Manila and neighboring provinces. Commercial customers accounted for 530,864 (8 percent) connections and industrial customers, 10,580 (0.2 percent).
>
> "I'm pleased with the swift resolution (of the ERC) to impose a fine . . . But the penalty of ₱19 million, for me, is just a drop in the bucket for Meralco," Gatchalian said.
>
> "I think the almost ₱300 million in penalty is reasonable enough because their violation is nonconformity to the orders of the ERC," the senator said.
>
> "If they still resist, I will advise ERC to mete out heftier fines and find other ways to penalize (Meralco)," he said in a separate radio interview.
>
> No breakdown of charges

Gatchalian assailed Meralco and other power distributors for their continued failure to clearly explain to their customers the breakdown of monthly charges, such as the collection of environmental fee and feed-in-tariff allowance and a universal tax on all electric consumers.

He said the recent decision of the House of Representatives to deny ABS-CBN's application for a new franchise should be a lesson to all holders of legislative licenses.

In fact, he said, any legislator could seek a review of Meralco's franchise as part of Congress' oversight authority even before the power distributor could apply for an extension.

"Based on our experience with ABS-CBN, the sins of the past can come and haunt you. In other words, during the deliberations of its franchise, this type of violation can be a basis for the revocation or non-extension of (Meralco's) franchise," Gatchalian said.

"This could be a 'bad record' against (Meralco) . . . It could be a hindrance (for securing a new franchise)," he cautioned.[25]

***Fourth, the* non-punitive legislative purpose *for the legislative confiscation of PECO's properties for MORE's take-over, benefit and use* is far-outweighed *by the* legislative intent to deprive PECO of its properties.**

***For one, the* public purpose for the confiscation *arose* solely *from the* utter inability *of MORE as the new franchise holder* to provide the facilities and technical knowhow *to* establish, operate *and* maintain *its franchise requirements*.**

But for *this* utter inability of MORE, *there would have been* NO non-punitive legislative purpose *for the legislative confiscation of PECO's properties for MORE's*

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[25] Philippine Daily Inquirer, https://newsinfo.inquirer.net/1329086/gatchalian-meralco-may-also-lose-franchise#ixzz6WeIQ9nuC last accessed August 31, 2020.

***take-over, benefit and use. The non-punitive legislative purpose* was a created or manufactured need *when Congress* allowed *a* non-equipped and ill-prepared entity to take-over the franchise *and* authorized *a* business plan *that* plainly revolved around the take-over *of the* existing franchise holder's properties.**

As a result, *it is* reasonable to conclude *that the* punishment of PECO *as the entity disadvantaged by RA 11212 is the* legislation's only preponderant purpose.[26]

***Equally important, the* condemnation of all of PECO's properties *lock, stock and barrel, is* clearly overbroad in relation to the purported legitimate purpose of RA 11212 *as it* unnecessarily precludes PECO from using its properties for other business purposes.**

I shift now to the **functional test of punishment** — whether, viewed in terms of the **type and severity of burdens imposed**, it could **reasonably be said to further non-punitive** legislative purposes.

The **functional test of punishment** balances the backdrop of the **confiscatory nature** of RA 11212 against its **non-punitive purpose**. The **latter** refers to the **uninterrupted provision and distribution of electricity to consumers in the franchise area**.

Less burdensome alternatives, however, could have been resorted to by Congress **to achieve this non-punitive** objective. For one, it could have required the winning franchisee to **be ready with its own facilities**; for another, it could have left the determination of the propriety of expropriation to the courts, without having to determine by itself that **expropriation** is the key to **MORE's** assumption as franchise-holder and that

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[26] *Consolidated Edison Co. of N.Y., Inc. v. Pataki*, supra.

all the elements of expropriation are already present *vis-à-vis* **PECO's** properties.

Indeed, while **I acknowledge that Congress has a legitimate interest** in ensuring the uninterrupted supply of electricity in the franchise area —

(i) the **specificity of the affected party** — PECO,

(ii) the **uniqueness of the congressional action** — as **admitted by the Energy Regulatory Commission** during the congressional deliberations (see below), and

(iii) the **breadth of the restrictive action** in this case — **the wholesale condemnation of PECO's properties**, since these **properties are its only properties** and **will result in its bankruptcy** as a **business entity *regardless of the nature of its subsequent business or businesses*** PECO engages in,

all these render Sections 10 and 17 disproportionately severe and thus punitive under the **functional test of punishment**.

Worse, the **public use** and **necessity** for the **confiscation** of PECO's properties **arose solely** from the **utter inability** of **MORE** as the new franchise holder **to provide the facilities and technical knowhow to establish, operate, and maintain** its franchise requirements. **But for this utter inability** of **MORE**, there would have been **NO non-punitive legislative purpose** for the legislative confiscation of **PECO's** properties for **MORE's** take-over, benefit, and use. The non-punitive legislative purpose was **a created or manufactured need** when Congress **allowed** a non-equipped and ill-prepared entity to take-over the franchise and **authorized** a business plan that **plainly revolved around the take-over** of the existing franchise holder's properties.

Thus, it is **reasonable to conclude** that **the punishment of PECO** as the entity disadvantaged by RA 11212 is **the legislation's only preponderant purpose**.

Equally troublesome, the condemnation of **PECO's properties** lock, stock, and barrel, is **clearly overbroad** in relation to the

purported legitimate purpose of RA 11212. This legislated approach **unnecessarily precludes** PECO from dedicating and using its properties for business purposes other than the distribution of electricity in the franchise area.

***Fifth, the* congressional deliberations *on the precursors of RA 11212* make it crystal clear *that* Sections 10 *and* 17 exhibit all the elements *of a* bill of attainder.**

The **legislative intent to punish** or the **motivational test of punishment** unearths Sections 10 and 17 as products of congressional deliberations which show the **intent** to **single out PECO**, **adjudge it as guilty of wrongdoings**, and **confiscate its properties for MORE's convenient takeover**.

The congressional deliberations **revolved around MORE's business plan** to **take over** the operations and properties of **PECO** — simply **because MORE has none of the facilities AND personnel to establish, operate and maintain its franchise.** The intent behind RA 11212 is to **impose burdens** and **deprivations** upon, and to **make a sacrifice** out of, **PECO**. Specifically:

1. Takeover by MORE of PECO's facilities once franchise is granted to the former since MORE does not have the facilities to operate its franchise:

MR. CASTRO. Your Honor, well, what we are hoping is that if their franchise will not be granted or the extension will not be granted, **we are hoping to — well, if granted the franchise — to operate and maintain the distribution system of their existing network**, Your Honor.

REP. UYBARRETA. So, on the assumption that on January 2019 **the current franchise of PECO will not be renewed, then you will take over**.

MR. CASTRO. Your Honor, that is the . . .

REP. UYBARRETA. Yeah, that is the premise because you are applying.

MR. CASTRO. Yes, Your Honor.

REP. UYBARRETA. **And do you have the necessary infrastructures to supply the customer needs of Iloilo?**

MR. CASTRO. At the moment, well, I would say we don't have it but if given the . . . granted the franchise and well, the existing franchise holder is also. . . Well; if the franchise is extended, well, we are considering to also put up our own infrastructure, Your Honor.

REP. UYBARRETA. What is the current growth as far as demand is concerned of Haila ccty?

MR. CASTRO. I am sorry, Your Honor, the current growth of?

REP. UYBARRETA. Demand, as far as power is . . .

(MS. AIDA P. MOLINYAWE TOOK OVER)

. . . .

REP. UYBARRETA. You mentioned earlier iyong reduction of rates, iyong customer service, iyong upgrading of customer satisfaction, iyong pagbabawas natin ng brownout and instances. Well, these are all good for the consumers and gusto rin namin iyon. But here in our . . . the Committee, we would like to be assured that the . . . ultimately the customers of Iloilo City hindi mapre-prejudice. Iyon naman lang po ang gusto namin dito.

We are one with you as far as that aspect is concerned. Kasi mahirap na . . . alam mo po pag pinag-uusapan natin ang mahal na kuryente, madali tayong umangal. But ang hindi natin nare-realize ang pinakamahal na kuryente ay iyong walang kuryente. And we're talking about inflation here, mahal ang gastusin sa bigas, marami ang nagugutom. Pero pag dineprayb (deprive) ninyo iyong mga kababayan natin from Iloilo na mapanood iyong Probinsiyano, patay tayong lahat diyan. **That's the reason why we're trying to help you achieve your goals also. So, you mentioned wala kayong infrastructure right now. Wala kayong substation, wala kayong linya currently,**

and you intend to take . . . to supply them by year 2017 . . . ah, 2019. Doon lang po ako may worry na ano. Kasi, well, you can contract although until such time that your amendments are approved the Securities and Exchange Commission, then you can contract with suppliers. But again iyong goal ninyo is to distribute and by distribution you need all these infrastructures and facilities. You need the substation na pagdadalahan n'yo, para icascade ninyo, ibaba ninyo, you need the 69 KB lines. You need secondary and collateral lines. You need all the transformers to bring it down to the consumers. Kaya sabi ko nga po sa inyo eh mahirap tayong hindi natin mabigyan iyong Iloilo ng kuryente. So, can you just enlighten this Representation and also this Committee on the exact plan as far as MORE Corporation is concerned?

MR. CASTRO. Yes, Your Honor. Thank you for that comment, Your Honor. **Yeah. Again, our base case, I would say, is the . . . if the franchise of PECO will end and we may have . . . well, we will be granted the franchise, 'no, is, well, we will take over the assets of PECO, 'no. And, well, these are . . . Your Honor, that's correct that, well, depriving consumers of power, 'no, is . . . well, our primary . . . well, is not . . . well, may not be good. It's not really good. But what we have in mind, Your Honor, is that in the long term, 'no, when . . . if we are able because we are confident that we will be able to bring down the rates, 'no.** I mean, given the basket of suppliers that they have now as was flashed earlier, they are not taking advantage. Or the consumers are not even taking advantage of the low power that is being provided by the . . . that is available in the open market, 'no. And . . . sorry.

2. *Because PECO's facilities are already sufficient to run the distribution of electricity within the franchise area, the legislative intent is to determine with finality the existence of* public use *and* genuine public necessity, *regardless of the* presence of alternatives *to avoid the* manufactured *public use and necessity of expropriation.*

. . . .

REP. UYBARRETA. (Continuing) . . . kabisado. Ilan bang . . . ilan . . . do you have a manufacturing plant there, do you have a mall, do you have big factories?

MR. CASTRO. Your Honor, the customer profile . . . well, Iloilo . . . well, the franchise area is about 66,000 customers. And from the official records that we have seen that are publicly available, there is only one big customer, all the rest . . . well, I would say distributed between residential, commercial establishments, government offices, 'yun. So, it's a . . . well, definitely there are commercial, especially recently when Megawide or Megaworld, Ayala and all the others started to put up the malls the last two . . . well, three to four years. The . . . well, rather, the customer profile has already . . . well, for commercial has already increased but in terms of industrial, I would say it is on the low side, Your Honor.

REP. UYBARRETA. **And these malls that you mentioned, are they sourcing their power sa current franchise holder or are they directly connected?**

MR. CASTRO. Yes, Your Honor. They are sourcing their power from the current franchise holder, Your Honor.

REP. UYBARRETA. So it is, more or less, safe to presume that the bulk of the revenue comes from these three malls that you mentioned?

MR. CASTRO. Well, if we lump the commercial establishments together *vis-a-vis* the whole customer profile, well, I would say that, yes. I mean, it's a significant contribution coming from the commercial . . . what you call this, commercial portion, Your Honor.

REP. UYBARRETA. **Given the franchise area that you are applying for and the customer mix and profile, in your estimate, how many substation do you need? Kasi part of the problem as far as outages are concerned is the lack of substation, so I think it's within your CapEx plan, so how many do you . . .**

MR. CASTRO. Your Honor, well, per our technical, the existing five actually are sufficient for now. But, I think, well, what we believed in is that there are improvements and upgrades that are needed in the substations. And may I pass, well, the floor to our chief technical officer, please, Mr. Chair?

THE CHAIRPERSON. Mr. Guevarra is recognized.

MR. AMADOR T. GUEVARRA (Chief Technical Officer, MORE Minerals Corporation). Mr. Chair, **In the substations, we have five**

existing substations but for the growth we are thinking, we need to upgrade the 50 MVA substation there in order to cater and we can deliver more reliable power supply there in Iloilo. We need to upgrade the 50 MVA. That's what we saw in the existing substation there in PECO.

REP. UYBARRETA. So, you were talking about the existing.

MR. GUEVARRA. Yeah.

REP. UYBARRETA. We're not talking about new ones. We're just talking about existing. 'Yung sa PECO ba 50 'yung pinakamataas nila? Anong pinakamababa nila, 10?

MR. GUEVARRA. Ten, yeah. Ten MVA, Your Honor.

REP. UYBARRETA. Ang pinakamababa nila?

MR. GUEVARRA. Yeah.

REP. UYBARRETA. Ilan 'yung 10 nila? Ilan 'yung 50 nila?

MR. CASTRO. Sorry, Your Honor. Well, we don't have that data for now, Your Honor.

3. *The* legislative intent *is to ascribe* public use *and* genuine public necessity *to the condemnation of PECO's properties and to peg the* amount of just compensation, *regardless of a court proceeding*.

REP. UYBARRETA. Mr. Chair, over and above what they presented today and the business plan, can we also get from them a more technical report and plan regarding how they intend to distribute electricity to the franchise area that they are applying for. Kasi ganito lang po iyan, at the end of the day, we are answerable to the consumers of the franchise area that you are applying for, while they are saying that it's hard to reinvent the wheel, pero alam naman po natin and meron palang existing franchise ngayon doon and why fix something that is not broken. That's just my concern. But I also advance the concept that we . . . the customer is the boss. Ultimately, kung anong ikabubuti ng consumer, doon tayo and part of our oversight function here is to safeguard the interest of the consumers. We are . . . I am asking hard questions because, ultimately, si Chairman ko ang sisisihin kung

sakaling maano tayo. So, Mr. Chair, if I may just be allowed a few more question, just for my satisfaction?

THE CHAIRPERSON. Please proceed.

REP. UYBARRETA. **In the event, Boss, na you take over na ano, how do you intend to buyout the assets from the present franchise holder?**

MR. CASTRO. Your Honor, well, based on the . . .

REP. UYBARRETA. Kasi currently sila ang may-ari, hindi ba, Boss?

MR. CASTRO. Yes.

REP. UYBARRETA. So, ang ano na lang natin diyan is that pag wala na silang silbi, eh, sooner or later they have to sell it to someone and pinakamagandang bentahan, eh, kayo. Ang problema lang kung . . . eh, paano kung hindi ibenta sa inyo?

MR. CASTRO. Yes, Mr. Chair, Your Honor. Well, based on the financial statements that we've seen of PECO, the hard assets or . . . yeah, the hard assets out of that about three billion of total assets, the hard assets that's directly related to the business is about 460 or 480 million pesos.

REP. UYBARRETA. Four hundred sixty?

MR. CASTRO. If I'm not mistaken it's in the region of 460 to 480 million pesos, Your Honor. So, well, if there will be an offer, then, definitely, we can . . . well, we will buy the assets and to the extent that we think would be justifiable. Because at the end of the day, well, whatever the price is, is a price to certain extent that would be reflected into the bills of the consumers, anyway.

REP. UYBARRETA. Yes. That's where I'm getting to.

MR. CASTRO. Yes, Your Honor.

REP. UYBARRETA. Kasi ang promise ninyo kanina is to lower the rates.

MR. CASTRO. Yes, Your Honor.

REP. UYBARRETA. But, again, your exposure and your expenditure will . . . ipa-pass . . . ano natin iyan, pass on iyan sa ganun. So, medyo balansehin natin.

MR. CASTRO. Yes, Your Honor. Definitely, we will . . . what do you call this, we will have to agree on what that price is because as I was mentioning earlier, Your Honor, well, if it's priced too much and it will be reflected in the rates, anyway, and it wouldn't help in bringing down the rates for the consumers, then we may have to opt for other . . . other option which is maybe through . . . well, if we put up our own . . .

REP. UYBARRETA. Yeah.

MR. CASTRO. . . . system.

REP. UYBARRETA. That's the only option that you have, actually.

MR. CASTRO. Yes, Your Honor.

REP. UYBARRETA. Kaya nga I'm concerned about the timeline kasi we know how . . . how long a distribution system is.

MR. CASTRO. Yes, Your Honor. We also recognize that.

REP. UYBARRETA. Do you know what I'm driving at?

MR. CASTRO. Yes, Your Honor.

REP. UYBARRETA. And secondly, alam ba natin kung ilan 'yung empleyado nung PECO?

MR. CASTRO. Your Honor, if . . . well, based on the official records, it's says about 88 employees . . .

MR. CASTRO. (Continuing) . . . 88 employees, Your Honor.

4. *MORE has* none of the technical people *to run the franchise, hence, it was* a fait accompli for MORE to condemn, *as Section 10 and Section 17* condemn *PECO's properties and* decree *the hiring of PECO's staff.*

REP. UYBARRETA. And currently, this MORE Minerals Corporation, how many ang staff ninyo ngayon?

MR. CASTRO. Well, Your Honor, for now since, well, it is only very recent that we've activated it and yeah, since the mining has never operated, so we actually don't have any people and staff under the current setup, Your Honor. So, right now, to answer your question, actually what we have are the technical people

that are with us here and as I've mentioned in the last . . . during the last hearing, there are talents that are actually available in the market, now whom we think are able to . . . would be able to help us in this corporation, Your Honor.

REP. UYBARRETA. Well, ito lang, in the event lang, we are not saying with absolute certainty pa naman dito, we are all under the ano, in the event na ano, are you open to absorbing employees coming from PECO?

MR. CASTRO. Your Honor, also in the event that if we will be given the franchise, granted the franchise, yes. I mean, you have our commitment that we will, we will absorb.

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REP. TAMBUNTING. Thank you, Mr. Chair. I would like to ask this question sa ERC. Sabi ni Cong. Caloy na ang nagiging problema, what happens in a scenario wherein one has the franchise and the other one has the asset, anong magiging remedy ng ERC diyan? Anong ruling ninyo diyan? Paano ninyo didiskartehan iyan?

MR. MAATUBANG. ML Chair, Your Honor, actually, we have submitted that in our position paper, Your Honor, and already discussed that during the previous hearing, Your Honor, that in the event that there are two DUs in one geographical location, there will be economies of scale, that problem. So, in the end, there will be a problem with the consumers. **And in terms of assets, Your Honor, that's the problem, the other one has no assets on how it will be delivered their electricity and the other one has the assets.**

REP. TAMBUNTING. In the event that only one will be given the franchise, ang isang assumption mo riyan sa statement mo, dalawa sila.

MR. MAATUBANG. Yes, Sir.
REP. TAMBUNTING. Ngayon, kung isa lang, paano?

MR. MAATUBANG. That's the problem, Your Honor. So that will be a problem in terms of regulation, in terms of prices because there will be economies of scales in terms of rate regulations, Your Honor. **And at the same time, the one with no asset, Your Honor, basically they will . . . there's the option to tap the other one for**

the billing of the service which is being done right now, like for the sales in our electric cooperatives. That would also be a scenario, Your Honor.

REP. TAMBUNTING. So iyong mga . . . ang precedence niyan will be the winning franchise holder will have to negotiate with the one with the asset and acquire. Ganyan ang mangyayari diyan. Iyong mga cooperatives na sinasabi mo kapag, may nananalong iba, siya ang bumibili nung asset nung natalo. Tama ba iyon? Iyon ba ang precedence niyon?

MR. MAATUBANG. No, Your Honor. I am just only saying that **in case there are two DUs, then one DU that has no assets, has to . . . has an option to wheel its power to the other one. So they will have to rent the distribution utility to deliver its power to its customers**, Your Honor.

REP. GATCHALIAN. Mr. Chair, can we ask if that is allowable by law, what you are saying?

MR. MAATUBANG. Yes, right now it's open access, Your Honor. That is allowed, Your Honor.

REP. TAMBUNTING. You know, when we award a franchise, only Congress has the power to take it back because you cannot rise above sa source. Kung ang sinabi namin ikaw ang franchise holder, you cannot sublease your franchise and give it to somebody else without informing Congress because that's not transferable. So I don't think that is allowed. Your opinion, I think, is not really happening na ang prangkisa ha, prangkisa that emanates from Congress is being transferred to a different entity without the knowledge of Congress or permission from Congress.

MR. MAATUBANG. No, Your Honor, what I am saying is that in terms of access of electricity. For example, if an end-user wants to get power from other sources other than the DU, they can wheel that power to the host DU.

REP. GATCHALIAN. Mr. Chair, I think ERC has an attorney here, their legal. So maybe the question of Congressman Tambunting is better answered by Attorney Arjay.

MR. ARJAY LOUIE B. CUANAN (Attorney III, Energy Regulatory Commission). Yes, good morning, Mr. Chair. Good morning to the Members of the Committee. Actually, the question is if there is a

precedent already, if the legislative franchise has been transferred or subleased to other cooperatives. Is that right?

REP. TAMBUNTING. Yes.

REP. GATCHALIAN. Is that allowable by law and is there a precedent already that happened before, for the appreciation of the Committee?

5. *The* forced condemnation by legislation *of PECO's properties to* serve the business interests of MORE *as the new franchisee* is unprecedented *and the* first of its kind *in franchise law-making and regulation*.

MR. CUANAN. Yes. Regarding the first question, Your Honor, the law explicitly provides that it is not allowed to transfer or to lease the legislative franchise that has been granted by, Congress, without the permission or without the consent of the Congress itself, their granting power.

With respect to the second question, we actually don't have the idea yet if there is . . . if the said subleasing of legislative franchise has been happening because as what we've said, this is not . . . this is prohibited by law.

REP. TAMBUNTING. So can we go back to the first question which is, what happens if one has the franchise and the person, the incumbent whose franchise will lapse and has the assets but with no franchise, so one has the permission, the permit but the other one has the asset. What is now . . . how would ERC rule on this?

MR. CUANAN. Actually, Your Honor, as we speak today, we have not ruled on that particular, we have not encountered such particular issue so far, where there is a franchise holder and the other one has the asset. So probably, the existing franchise holder will take over or will buyout the assets of the old franchise holder.

REP. GATCHALIAN. So, if they will take over, through a corporate takeover, then hindi na ho nila kailangan humarap ngayong umaga dito, So they will take over the company . . .

REP. GATCHALIAN. (Continuing) . . . the company if they want to, the corporate entity if they wanna take over the assets

only without the corporate entity. And the corporate itself, the PECO, already has a franchise eh. So, why are you applying a new franchise here, if that's your intention, ha? We're just trying to understand.

MR. CUANAN. Sorry, Your Honor. I think PECO has a separate juridical entity. If they want to maintain, I mean they want to have a juridical . . . separate juridical personality from PECO, the existing franchise holder, so they need to secure a franchise.

REP. GATCHALIAN. So, hindi na ho applicable iyong sinagest (suggest) ni Engineer Maatubang and the question of the Honorable Tambunting about **Company A who has the asset and Company B . . . but losing, 'no, and Company B who has the liquidity but wants to take over the asset**. So, that's what we're trying to connect here and if that is allowable also by law, kayong ERC ang makakasagot diyan.

MR. CUANAN. Okay. For that, Your Honor, MORE Corporation has to secure legislative franchise. And if they will be given that franchise or granted that franchise then, probably, they can secure or buyout the assets of PECO, which is the existing franchise holder, if in case PECO will . . . PECO's franchise will not be renewed. Okay, Mr. Chairman.

REP. GATCHALIAN. So, the asset only, not including the franchise. What if PECO's franchise was renewed?

MR. CUANAN. Actually, we have not encountered that, Your Honor. We have no precedent on that because . . . we have actually one which is Bicol Light which is already . . . which is still pending before the Senate. But we have not encountered a situation where there are two distribution utilities within the geographical area.

THE CHAIRPERSON. Okay, before that, the Chair would like to recognize Congressman Montoro.

I have just one additional question. Iyong pinaka . . . from what I understand iyong pinaka-question kasi, paano iyong transition period, for example nga sa scenario na ma-approve ang MORE? And then, let's say, hindi ma-renew kaagad iyong PECO since January mag-e-expire na, sino'ng magsu-supply ng kuryente, habang iyong MORE o iyong period na iyon na mag-expire ang PECO? Ano iyong MORE kunwari magse-set up pa nu'ng kanilang infra ng equipment, siyempre mag . . . medyo may kakailanganin na time iyon eh especially if

hindi naman bibilhin iyong assets na existing. So, sino'ng magsu-supply sa Panay? Like, iyong ERC ba nagbibigay ba kayo ng provisional authority na mag-operate muna sila until such time na ready na iyong MORE? Or, papaano ang magiging set-up? Hindi naman puwedeng mag-brownout iyong Panay.

REP. TEODORO G. MONTORO. Mr. Chair, can I?

REP. TAMBUNTING. I think . . . yes. So, is it . . . Attorney, I think the . . . to amend, 'no, the question really is, what if there is a standoff and they don't want to sale to the winning bidder? What . . . how would you rule? Would you give a PA to them pending the approval, the sale?

MR. CUANAN. Sir, may I just hand over the floor to Engineer Maatubang?

MR. MAATUBANG. Your Honor, if that is the case, Your Honor, there will be a problem in regulations in terms of how we will regulate the two distribution utilities, That's the . . . that's what our concern here that was submitted in this Honorable Commission.

REP. TAMBUNTING. I think very specific naman po iyong tanong. Iyong tanong is kung hindi sila magka." alam nating magkakaproblema kaya nga ho kami nagtatanong sa inyo, 'no. Alam namin may problema. Ngayon, ano hong magiging solusyon ho n'yo? Ano'ng magiging ruling n'yo diyan? Magbibigay ba kayo ng provisional permit? "O, sige, tuloy ka muna, PECO, habang nagtatayo iyong nanalong," winning franchise owner:'

MR. CUANAN. Sir, since we don't encounter yet this particular issue, can we refer this yet to the Committee, if ever, I mean, to the Commission, if ever? Give us an opportunity to confer the matter to the Commission. Because our existing policy is we grant Certificate of Public Convenience and Necessit . . . Necessity and Convenience to the distribution utility and that is based on the legi . . . or dependent on the legislative franchise being granted by the Congress. So, if the franchise is denied, so immediately *ipso facto* the CPCN is also denied.

REP. TAMBUNTING. Correct.

. . . .

Mr. Chair, we are walking on very thin ice here, sabi nga ng ERC, ***this is the very first time that this is happening***. Kasi nga po, ang distribution and transmission business is a natural monopoly, accepted

po iyan in any country and all over the world that **distribution and transmission is a natural monopoly kasi po sa laki ng gastos para mag set up ng facilities. I heard that MORE committed that they will be able to put up their facilities, their complete distribution facilities within one year, I don't want to debunk that or ano, I just wish them well. But we know for a fact that just to set up one substation entails a lot of years and months, that's just one substation. And during last hearing, it was stated that for one distribution utilities to be able to supply the need of the franchise area that we are referring to or we are discussing here, a minimum of five substations will be required. That is capital intensive. We are not even talking about the distribution lines. We are not even talking about 'yung mga capacitor, 'yung mga transformers, the meters, the new meters, the new lines that will be put in. Again, kaya I just appeal for us to be very, very careful in deciding this. I will go for any move to give better service to any given consumers. I'm all for that. But I'm also on the side of caution kasi nga ano eh, I have nothing against MORE**, if they can promise better service, I'm all for that kasi at the end of the day, we are all here for the welfare of the consumers. But I just caution that kasi hindi natin napag-uusapan 'yung aspeto na 'yon that the signal that we will be ending to the lending institution and to the investors, kung ano man ang gagawin natin dito, will have repercussion on that. That's just my manifestation, Mr. Chair.

. . . .

MR. OFALSA. (Continuing) . . . EPIRA po, RA 9136, may third party valuation po na isa-submit on the valuation of the assets. But for now po, when a . . . sa existing policy ng ERC in existing distribution utilities, we have guidelines using a standard on how we value the assets po. Katulad po sa electric cooperatives, we use the NEA guidelines on the valuation of the assets. For private utilities for purposes of performance-based regulated, we use po iyong SKM valuation namin. This is more on technical valuation of the existing assets of all distribution utilities po.

REP. TAMBUNTING. So, in previous take overs, this is the same formula that was used.

MR. OFALSA. Wala pa kasi kami, Sir, I do not recall of any take overs of distribution. Siguro, Sir, in the past, iyong mga maliliit, ano, iyong mga una . . .

REP. TAMBUNTING. Iyong hindi pa tayo ipinapanganak.

MR. OFALSA. Yes, opo, mayroon po sigurong ganoon. Pero in my experience po sa ERC, we did not encounter any take overs of existing franchise utility po.

6. *The* expropriation of PECO's assets *is* the only means for MORE *to be able* to establish and operate *its franchise. Congress* has determined *a priori,* ***or prior to any court proceedings, that expropriation* must *take place so that MORE is able to establish and operate its franchise. Otherwise,* without PECO's assets in MORE's hands*, the people in the franchise area will have no electricity*.**

MR. CUANAN. So, the corporation cannot proceed with the distribution activity.

REP. TAMBUNTING. So, you're trying to say that the person with the franchise has the upper hand?

MR. CUANAN. Sorry, Sir?

REP. TAMBUNTING. In any area, the person with the franchise has the upper hand.

MR. CUANAN. Yes, Sir.

REP. TAMBUNTING. Now, question, is expropriation also a possibility?

MR. CUANAN. Expropriation for?

REP. TAMBUNTING. For the asset.

MR. CUANAN. You mean, the . . .

REP. TAMBUNTING. A winning franchise holder . . .

MR. CUANAN. A winning franchise holder will expropriate the . . .

REP. TAMBUNTING. Yes.

MR. CUANAN. We will, include that one, Sir, in the . . .

REP. TAMBUNTING. You don't have an answer. Thank you very much.

MR. CUANAN. Yes. We don't have an answer right now. Sorry.

REP. TAMBUNTING. Thank you very much, Mr. Chair.

THE CHAIRPERSON. Congressman Montoro.

REP. MONTORO. Thank you, Mr. Chair. Magandang umaga po sa lahat. Just a point of clarification, Mr. Chair. To the applicant, have you tried . . . nakipag-usap ba kayo doon sa ano sa currently holder ngayon? Do they know na nag-submit kayo?

MR. CASTRO. Mr. Chair, Your Honor, well, we have not yet, well, gone formally to PECO regarding this, Your Honor.

REP. MONTORO. Exactly, Mr. Chair, magkakaroon tayo ng problema rito later on kasi wala pa silang communication or formal communication with that current holder. So, siguro in the meantime, I move for deferment muna dahil kailangan munang . . . we have to . . . for the next meeting, I move that the holder will be present here para magkaroon tayo ng ano. Baka magkaroon tayo ng problema later on. Mag-aano tayo tapos sila pa ang may hawak.[27]

. . . .

REP. UNABIA. So, Mr. Chair, I understand the franchise of PECO will expire on January, 2019? Can I ask MORE Minerals Corporation, if ever, Mr. Chair, if ever they will be granted a franchise, 'no, how long can you put up your, say, for example, DU or distribution to Iloilo, if ever?

. . . .

MR. ROEL Z. CASTRO (President, MORE Minerals Corporation). Good morning, Honorable Committee and Honorable Chair. To the question of the Honorable Unabia, **if we were to put up our own system I think it would take about a year, more or less. But, again, I mean, we are still looking at the . . . at the mode wherein we could . . . we could take over the assets, of course, with just compensation to the existing franchise holder, Mr. Chair. Thank you.**

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[27] Committee Hearing, Committee on Legislative Franchises, September 12, 2018.

. . . .

REP. PANCHO. Ilang years po? Kasi ang sabi po nila ay it will take them at least a year to construct iyong mga bagong mga infrastructure nila. So, ilan po ang nakikita ninyo na ideal number of years na kailangan nating ibigay para doon sa winding period?

MS. GINES. Your Honors, ang isa pong alternative to them putting up is to, iyon na nga po, take over the current facilities but subject to the payment of just compensation. Kasi mayroon din naman pong portion of the cost of those facilities na equity ng PECO and then you also have the obligations. So, iyon po iyong isang alternative para ho dire-diretso iyong service po ng kuryente. Pero iyon na nga po ang sinabi ko ho kanina, strictly speaking po. Kaya po sabi ko po kanina, strictly speaking, iyon po talaga iyong legal implication without a franchise. But I don't think na pagdating po ng alas once . . . 11:59 ng gabi, eh, talagang magsha-shutoff. Hindi naman po. Hindi naman po siguro ganoon ang mangyayari.

. . . .

REP. UYBARRETA. Just, actually, I will not be asking too much question already because except for the fact that I requested for a technical report which I got this morning. However, just to . . . for us as the Committee on Franchise, to have a wider perspective of what we are doing right now. Iyong sinabi kanina that both DUs will be operating at a loss, in layman's term, ang sinasabi doon is pahabaan ng pisi, kung sino 'yung makakatagal na lugi magpatakbo ng negosyo at mag-survive, iyon 'yung matitira. Mr. Chair, that's a very dangerous business practice. Mahirap po if we are enticing investors to come in in our country at sasabihin natin, "Pahabaan kayo ng pisi, eh anyway parehas kayong lugi eh." That's a very dangerous business concept for us. Now, just so that we will have a bigger picture also. I'm pretty sure because of my experience sa DUs and the electric cooperatives, I'm pretty sure that the existing franchise has existing loans, one hundred percent ako sure diyan, one hundred and ten percent sure ako diyan, they have existing loans because most of the time, when you upgrade or even repair your facilities, you take in loan and then you apply that sa capex application, ina-apply sa ERC and then the ERC would give them the proper rate and a time frame or a time table to recover. Naka-apply po. Now, assuming this thing will happen, ang bigger question natin is, ano

ang mangyayari sa existing loans ng existing franchise holder? Are we giving a very bad signal to the investors and to the lending institutions that we have?

Mr. Chair, we are walking on very thin ice here, sabi nga ng ERC, ***this is the very first time that this is happening***. Kasi nga po, ang distribution and transmission business is a natural monopoly, accepted po iyan in any country and all over the world that **distribution and transmission is a natural monopoly kasi po sa laki ng gastos para mag set up ng facilities. I heard that MORE committed that they will be able to put up their facilities, their complete distribution facilities within one year, I don't want to debunk that or ano, I just wish them well. But we know for a fact that just to set up one substation entails a lot of years and months, that's just one substation. And during last hearing, it was stated that for one distribution utilities to be able to supply the need of the franchise area that we are referring to or we are discussing here, a minimum of five substations will be required. That is capital intensive. We are not even talking about the distribution lines. We are not even talking about 'yung mga capacitor, 'yung mga transformers, the meters, the new meters, the new lines that will be put in. Again, kaya I just appeal for us to be very, very careful in deciding this. I will go for any move to give better service to any given consumers. I'm all for that. But I'm also on the side of caution kasi nga ano eh, I have nothing against MORE**, if they can promise better service, I'm all for that kasi at the end of the day, we are all here for the welfare of the consumers. But I just caution that kasi hindi natin napag-uusapan 'yung aspeto na 'yon that the signal that we will be ending to the lending institution and to the investors, kung ano man ang gagawin natin dito, will have repercussion on that. That's just my manifestation, Mr. Chair.

. . . .

MR. OFALSA. (Continuing) . . . EPIRA po, RA 9136, may third party valuation po na isa-submit on the valuation of the assets. But for now po, when a . . . sa existing policy ng ERC in existing distribution utilities, we have guidelines using a standard on how we value the assets po. Katulad po sa electric cooperatives, we use the NEA guidelines on the valuation of the assets. For private utilities for purposes of performance-based regulated, we use po iyong SKM valuation namin. This is more on technical valuation of the existing assets of all distribution utilities po.

REP. TAMBUNTING. So, in previous take overs, this is the same formula that was used.

MR. OFALSA. Wala pa kasi kami, Sir, I do not recall of any take overs of distribution. Siguro, Sir, in the past, iyong mga maliliit, ano, iyong mga una . . .

REP. TAMBUNTING. Iyong hindi pa tayo ipinapanganak.

MR. OFALSA. Yes, opo, mayroon po sigurong ganoon. Pero in my experience po sa ERC, we did not encounter any take overs of existing franchise utility po.

REP. TAMBUNTING. Mr. Chair, may I ask the MORE representatives? Do you agree with the formula presented by ERC?

MR. CASTRO. Your Honors, yes, we agree with the formula. Now, however, still I think . . . well, when it comes . . . because there has been no experience on private company take over and . . . well, and let me just say that . . . just going back to that question . . . to the answer earlier that there has to be just compensation and I think this is related to that, Mr. Chair. The question is if, let's say, the asking price of the . . . well, of the existing asset owner is too high that would jeopardize the rate, ano, to the end consumer, still I think . . . well, an approach might not be totally acceptable because, at the end of the day, it's gonna be the consumers who will take it. So, that's why I think there has to be a deeper study on who actually owns really the assets, I mean, upon take over. Because as you correctly pointed out, part of it has already been recovered. In fact, if . . . well, from the distribution assets right now, if, let's say, there are assets that are fully recovered which means that consumers have already paid for it over a period of time, the question is does it still . . . make sure that it's still owned by PECO wherein . . .

REP. TAMBUNTING. Correct.

MR. CASTRO. . . . well, a company like us who would be negotiating for just compensation be included in the asset-based.[28]

x x x x

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[28] Committee Hearing, Committee on Legislative Franchises, September 18, 2018.

REP. TAMBUNTING. Thank you very much, Atty. Jan. For the transition plan which has been submitted to the ComSec, maybe we can ask Mr. Roel Castro to expound on this, with the permission of the Chair.

THE CHAIRPERSON. Mr. Castro, do you have a presentation or . . .

MR. ROEL Z. CASTRO (President, MORE Electric and Power Corporation). Good morning, Your Honors. Yes, we have a short presentation on the transition plan.

REP. TAMBUNTING. Please proceed.

MR. CASTRO. Next, please. So, upon granting of franchise, Monte Oro Power will negotiate with PECO for the purchase of its distribution assets. Assuming that there is . . . that it is positive then we will apply for the certificate of Public Convenience and Necessity and we will deploy technical personnel to conduct the operations improvement plan; develop the planning and control processes for operations and maintenance; deploy security; and conduct a total system and network audit. Should the negotiation be successful, as stated during the last hearing, we are . . . actually we are open and we would like to hire the existing personnel of PECO; develop a total distribution network development plan; implement the processes to determine the cost-effective capital investments, establish maintenance program; create the corporate planning group to establish and optimize management processes. Now, if there is a failure to reach an agreement, which means that PECO and MORE Power cannot . . . well, has no agreement on terms, MORE Power will file an expropriation case, 'no, the right to expropriate is integral part of the franchise if approved, and MORE Power will definitely pay just compensation to PECO as determined by the court.

Well, if we're still on the premise that there is a failure to reach an agreement, MORE Power will have a standby quick maintenance and response team which we are in the process of putting together that we can readily deploy in case there will be a need, in case of emergency situations where major installation like substations will be compromised. We are also in the process of already looking for a possible mobile standby substations that will be backed-up by the emergency response team. And these are facilities that are readily available. Now, for the technical and operational readiness, our

. . . well, we're contemplating that the emergency response team which is made up of engineers, technicians, and specialists who will man important facilities/like substations are ready on call for a 24/7 deployment. Standby mobile substations in case of emergency, third-party line maintenance team and crew is also being . . . we're in the process of already getting these team. The third party meter readers, as well as, we will make sure that the customer relations desk would be available 24/7 also in cooperation with the different media outlets to make sure that if there are questions or maybe any confusion . . .

MR. CASTRO. (Continuing) . . . confusion from the customer side, we will be able to respond to those queries. **Well, the other option is definitely MORE Power is ready to build its own distribution assets, 'no. We can provide our own personnel and, well, again, as also mentioned during the last, I think, during the last two hearings, 'no, we were saying that personnel is not really that difficult to source, 'no, since it is readily available in the market.** Now, on human resources, MORE Power will hire the services of the current employees who may be willing to work with us. MORE Power will hire a competent local HR Manager and, as we speak now, we actually already have applications from different . . . from a number of HR practitioners from Iloilo, 'no, to lay down the process of employment and among this, priority is really giving the training and development of its employees. Plans and programs-well, this is on the assumption that, well, the . . . we're able to come in which is . . . which has been laid down in the plans and programs that we've submitted to the Committee. We will make a thorough system audit. Prepare the necessary repair maintenance and even . . . well, from the audit, I think we'll be able to already find out if what are the improvements, immediate medium-term and long-term improvements, that will be needed. And immediately deploy the SCADA system throughout the franchise area. Well, on the distribution plan, well, I think these are some details already which we can move to the next. So, in conclusion, MORE Power will be prepared to implement the following from transition period and bring it to normal operations as soon as possible. Again, the smooth transition of normal operations including hiring of deserving employees, infusion of sufficient funding, develop and design the new distribution system, develop/implement new set of maintenance operating rules, the balance of energy, continuous training, improve responsiveness increase system, reliability and bring down the systems loss. With that, I'd

like to thank the Committee for giving us the opportunity to present the transition plan. Thank you.

. . . .

REP. PADUANO. It's still pending in the Committee. Now, Mr. Chair, just an observation during the presentation of the MORE. Kasi nandun nakalagay, ongoing 'yung negotiation with the PECO para . . . to take over. So, ang tanong ko, Mr. Chair, ano na ngayon ang status ng negotiation? Kasi, Mr. Chair, 'pag binigyan natin ng prangkisa itong MORE, it follows dapat handa sila. Kasi the consumers in Panay Island, hindi puwedeng maghintay, hindi ba? Hindi puwedeng maghintay. 'Yung question nung expropriation, if we give them the franchise. But what if . . . what if . . . if we also renew the franchise, 'di ba? If we . . . if this Committee and this House will renew their franchise, it follows na mas nauna 'to, ang PECO, mas sila ang nagsisimula sa ngayon, 'di ba? Sa ngayon sila. Of course, it is allowed, it's a free competition. But 'yung point ko, 'yung sinasabi niyong negotiation in the presentation, siguro naman dapat malaman natin kung ano na ang status ng negotiation. And nandito rin pala 'yung mga taga-PECO. Kasi, Mr. Chair, 'yun 'yung sinasabi ko, eh, if we grant MORE because free competition natin, now . . . and we also grant the renewal, it follows 'yung PECO naghahanda pa. If negotiation between PE . . . no, 'yung MORE, if negotiation between PECO and MORE failed kung i-grant natin ang PECO and there is a pending bill in this Committee. So, Mr. Chair, I just want to be clarified about the ongoing negotiation. 'Wag muna tayo pumunta doon sa question nung granting of franchise kasi, what if it failed? I-expropriate niyo, eh, there's a pending application in this Committee, this House. So, medyo may problema tayo doon. Kaya 'yung position or proposal, 'yung negotiation, medyo may problema tayo if PECO will not negotiate with you. Walang compromise, walang agreement. Now, the question is, are you prepared? Kung kompetisyon, okay. No problem with that. But 'yung sinasabi ko existing . . . existing ngayon 'yung PECO and they are applying for renewal. 'Yun Lang' yung . . . 'yun lang 'yung medyo mahirap kong intindihin, 'no. Hindi ko maintindihan na ongoing 'yung negotiation, nag-apply din sila, 'yung PECO, for renewal. So . . . Thank you, Mr. Chair.

. . . .

MR. CASTRO. Well, next . . . sorry, Mr. Chair, next slide, please. Well, there was no mention that there is an ongoing negotiation, I mean, just to clarify. What we said is that, upon granting of

the franchise, we will start . . . we will negotiate with PECO. So, there has been no statement about an ongoing negotiation.

Mr. Chair. Atty. Benny?

MR. TAN. Your Honor, we would prefer to negotiate so . . . we are not sure if we'll get our franchise so it would be presumptuous to negotiate now. Once it becomes clear that we will be able to get our franchise, we have to hurdle Senate pa. Then, we will negotiate with PECO. You mentioned the possibility that PECO will also get its franchise. Yeah, in that situation, it will be an open competition, so we will not be able to . . . to acquire their distribution assets. We will have to build our own distribution assets in such situation where there are two franchise holder for the same area, Your Honor.

. . . .

MR. OFALSA. Okay. The letter is dated September 25, 2018, addressed to Honorable Franz E. Alvarez, Chairperson, Committee on Legislative Franchise. "During the House Representatives' Committee on Legislative Franchises hearing on House Bill No. 8132 last September 12, 2018, the Energy Regulatory Commission was directed to submit its supplemental position paper on the said bill. In compliance with the said directive, please find attached ERC's Supplemental Position Paper in response to the queries and additional information requested during the hearing. We hope that the Committee will consider the same during the deliberation of this piece of legislation. Thank you." Signed by Chairperson and CEO, Agnes V.S.T. Devanadera.

The letter . . . the title of this position is ERC's Supplemental Position Paper on House Bill No. 8132, AN ACT GRANTING THE MORE MINERALS CORPORATION A FRANCHISE TO ESTABLISH, OPERATE AND MAINTAIN FOR COMMERCIAL PURPOSES AND IN THE PUBLIC INTEREST A DISTRIBUTION SYSTEM FOR THE CONVEYANCE OF ELECTRIC POWER TO END-USERS IN THE CITY OF ILOILO, IN THE PROVINCE OF ILOILO.

During the Committee on Legislative Franchises' hearing on House Bill 8132 last September 18, 2018, legal issues and operational concerns on the occurrence of any of the following scenarios were raised, namely. . . .

We go now to scenario number two — where franchise is granted to MMC and PECOs franchise is not renewed. PECO is the existing franchise electric utility with exclusive authority to operate and

maintain a distribution system in Iloilo City. As such, PECO owns the only existing distribution assets in Iloilo City. In the event that PECO's franchise is not renewed and another entity that is MMC is given the franchise to operate and maintain a distribution system in Iloilo City, a question was raised on whether PECO will be allowed to operate the existing distribution system during the transition phase of MORE Minerals. As earlier pointed out in the supplemental position paper, an entity operating and maintaining a distribution system must first secure a franchise. In the case of PECO, once existing franchise expires, it may no longer engage in the business of distribution of electricity and ERC has no legal basis to issue any authority to PECO for the latter to operate its distribution system. As ERC has no authority over PECO after the expiration of the latter's franchise, the ERC will defer to the wisdom of the Congress on whether to grant PECO a legislative franchise that will allow PECO to continue operating its distribution system.

. . . .

MR. INOCENCIO FERRER, JR. (Board Member, Panay Electric Company). Good morning, Mr. Chairman. Sorry but I have flu, 'no, so my voice is not very clear. I am Atty. Inocencio Ferrer, Jr. I represent PECO and the majority of the Board Members of PECO. Mr. Chairman, we have previously filed several letters opposing the House Bill of Congressman Gus Tambunting. And **in answer directly to the question of whether or not PECO is amenable to selling its assets or the company to MORE, I can categorically say . . . state that after conferring with the majority owners of PECO, they are not amenable to sell their assets and they will contest and bring to court any move by MORE to use the government power to expropriate their assets and give it to a private entity.** It is our position, Mr. Chairman, that **based on the presentation of the President of MORE, he actually admitted that they don't have any assets on the electrical power distribution. He admitted that. In fact, his only plan is to buy us out and if we refuse to sell, then he will invoke the government . . . the government . . . he will use the government to expropriate our assets and award it to a private entity. Number two, the President of MORE admitted now, that's why I wanted him to admit it under oath that they don't have any personnel. They don't have any technicians, experts in the field of electric power distribution and their only plan is to hire our employees.** Third, Your Honor, I don't think what he presented is a rollout plan. **Usually, a rollout plan tells the Honorable Members**

the year-to-year activities of MORE to purchase equipment, to install equipment, to apply for permits on the barangay level, the city level to install their infrastructure. They should present that to the Chairman year-to-year. Every year how much assets they will buy. Every year, how many employees they will hire. Every year, how many equipment that they will purchase. But they have not submitted a rollout plan. Instead, what they are actually telling the public is they will invoke the power of the Constitution to expropriate our property and to award it to a private entity. I think, Your Honor, that will violate the Anti-Graft Law. Anyway, we will question that in the Supreme Court. Your Honor, may I, again, ask the Chairman to distribute the various opposition . . . the various opposition submitted to this Honorable Committee against . . . the opposition against . . . the very strong opposition against the application of MORE. **In fact, the biggest association of power distributors, electric power distributors, in the Philippines submitted a very, very strong objection. They are the expert in the field and this association, PEPOA, they are called PEPOA, and PEPOA is a Private Electric Power Operators Association of the Philippines, the only expert association of private operator, strongly oppose the application of MORE because they don't have any assets. MORE does not have a single asset on the ground now in Iloilo City, nothing. Their only plan is just to expropriate our property and allow the government to pay us in court.** Second, the Private Electric Power Operators Association, which represents all . . . all the private electric power distributors in the country, strongly supported the House Bill of Congressman Xavier Jesus Romualdo, House Bill 6023, in favor of PECO. . . . Finally, Your Honor, **at that time that MORE filed its application on August 22, less than 40 days ago, MORE was a mining company. It was a mining company with only P2.5 million pesos capital and it did not have a single experience or track record in electric power distribution. Therefore, at that time they filed the application, they were not entitled. They were not qualified. And if they are now submitting the amendment of their Article, it merely states that they have . . . what? Two hundred fifty million pesos and they are going to try to takeover a multi-billion peso existing electric power distribution.** That is incredible . . .

. . . .

MR. CASTRO. Thank you very much, Your Honor. Well, just to reiterate, well, what we've stated during the first hearing. **Yes, while**

we still don't have the . . . I would say, the . . . the full complement, but, well, at the officers' level, we actually have an experienced general manager of an electric cooperative which is about three times, at least three times bigger than PECO, with a customer base of over 200 thousand, and by experience, was able to bring down systems losses from double digit to single digit, 'no. We have another general manager of another electric coop who will be joining us very soon. Again, his experience is a customer base four times bigger than that of PECO. PECO is about 60 thousand. This another GM that we are-and I'm not yet in the position to name him-actually has been managing electric coop of another urbanized area of about 225 thousand customers, ano. And experience would show na in his management, he was able to bring down systems losses and was able to turn around the . . . the financials of this utility from barely negative to positive. Also together with us is a former Undersecretary of Energy and former NAPOCOR President, Cyril Del Callar, who is very much acquainted with the power industry from the very time he joined, well, his law profession in the power industry and up to this date. Well, on the . . . on the owner's side, Monte Oro was also . . . we were part owner of the National Grid Corporation of the Philippine, when we privatized TransCo, 'no. And NGCP, we won the bid for 3.95 billion U.S. Dollars and we were able to . . . well, we had . . . we have the capital, we had the we were able to comply with what was needed on the financial side, needed by the government that's why we were awarded that franchise for the National Grid Corporation of the Philippines. And as we had . . . we have the capital, we had the we were able to comply with what was needed on the financial side, needed by the government that's why we were awarded that franchise for the National Grid Corporation of the Philippines. And as we. . . .

REP. A. M. BRAVO. Thank you very much, idol. **Assuming that MORE is capable of putting up the infrastructure, questioning their capability maybe, well, not proper as of this present as made mentioned by the author that it requires first a franchise so that they will be able to build up the facilities. Assuming that they are capable of building up and maybe to . . . after such build up they will be ready to propel the business in favor of the consumer it will take how many years do you think to do it?**

MR. CASTRO. Well, in our . . .

REP. A. M. BRAVO. On an assumption that PECO will not sell.

MR. CASTRO. Mr. Chair, Honorable Chair, in our opinion, well, **since I think capital is not a problem for us, if let's say, we're given at least a year, I mean I think we can . . . we can actually come up with the system. Because like, let's say, substations, there are mobile standby substations that we can use immediately, deploy immediately while, let's say, building the permanent substations, 'no. So, I guess, again, I mean, since capital is not a problem for us then, I think at least a year would be more or less right**, Mr. Chair. Thank you.

. . . .

REP. ANICETO JOHN D. BERTIZ. Idol ko 'yun si Bravo, pero I'm so honored that I was called. Good morning po, good morning, Mr. Chair. Actually, my question is in line with the . . . just a follow-up question with Congressman Anthony Bravo. Of course, it is incumbent for us, for this Committee to know what are the transitory plans and I would like to ask more . . . no, I mean, **I will not ask more but the MORE Mineral Corporation to know about what is your immediate plan because our worry is from now until January when PECO expires, what will be your immediate plan?** Because you know, that's the only time you will start putting up your electric posts, whatsoever, power plant, et cetera, et cetera, clearances, right of way, issues, trees to be cut, DENR, et cetera, et cetera. So, ano 'yung mangyayari? Comes January, na ano ang mangyayari doon sa ilang libong consumers or users ng existing power plant? So I just would like to know what is your immediate' because, you know, we cannot leave those thousands of families, you know, push them back to the dark ages especially in Iloilo. Thank you, Mr. Chair.

THE CHAIRPERSON. Mr. Castro.

MR. CASTRO. Your Honor, well, we presented earlier the transition plan when the hearing started, 'no, but just to summarize, it's well, **once we are granted of franchise, in good faith we would negotiate with PECO on the purchase of their distribution assets. If there's a failure in that respect, well, there is the imbedded in the franchise, the expropriation.** Well, the other option actually is that we can come up in well, as stated earlier, within a year, at least we can come up with our own facilities, Mr. Chair. That in essence are the three points that we've presented earlier. Thank you.[29]

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[29] Committee Hearing, Committee on Legislative Franchises, September 26, 2018.

I purposely quoted at length the congressional deliberations to prove that the **business plan** has ***all along*** been to **take PECO's properties at all costs** since these **properties**, as ***cleverly decreed*** in ***Section 10***, are **those properties "actually necessary"** for the **establishment** and **operation** of **MORE's** franchise. It has to be **that way** because petitioner **MORE** has **none of the facilities** to distribute electricity to consumers.

Expropriation is a **foregone** conclusion; it is the **only way** by which **MORE** as the new franchisee can **establish and operate** the distribution of electricity; **without expropriation**, since **PECO** is not willing to sell its assets, Iloilo residents will suffer a **black-out**. The **impact** of Section 10 and Section 17, as their **respective texts** prove and as envisioned by the **legislators**, is to **render** the **condemnation** a **fait accompli**, and the provision on **expropriation proceedings** a **ceremonial procedure**.

That the legislative record reveals much concern about protecting the business of **MORE** by **volunteering the taking of PECO's properties** is **nothing but consistent with** House Bill 8132's conclusion that *"[t]he quality of service of PECO has been wanting. Among the complaints against PECO are: overbilling/overcharging, arrogant personnel/poor customer relations, distributor related outages, inadequately maintained lines, inadequate investment in distribution facilities, and inordinate delay in the restoration of power services, among others."*

PECO's representative was even **invited** to give a statement on **MORE's** application for a franchise in what appeared to be a **congressional trial** of **PECO's** alleged failings. Apart from the non-renewal of its franchise and the award thereof to **MORE**, the **takeover of PECO's properties by MORE** is the **legislative punishment** for **PECO's** purported failings.

MORE's business plan and congressional intent are **relevant** to the **conclusion** that **Sections 10** and **17** are **indeed bills of attainder** because they **follow the template** as to **why bills of attainer are enacted** and **why they should be banned**. The **template** has been elucidated as follows:

We have just seen the danger that arises when a legislature acts in a judicial capacity and enacts bills of attainder to take private property, while simultaneously asserting that its actions are consistent with the law of the land. That discussion was missing only one important ingredient — **motive**. This section discusses **factions as the motive for legislative defiance of due process**. Once again, the ban on bills of attainder is by far the best aid in understanding why factions are so dangerous.

Why would a legislature be tempted to defy due process, take property without compensation, and declare that its acts are above judicial review? What possible motive could elected officials have for such misguided behavior? Factions are the answer. For a surprisingly clear statement as to why this is so, we turn to governmental genius James Madison. If anyone understood the workings and dangers of government, he did. Madison directly linked property takings, governmental factions, and rogue legislatures acting in a judicial capacity.

The occasion for Madison's interweaving of these topics was The Federalist No. 10. This is perhaps the single most famous of the Federalist papers penned by Madison, Hamilton, and Jay, and is best known for discussing the dangers of factions. What is less known is that this essay also related directly to bills of attainder and eminent domain takings as well.

In the middle of The Federalist No. 10, Madison made the seemingly innocent comment that **"no man is allowed to be a judge in his own cause." This seems self-evident. How can a man judge whether he is worthy of punishment? But Madison then took this simple concept one step further and applied it to the workings of government — more specifically, the legislature.** He said: "[A] body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens?" In other words, Madison raised the very point discussed by Webster and Hamilton above. **The legislature is tempted constantly to step into the judicial sphere, unless something prevents it from doing so.** While Webster and Hamilton spoke in terms of individualized legislation, such as bills of attainder targeted at persons or small groups of people, Madison spread the canvas farther. Was not the same principle true when large groups were targeted for unfair

treatment as well? Could not such far-reaching laws also be bills of attainder?

And just what were the groups that comprised opposing factions? Madison gave the answer in no uncertain terms: "**The most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests** in society." Madison was no communist, however, and he was not in any way criticizing an unequal distribution of property or asserting that there should be a redistribution of the same to make everyone equal. For him, such a proposition would be impossible, since the acquisition of property was derived from the very unique personalities of individual men. He referred to this concept as "the diversity in the faculties of men, from which the rights of property originate." Then came his key point — that **it was the government's job to protect and preserve such individual faculties, which in turn would forever preserve factions**:

> The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, **the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests** and parties.

What type of government would preserve property factions as necessary and unavoidable elements of society, **while at the same time preventing them from controlling the legislature** and exceeding its powers through bills of attainder? A large republic, answered Madison in The Federalist No. 10 — **a republic in which small groups of representatives from large and distant population centers would effectively hold each other in check**.

Of course, Madison believed that **the most effective way the Congress could accomplish this task was through a legislative veto**, as he had originally proposed. This legislative veto, **however, had been overturned and replaced with a judicial veto over unacceptable state acts, such as the ban on bills of attainder**. Madison still hoped and believed that the structure of the federal republic, combined with the limits in Article I, Section 10, would provide the needed protection against factions. He stated in the Federalist No. 44:

> Bills of attainder, ex-post-facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation . . . **Very properly, therefore, has the convention added this constitutional bulwark in favor of personal security and private rights . . . The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences**, in cases affecting personal rights, **become jobs in the hands of enterprising and influential speculators** . . .

Madison was not the only one who said that the ban on bills of attainder was the chief vehicle to overcome the dangers of factions. Justice Iredell in *Minge v. Gilmour* said:

> **In times of violent faction or confusion of any kind, men are often prompted, if they can, to destroy their adversaries under the color of the law.** The numerous acts of attainder in England, and other arbitrary parliamentary punishments, show how necessary it was for a wise people, forming a constitution for themselves, **to guard against tyrannies like these**.
>
> . . . .
>
> In sum, **the greatest fear of the founding generation was that the factions** — which are always present in society, and **which arise because of unavoidable differences in property ownership** — would **use the government itself to oppress** their fellow citizens. The founders hoped that the nature of America's large republic would overcome this problem. But if the republic failed to do so fully, **a very specific ban on egregious, faction-based takings legislation could also be used as a protection. This protection was the ban on bills of attainder**.[30]

D. Conclusion

Admittedly, the use of the ban on bills of attainder as a takings protection has long faded. Nonetheless, it does not need to be that way. As has been said:

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[30] *Id.* at 423-425, 427.

The ban on bills of attainder still stands as a bulwark of liberty to those whose property is arbitrarily taken by an unjustified legislative act. The provision itself has not changed, but only our understanding of it. **The provision can protect** both persons and groups who for a time are unpopular — such as those of Japanese descent in World War II, suspected communists in the 1950s, or suspected terrorists today — as well as **persons or groups that own property the government wants, and then exerts pressure to obtain. Courts today should not be afraid to apply this unique and powerful tool as it was applied in the days of our early history**. And when they do, courts will discover that it clarifies many other constitutional principles as well.[31]

II. Sections 10 and 17 violate the equal protection clause.

In ***Biraogo v. The Philippine Truth Commission of 2010***,[32] the Court nullified then President Aquino's Executive Order No. 1 creating the Truth Commission and tasking it to investigate reported cases of graft and corruption allegedly committed during the presidency of President Macapagal-Arroyo. The Court held that this executive rule violated the equal protection clause, *viz.*:

> The equal protection clause is aimed at all official state actions, not just those of the legislature. Its inhibitions cover all the departments of the government including the political and executive departments, and extend to all actions of a state denying equal protection of the laws, through whatever agency or whatever guise is taken.
>
> It, however, does not require the universal application of the laws to all persons or things without distinction. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. **Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and**

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[31] *Id.* at 428.

[32] 651 Phil. 374 (2010).

(4) It applies equally to all members of the same class. "Superficial differences do not make for a valid classification."

For a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class. . . .

The classification must not be based on existing circumstances only, or so constituted as to preclude addition to the number included in the class. It must be of such a nature as to embrace all those who may thereafter be in similar circumstances and conditions. It must not leave out or "under include" those that should otherwise fall into a certain classification. . . .

Applying these precepts to this case, Executive Order No. 1 should be struck down as violative of the equal protection clause. The clear mandate of the envisioned truth commission is to investigate and find out the truth "concerning the reported cases of graft and corruption during the previous administration" only. The **intent to single out the previous administration is plain, patent and manifest**. Mention of it has been made in at least three portions of the questioned executive order. Specifically, these are. . . .

In this regard, it must be borne in mind that the Arroyo administration is but just a member of a class, that is, a class of past administrations. It is not a class of its own. Not to include past administrations similarly situated constitutes arbitrariness which the equal protection clause cannot sanction. **Such discriminating differentiation clearly reverberates to label the commission as a vehicle for vindictiveness and selective retribution.**

. . . .

To reiterate, in order **for a classification to meet the requirements of constitutionality, it must include or embrace all persons who naturally belong to the class**. "**Such a classification must not be** based on existing circumstances only, or **so constituted as to preclude additions to the number included within a class**, but **must be of such a nature as to embrace all those who may thereafter be in similar circumstances** and conditions. Furthermore, all who are in situations and circumstances which are relative to the discriminatory legislation and which are indistinguishable from those of the members of the class must be brought under the influence of the law and treated by it in the same way as are the members of the class."

Here, Sections 10 and 17 are directed **only** against respondent **PECO**. While the language of these provisions may be construed to refer to property owners other than **PECO**, the congressional deliberations **made it very clear and categorical** that **the take-over is solely with regard to PECO and its properties**. The **overriding intent** is the ***legislated*** **taking, condemnation of expropriation of PECO's assets** and **no other entity's properties**, because **this is petitioner MORE's business plan** as it has **none of the facilities** to establish and operate the distribution of electricity within its franchise area. This is the same **evil** that ***Biraogo*** has railed against, the **singling out** of a person for the **imposition of burdens** that and whenever **the singled out person is not willing to accept**.

Indeed, what **differentiates** respondent **PECO** from other property owners? **PECO** is **not the only entity** that has "*poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment.*" As admitted by petitioner **MORE**,

> Well, the other option is definitely MORE Power is ready to build its own distribution assets, 'no. We can provide our own personnel and, well, again, as also mentioned during the last, I think, during the last two hearings, 'no, we were saying that personnel is not really that difficult to source, 'no, since it is readily available in the market.
>
> . . . since I think capital is not a problem for us, if let's say, we're given at least a year, I mean I think we can . . . we can actually come up with the system. Because like, let's say, substations, there are mobile standby substations that we can use immediately, deploy immediately while, let's say, building the permanent substations, 'no. So, I guess, again, I mean, since capital is not a problem for us then, I think at least a year would be more or less right . . .

Hence, there is **no basis** for Sections 10 and 17 to **single out** PECO for the **take-over** and **condemnation** of its properties and to drive it altogether from doing **other legitimate businesses** as regards its assets.

III. Response to Key Points in the Ponencia.

With the kind indulgence of my friend, the revered *ponente*, Justice Reyes, Jr., may I politely reply.

The *ponencia* admits:

x x x x

At the same time, Section 17 expressly provides that, even as PECO is operating the distribution system, this interim arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain. Thus, after R.A. No. 11212 took effect on March 9, 2019, MORE filed on March 11, 2019 a Complaint for Expropriation with the Regional Trial Court of Iloilo City, Branch 37 (Iloilo RTC), over the distribution system of PECO in Iloilo City.

x x x x

x x x x Ownership was co-existent with the franchise. x x x x

The reference to an expropriation proceeding now before the trial court strengthens the view that **MORE** has been true to its business plan of **merely taking over PECO's properties** to establish, operate and maintain its franchise. The *ponencia*'s statement that "[o]wnership was co-existent with the franchise" further proves that the **confiscation of PECO's properties** is the **Congress' primordial means** of supporting **MORE's** franchise.

Expropriation by MORE of the distribution system of PECO is for a genuine public purpose.

The next legal issue is whether expropriation by MORE of PECO's distribution asset under Section 10 and Section 17 of R.A. No. 11212 is for a genuine public purpose. To reiterate, while it is Congress that defines public necessity or purpose, the Court has the power to review whether such necessity is genuine and public in character, by applying as standards the constitutional requirements of due process and equal protection.

In its assailed decision, the RTC held that while R.A. No. 11212 authorizes MORE to expropriate the private property of PECO and to apply the same to the public purpose of power distribution, such identified public purpose is not genuine for ultimately it is the private

interest of MORE that will be served by the expropriation. In other words, the expropriation is an ill-disguised corporate takeover.

x x x x

Even without these developments in Western jurisprudence, the genuineness of the public purpose of the expropriation of the distribution system of PECO can be determined from R.A. No. 11212 itself.

Expropriation under Section 10 and Section 17 of R.A. No. 11212 is not only for the general purpose of electricity distribution. A more distinct public purpose is emphasized: the protection of the public interest by ensuring the uninterrupted supply of electricity in the city during the transition from the old franchise to the new franchise. This distinct purpose has arisen because MORE is the new franchise holder in a city whose public space is already burdened by an existing distribution system, and that distribution system cannot continue to serve a public use for it is owned by the old franchise holder.

x x x x

The public necessity of ensuring uninterrupted electricity is implicit in Section 10, which authorizes MORE to expropriate the existing distribution system to enable itself to efficiently establish its service. This distinct public necessity is reiterated in Section 17 under which MORE may initiate expropriation proceedings even as PECO is provisionally operating the distribution system. In fact, this distinct public necessity of ensuring uninterrupted electricity is the very rationale of the ERC in granting PECO a provisional CPCN. The provisional CPCN is the legal basis of PECO's continued operation of the distribution system. PECO cannot deny that such distinct necessity to ensure uninterrupted electricity supply is public and genuine.

x x x x

x x x In sum, expropriation by MORE of the distribution system of PECO under Sections 10 and 17 serves both the general public interest of conveying power and electricity in Iloilo City and the peculiar public interest and security of ensuring the interrupted supply of electricity. The RTC erred in declaring these provisions unconstitutional.

The discussion in the *ponencia* **validates** what I have been saying all along that **Congress** through Sections 10 and 17 has already **determined** and **settled** the issues inherent in an **otherwise judicial** expropriation proceeding. The court expropriation case has become and will be **a *fait accompli,* a ceremonial figurehead**.

Additionally, the **public purpose** for the expropriation **did not arise** because, to quote the *ponencia*, "MORE is the new franchise holder in a city whose public space is already burdened by an existing distribution system, and that distribution system cannot continue to serve a public use for it is owned by the old franchise holder."

Rather, the **public use *came about*** because MORE **has had none of the facilities and the people** to establish, operate and maintain the franchise. The fact that PECO has its facilities in the franchise area **does not justify** the expropriation, because there **would have been no use for these facilities *if only MORE has been equipped*** and ***skilled*** to **perform** the **franchise it sought and was awarded**.

It is **unfair** and **out-of-line** to turn the tables on **PECO** when it is **MORE** that has no equipment and people to make its franchise useful to the people it is intended to serve.

The *ponencia* claims that:

> In her Dissenting Opinion, Justice Javier extends the concept of bill of attainder to cover Sec. 10 and Sec. 17 in that these legislations purportedly single out PECO and subject the latter to punishment without the benefit of trial. **This conception bills of attainder is problematic for, as correctly pointed out by Justice Leonen in his dissent, a legislative franchise is not a right but a special privilege the grant, amendment, repeal or termination of which is granted to Congress by no less than the Constitution.** Consequently, the termination of a franchise by its expiration is not a deprivation of a right or property that amounts to punishment. There is no question that the franchise of PECO was allowed to lapse because of its failure to render competent public service. No prior judicial trial of the performance of PECO is required before Congress may

decide not to renew PECO's franchise. The power of this Court to subject to judicial review the constitutionality of a franchise legislation does not include the power to choose the franchise holder. That is not our place in the constitutional scheme of things.

With due respect, it is indeed problematic that the *ponencia* has completely **misconstrued** and **misappreciated** the point of my dissent. What I claim to be bills of attainder are Section 10 and Section 17 of **MORE's** franchise, and **certainly not** the denial of **PECO's** franchise. The latter is **not** the subject matter of this case and therefore I cannot have assailed or challenged it in my dissent. In any event, the grant or denial of a franchise begins and ends with Congress — that is a given.

What I point out as **bills of attainder** are **Section 10 and Section 17, RA 11212**, which have **burdened PECO** with the **fait accompli expropriation or taking** of its property in a manner that **dispenses with the judicial trial** on whether public use and public necessity are present in the take-over of PECO properties. Here, it was Congress itself that **has become no only the initial but also the final arbiter** of what **essentially** has **always been** a **judicial function**.

To be sure, the denial of PECO's franchise and the grant of franchise to MORE **did not have** to come with the **added burden to PECO** of a **legislatively determined** expropriation of PECO's assets. The **two actions** are **actually separable** from each other, and hence, a challenge on the latter **does not amount to** an attack on the former.

The *ponencia* also holds:

> Justice Javier argues that Sec. 10 and Sec. 17 virtually enable MORE to piggyback on PECO in order to establish and operate its franchise. Every legislative franchise enables the franchise holder to expropriate with the view of building its distribution system. Even PECO obtained the franchise from De La Rama along with the authority to use public spaces for the installation of its distribution system. MORE is authorized to acquire the assets of PECO and any other assets of any other entity that might be available as these are be necessary for the discharge of its public franchise.

There is a huge difference between a consensual acquisition of another's property and a forcible or coercive take-over thereof. The latter is an exercise of State power that the *Constitution* restrains. While a legislation may authorize its exercise and **initially** determines the propriety of its exercise, it is a **court decree** that **makes the ultimate lawfully binding determination** on the basis of the existence of public use and public necessity and the payment of just compensation. In the case at bar, **the process has been skewed** because Section 10 and Section 17 of RA 11212 themselves, as confirmed by the legislative deliberations, **have adjudged with finality** the existence of the elements that should have been the court's prerogative to adjudicate. Even the Court, though it is **not** the expropriation court, **has already found** in the present case and on the basis or upon the lead of Section 10 and Section 17, that the take-over is for a public use and publicly necessary.

Thus, while I sincerely appreciate the *ponencia*'s discussion on the points I have raised, I **still cannot find myself** to agree with both the rationale and the conclusion it has reached. I maintain my dissent.

IV. Thoughts on Justice Caguioa's Opinion.

As always, my friend and senior colleague's thoughts have sharpened the points of discussion.

One. I agree with Justice Caguioa that "the power of expropriation is by no means absolute." But the power of eminent domain is **not only limited** by *public use* and *just compensation*; **genuine public necessity** and the **proscription against bills of attainder** similarly restrict the exercise of this State power.

Two. I disagree with the thought that "the Constitution does not sanction the taking of a private [property]" only if "the **sole** purpose" thereof is to transfer it to another private party. **Sole** means only, one and only, single, solitary, lone, unique. But, as the Opinion itself cites, **even** the **confluence** of **private and public** benefits, **not solely** the conferment of private benefits, may destroy the public use claim of an expropriation "when

the purported public use is merely incidental or pretextual, thereby serving as a guise to favor private interests." **Clearly**, the fact that there is a **gloss of public use** to a taking **does not end** the debate simply because it is **not the sole** purpose of the taking to benefit a private party. The **incidental or pretextual public use defense** has been explained in this manner:

> When determining the limits of the government's right to take private property, we will defer to the General [***36] Assembly's exercise of those powers. Id. at 543; SWIDA, 199 Ill. 2d at 236 ("Great deference should be afforded the legislature and its granting of eminent domain authority."). Under SWIDA, **that deference evaporates when the public purpose behind the taking is a pretext, when a municipality uses eminent domain as a weapon to forcibly transfer property from one private owner to another**. See SWIDA, 199 Ill. 2d at 240 ("While [SWIDA's] activities here were undertaken in the guise of carrying out its legislated mission, SWIDA's true intentions were not clothed in an independent, legitimate governmental decision to further a planned public use."); *Kelo v. City of New London, Connecticut*, 545 U.S. 469, 478, 125 S. Ct. 2655, 162 L. Ed. 2d 439 (2005) (noting government would not be allowed "to take property under the mere pretext of a public purpose, **when its actual purpose was to bestow private benefit**."); cf. *Franco v. National Capital Revitalization Corp.*, 930 A.2d 160, 169 (D.C. 2007) (finding **"pretext" to be valid affirmative defense to condemnation** for economic redevelopment).
>
> Recognizing the difference between a valid public use and a sham can be challenging. But **a telling feature of sound public use** in the context of economic redevelopment is **the existence of a well-developed, publicly vetted, and thoughtful economic development plan. Such a plan was present in Kelo**, 545 U.S. at 483-84, and Gutknecht, 3 Ill. 2d at 542-43, **but absent in SWIDA**, 199 Ill. 2d at 240 ("SWIDA did not conduct or commission [***37] a thorough study of the parking situation at [the racetrack]. Nor did it formulate any economic plan requiring additional parking at the racetrack."). **A taking will likely pass constitutional muster where done in furtherance of a sound economic development plan, rather than** [****432] [**522] **the plan retroactively justifying the taking**. Cf. *Romeo v. Cranston Redevelopment Agency*, 105 R.I. 651, 254 A.2d 426, 433 (R.I. 1969) ("governing bodies must either plan for the development or redevelopment of urban areas or permit them to

become more congested, deteriorated, obsolescent, unhealthy, stagnant, inefficient and costly" (internal quotation marks omitted)).[33]

As has been copiously quoted and also explained at length, **MORE's business plan** from the beginning has been to **take over PECO's** properties. There was **no** well-developed, publicly vetted, and thoughtful plan as **the idea was simply to take** and **justify this taking by retroactively referring to MORE's business plan** of simply taking over PECO's properties.

In ***Southwestern Ill. Dev. Auth. v. Nat'l. City Envtl., L.L.C.***,[34] a government agency sought to expropriate private parcels of land to be conveyed to a private race track which would then build additional parking spaces for its clientele. The court ruled that the public benefits arising from the parking spaces were merely incidental and pretextual to the profit motivation of the private race track. Thus:

> If this taking were allowed to stand, it may be true that spectators at Gateway would benefit greatly. **Developing additional parking could benefit the members of the public who choose to attend events at the racetrack, as spectators may often have to wait in long lines of traffic to park their vehicles and again to depart the facility. We also acknowledge that a public use or purpose may be satisfied in light of public safety concerns.** See *Illinois Toll Highway Comm'n. v. Eden Cemetery Ass'n.*, 16 Ill. 2d 539, 158 N.E.2d 766 (1959). The public is allowed to park on the property in exchange for the payment of a fee. **Gateway's racetrack may be open to the public, but not "by right."** Gaylord, 204 Ill. at 584. It is **a private venture designed to [*239] result not in a public use, but in private profits**. If this taking were permitted, **lines to enter parking lots might be shortened and pedestrians might [***21] be able to cross from parking areas to event areas in a safer manner. However**, we are **unpersuaded** that these facts alone are sufficient **to satisfy the public use requirement**, especially in light

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[33] *City of Chicago v. Eychaner*, 2015 IL App (1st) 131833, P70-P71, 26 N.E.3d 501, 521-522, 2015 Ill. App. LEXIS 37, *35-37, 389 Ill. Dec. 411, 431-432 (III. App. Ct. 1st Dist. January 21, 2015).

[34] 199 III. 2d 225, 238-242, 768 N.E.2d 1, 9-11, 2002 III. LEXIS 299, *20-27, 263 Ill. Dec. 241, 249-251 (I11. April 4, 2002).

of evidence that **Gateway could have built a parking garage structure on its existing property**.

We have also recognized that **economic development is an important public purpose**. See *People ex rel. City of Canton v. Crouch*, 79 Ill. 2d 356, 38 Ill. Dec. 154, 403 N.E.2d 242 (1980); *People ex rel. City of Urbana v. Paley*, 68 Ill. 2d 62, 11 Ill. Dec. 307, 368 N.E.2d 915 (1977); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 291 N.E.2d 807 (1972). SWIDA presented extensive testimony that **expanding Gateway's facilities through the taking of NCE's property would allow it to grow and prosper and contribute to positive economic growth in the region. However, "incidentally, every lawful business does this."** Gaylord, 204 Ill. at 586. Moreover, nearly a century ago, Gaylord expressed the long-standing rule that "**to constitute a public use, something more than a mere benefit to the public must flow from the contemplated improvement**. [***22]" Gaylord, 204 Ill. at 584.

This case is strikingly similar to our earlier decision in *Limits Industrial R.R. Co. v. American Spiral Pipe Works*, 321 Ill. 101, 151 N.E. 567 (1926). In Limits Industrial, this court held that a railroad could not exercise eminent domain authority to acquire property for the purpose of expanding its facilities. Despite a certificate of convenience and necessity issued by the Illinois Commerce Commission, we found the proposed spur track and public [**10] [****250] freight house provided **minimal public benefit and principally benefitted the railroad itself and a few other business entities**. Limits Industrial, 321 Ill. at 109-10. Similarly, it is incumbent upon us to question SWIDA's findings as to the parking situation at Gateway and **determine whether [*240] the true beneficiaries of this taking are private businesses and not the public**.

We do not require a bright-line test to find that this taking bestows a purely private benefit and lacks a showing of a supporting legislative purpose. As was the case in Limits Industrial, **members of the public are not the primary intended beneficiaries of this taking.** Limits Industrial, 321 Ill. at 109-10. [***23] **This condemnation clearly was intended to assist Gateway in accomplishing their goals in a swift, economical, and profitable manner.**

Entities such as SWIDA must always be mindful of expediency, cost efficiency, and profitability while accepting the legislature's

charge to promote development within their defined parameters. However, **these goals must not be allowed to overshadow the constitutional principles** that lie at the heart of the power with which SWIDA and similar entities have been entrusted. As Justice Kuehn stated in dissent in the appellate court, "If property ownership is to remain what our forefathers intended it to be, if it is to remain a part of the liberty we cherish, **the economic by-products of a private capitalist's ability to develop land cannot justify a surrender of ownership to eminent domain**." 304 Ill. App. 3d at 556 (Kuehn, J., specially concurring).

While the activities here were undertaken in the guise of carrying out its legislated mission, **SWIDA's true intentions were not clothed in an independent, legitimate governmental decision to further a planned public use. SWIDA did not conduct or commission a thorough study of the parking situation** [***24] at Gateway. **Nor did it formulate any economic plan requiring additional parking** at the racetrack. SWIDA advertised that, **for a fee, it would condemn land at the request of "private developers" for the "private use"** of developers. In addition, SWIDA entered into **a contract** with Gateway **to condemn whatever land "may be desired** *** by Gateway." Clearly, [*241] the **foundation of this taking is rooted not in the economic and planning process** with which SWIDA has been charged. **Rather, this action was undertaken solely in response to Gateway's expansion goals and its failure to accomplish those goals through purchasing** NCE's land at an acceptable negotiated price. **It appears SWIDA's true intentions were to act as a default broker of land for Gateway's proposed parking plan.**

This point is further emphasized by the fact that **other options were available to Gateway that could have addressed many of the problems** testified to by Pritchett, Ortbals and others. Gateway could have built a parking garage structure on its existing property rather than develop the land owned by NCE. **However, when Gateway discovered that the cost of constructing a garage on land it already owned was substantially higher than [***25] using SWIDA as its agent to take NCE's property for open-field parking, Gateway chose the easier and less expensive avenue.**

As a result of the acquisition of NCE's property, Gateway could realize an estimated increase of $13 to $14 million in projected revenue per year. While we do not deny that this expansion in revenue could potentially trickle down and bring corresponding revenue increases to the region, revenue expansion alone does not justify an improper and unacceptable expansion [**11] [****251] of the eminent domain power of the government. Using the power of the government for purely private purposes to allow Gateway to avoid the open real estate market and expand its facilities in a more cost-efficient manner, and thus maximizing corporate profits, is a misuse of the power entrusted by the public.

The legislature intended that SWIDA actively foster economic development and expansion in Madison and St. Clair Counties. 70 ILCS 520/2(g), 5 (West 1998). However, the actions of SWIDA in this case blur the lines between [*242] a public use and a private purpose. A highway toll authority may justify the use of eminent domain to ensure that motorists have reasonable access [***26] to gas stations. Illinois Toll Highway Comm'n, 16 Ill. 2d at 546. **Does the highway authority's power include the ability to use eminent domain authority to take additional land for a car wash, and then a lube shop? Could the authority then use its power to facilitate additional expansions for a motel, small retail shops, and entertainment centers? The initial, legitimate development of a public project does not justify condemnation for any and all related business expansions.**

SWIDA contends that the "wisdom *** of the legislation and 'the means of executing the project' are beyond judicial scrutiny 'once the public purpose has been established.' It is that purpose which controls and not the 'means' or 'mechanics' of how the purpose is carried out." We disagree. The Constitution and the essential liberties we are sworn to protect control. In its wisdom, the legislature has given SWIDA the authority to use eminent domain power to encourage private enterprise and become involved in commercial projects that may benefit a specific region of this state. While we do not question the legislature's discretion in allowing for the exercise of eminent domain power, "the government [***27] does not have unlimited power to redefine property rights." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439, 73 L. Ed. 2d 868, 885, 102 S. Ct. 3164, 3178 (1982). The power of eminent domain is to be exercised with restraint, not abandon.

Here, **Sections 10 and 17 have become the default broker for MORE**. The latter could have discovered that the cost of building facilities for the distribution of electricity was substantially higher than using these assailed provisions as its agent to take **PECO's** properties. **MORE** chose the easier and less expensive avenue to exercise its franchise.

Three. It has been explained that:

> **Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit.** The takings before us, however, would be **executed pursuant to a "carefully considered" development plan**. 268 Conn., at 54, 843 A.2d, at 536. The trial judge and all the members of the Supreme Court of Connecticut agreed that there was no evidence of an illegitimate purpose in this case. Therefore, as was true of the statute challenged in Midkiff, 467 U.S., at 245, 81 L. Ed. 2d 186, 104 S. Ct. 2321, **the City's development plan was not adopted "to benefit a particular class of identifiable individuals."**[35]

Here, the **actual purpose** for the expropriation of **PECO's** properties has been to bestow a **private benefit** on **MORE's** exercise of its franchise that it could not have fulfilled otherwise. **But for MORE's inability** to provide the facilities and technical knowhow to establish and operate its franchise, and **MORE's ultimate business plan to take-over and raid PECO's** facilities, the expropriation of **PECO's** properties would **not** have come to pass and would not have been **made** necessary. Verily, Sections 10 and 17 have been **meant to operationalize** a **business plan** to **benefit** a **particular class of identifiable individuals — MORE**.

Four. On pages 4 to 5 of his Opinion, Justice Caguioa **confirms** that the **expropriation of PECO's properties** has its **roots** in the **perceived shortfalls** in **PECO's services**. His Opinion **rounds up the expropriation provisions to facts associated with the non-renewal of PECO's franchise, the award of the franchise to MORE**, and **PECO's alleged poor**

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[35] Kelo, supra.

services that gave birth to all its woes. In other words, **PECO** has been singled out with the expropriation of its properties without a judicial trial.

Five. Much like the *ponencia*, the Opinion echoes Sections 10 and 17 that the expropriation of **PECO's** properties — **including, but not limited** to its poles, wires, cables, transformers, switching equipment and stations, buildings, infrastructure, machineries and equipment — is intended for public use and demanded by public necessity. With this determination, **what else are we to expect from the lower court hearing the expropriation proceedings?** This confirms what I have been saying all along that **PECO has been singled out** and **punished for its alleged poor services** through the **take-over of its properties** whose **validity and legitimacy** have been **settled by legislative fiat** through Sections 10 and 17.

ACCORDINGLY, I vote to **DISMISS** the petitions and **AFFIRM** the trial court's Judgment dated July 1, 2019, declaring Sections 10 and 17 of Republic Act No. 11212 **UNCONSTITUTIONAL** for being bills of attainder and for being violative of the equal protection clause.

EN BANC

[G.R. No. 252120. September 15, 2020]

IN THE MATTER OF THE PETITION FOR WRIT OF AMPARO AND WRIT OF HABEAS CORPUS IN FAVOR OF ALICIA JASPER S. LUCENA;

RELISSA SANTOS LUCENA AND FRANCIS B. LUCENA, *Petitioners, v.* **SARAH ELAGO, KABATAAN PARTY-LIST REPRESENTATIVE; ALEX DANDAY, NATIONAL SPOKESPERSON OF ANAKBAYAN; CHARY DELOS REYES, BIANCA GACOS, JAY ROVEN BALLAIS VILLAFUENTE, MEMBERS AND RECRUITERS OF ANAKBAYAN; AND ATTY. MARIA KRISTINA CONTI**, *Respondents*.

SYLLABUS

1. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; ISSUANCE OF A WRIT OF *AMPARO* IS NOT PROPER AS THE SITUATION IN THIS CASE DOES NOT QUALIFY EITHER AS AN ACTUAL OR THREATENED ENFORCED DISAPPEARANCE OR EXTRALEGAL KILLING. — Petitioners' plea for the issuance of a writ of *amparo* is not proper. The remedy of *amparo*, in its present formulation, is confined merely to instances of "*extralegal killings*" or "*enforced disappearances*" and to threats thereof. x x x Here, there is not much issue that AJ's situation does not qualify either as an actual or threatened enforced disappearance or extralegal killing. AJ is not missing. Her whereabouts are determinable. By all accounts, she is staying with the *Anakbayan* and its officers which, at least insofar as AJ's case is concerned, are not agents or organizations acting on behalf of the State. Indeed, against these facts, petitioners' invocation of the remedy of *amparo* cannot pass.

2. ID.; WRIT OF *HABEAS CORPUS*, DEFINED; WHERE PETITIONERS HAD NOT BEEN EXCLUDED FROM THEIR RIGHTFUL CUSTODY OVER THEIR DAUGHTER AND THE LATTER DENIED BEING

ABDUCTED OR DETAINED BY RESPONDENTS, THE PETITION IS DISMISSIBLE FOR LACK OF MERIT. — The Rules of Court envisions the writ of *habeas corpus* as a remedy applicable to cases of illegal confinement or detention **where a person is deprived of his or her liberty,** or **where the rightful custody of any person is withheld from the person entitled thereto.** x x x In this case, however, it did not at all appear that AJ had been deprived of her liberty or that petitioners had been excluded from their rightful custody over the person of AJ. *First.* The petitioners failed to make out a case that AJ is being detained or is being kept by the *Anakbayan* against her free will. To start, there was never any accusation that the *Anakbayan* employed violence, force or threat against AJ that would have influenced her in deciding to stay with the *Anakbayan.* Neither is there an allegation that the *Anakbayan* is employing such violence, force or threat so as to prevent AJ from eventually changing her mind and from possibly leaving the *Anakbayan* in the future. x x x AJ already categorically denied being abducted by the *Anakbayan* during a press conference conducted by the representatives of the *Kabataan, Bayan Muna,* ACT Teacher and *Gabriela* Party-lists on August 14, 2019. x x x Against these explicit submissions, petitioners' claim that AJ is being held against her will certainly cannot stand. *Second.* It also cannot be said that petitioners were being excluded from their rightful custody over the person of AJ. As it was established, AJ has already reached the age of majority and is, thus, legally emancipated. The effect of such emancipation is clear under the law. It meant the termination of the petitioners' parental authority — which include their custodial rights — over the person and property of AJ, who is now deemed qualified and responsible for all acts of civil life save for certain exceptions provided by law.

3. ID.; ID.; A PERSON WHO HAS ALREADY ATTAINED THE AGE OF MAJORITY HAS THE RIGHT TO MAKE INDEPENDENT CHOICES AS LONG AS THEY DO NOT VIOLATE ANY LAW OR ANY OTHER PERSON'S RIGHT, SUCH CHOICES HAS TO BE RESPECTED; THE WRITS OF *AMPARO* AND *HABEAS CORPUS* WERE NEVER MEANT TO TEMPER THE BRASHNESS OF YOUTH. — As she has already attained the age of majority, AJ — at least in the eyes of the State — has earned the right

> to make independent choices with respect to the places where she wants to stay, as well as to the persons whose company she wants to keep. Such choices, so long as they do not violate any law or any other persons' rights, has to be respected and let alone, lest we trample upon AJ's personal liberty — the very freedom supposed to be protected by the writs of *amparo* and *habeas corpus*. While we understand that petitioners may feel distressed over AJ's decision to leave their home and stay with the *Anakbayan*, their recourse unfortunately does not lie with the Court through the instant petition. The writs of *amparo* and *habeas corpus* were never meant to temper the brashness of youth. The resolution of the conflict besetting petitioners and their daughter AJ is simply beyond the competence of the writs applied for.

APPEARANCES OF COUNSEL

Topacio Law Office, Maria Cecilia Capa, and *Bryan Bantillan* for petitioners.

National Union of People's Lawyers for respondents Jayroven Balais Villafuente, Bianca Gacos and Chary Delos Reyes.

Public Interest Law Center for respondents Alex S. Danday and Maria Kristina C. Conti.

Maria Cristina F. Yambot and *Fahima Tajar*, collaborating counsels for respondent Sarah Jane I. Elago.

D E C I S I O N

PERALTA, *C.J.*:

At bench is a petition for the issuance of the writs of *amparo* and *habeas corpus*[1] filed by petitioners Relissa and Francis Lucena.

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[1] *Rollo*, pp. 3-17.

1.

Petitioners are the parents of Alicia Jasper S. Lucena (AJ) — a 19-year-old lass born on July 24, 2001.

Sometime in 2018, AJ enrolled as a Grade 11 student at the Far Eastern University *(FEU)*.[2] There, AJ was enticed to join the FEU Chapter of *Anakbayan* — a youth organization supposedly advocating ideals of national democracy.

On February 2, 2019, AJ informed petitioners that she had joined and was now an official member of *Anakbayan*.

The next day, AJ left the family home without any explanation. She did not return until three (3) days later.

On March 10, 2019, AJ once again left the family home. This time, she did not return until more than two (2) months later, or on May 25, 2019. Petitioners learned that during the time AJ was not at home, AJ was in the custody of respondents Charie Delos Reyes *(Reyes)*,[3] Bianca Gacos *(Gacos)* and Jay Roven Ballais Villafuente *(Villafuente)*[4] — national leaders of *Anakbayan*. AJ was then conducting recruiting activities on behalf of *Anakbayan* and was also campaigning for the *Kabataan* Partylist and Neri Colmenares.

On July 10, 2019, AJ left the family home for the third time and never came back. She has since dropped out from FEU.

On August 7, 2019, the Senate Committee on Public Order and Dangerous Drugs conducted a hearing amidst reports that *Anakbayan* had been recruiting students and inducing them to abandon their homes. Among those invited in the committee hearing was petitioner Relissa, who testified about her experience with AJ.

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[2] See Annex "G" of the Petition; *id.* at 76.

[3] Identified as Charie *Del Rosario* on page 8 of the Petition; *id.* at 10.

[4] Identified as Jay Roven Ballais on page 8 of the Petition; *id.*

On August 14, 2019, representatives of the *Kabataan*,[5] *Bayan Muna*,[6] ACT Teacher[7] and *Gabriela*[8] Party-lists conducted a press conference where they presented and appeared alongside AJ and another allegedly missing student.[9] AJ, in that press conference, explained that she was never abducted, but rather joined *Anakbayan* voluntarily.[10]

2.

Seeking mainly to regain custody of AJ, petitioners instituted the present petition for the issuance of the writs of *amparo* and *habeas corpus*. Impleaded along with Reyes, Gacos and Villafuente as respondents in the petition are: Sarah Elago, who is a representative of the *Kabataan* Party-list; Alex Danday, who is the spokesperson of *Anakbayan*; and Atty. Maria Kristina Conti, who is a known counsel of *Anakbayan*.[11]

The petition, in particular, prays the Court to issue the following reliefs:[12]

a. A writ of *amparo* in favor of AJ and petitioners.

b. In the interim, a temporary protection order "*prohibiting the respondents, and the [Anakbayan] and [Kabataan] Party-list from recruiting, influencing, indoctrinating, immersing and threatening the life, liberty and security of [AJ], or from committing or attempting to commit any act which are violative of the rights of [AJ], and abusive of her physical, mental, psychological and emotional development.*"

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[5] Namely, respondent Sarah Elago.

[6] Namely, Carlos Zarate, Eufemia Cullamat and Ferdinand Gaite.

[7] Namely, France Castro.

[8] Namely, Arlene Brosas.

[9] Annex "W" of the Petition.

[10] *Id.*

[11] *Rollo*, p. 7.

[12] *Id.* at 16.

c. A writ of *habeas corpus* ordering the respondents to produce the person of AJ in Court.

d. An order immediately placing AJ under the custody and care of the petitioners.

e. An order requiring the conduct of a medical and psychological examination on, and the conferment of medical and psychological assistance to AJ in order to determine the extent and gravity of the abuse, exploitation and prejudice to her mental, physical, emotional and psychological state.

The petitioners concede that AJ is already at the age of majority — eighteen (18) years old to be precise. However, they argue that AJ's decision to stay with the *Anakbayan* cannot be considered to have emanated from a valid and informed consent as the same had been a product of the radicalization and indoctrination AJ received from *Anakbayan* when she was still a minor.[13] According to petitioners, this radicalization and indoctrination at such a young age prejudiced AJ's "*mental, psychological, emotional or spiritual development*"[14] which, in turn, hindered her ability to freely give consent even after reaching the age of majority.[15] Hence, for all intents and purposes, AJ cannot be considered to have freely consented to joining the *Anakbayan*, to participating in the activities of *Anakbayan* and, ultimately, to staying with the *Anakbayan*.

On May 19, 2020, the Court issued a Resolution[16] requiring the respondents to show cause — within ten (10) days from their receipt of said resolution — why the peremptory writs of *amparo* and *habeas corpus* should not be issued. All respondents filed their compliance with the resolution on time.[17]

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[13] *Id.* at 13-14.

[14] *Id.* at 4.

[15] *Id.* at 14.

[16] *Id.* at 231.

[17] *Id.* at 257-284 for the Compliance of respondents Jayroven Balais, Chary Delos Reyes and Bianca Gasos. The Compliance of respondent Sarah Jane Elago, and the Compliance of respondents Alexis Diane S. Danday and Maria Kristina Conti were electronically submitted.

OUR RULING

We dismiss the petition.

I

Petitioners' plea for the issuance of a writ of *amparo* is not proper. The remedy of *amparo*, in its present formulation, is confined merely to instances of "*extralegal killings*" or "*enforced disappearances*" and to threats thereof. As illuminated in *Agcaoili v. Fariñas*:[18]

Section 1 of the Rule on the Writ of *Amparo* provides:

> SECTION 1. *Petition*. — The petition for a *writ of Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.
>
> **The writ shall cover extralegal killings and enforced disappearances.**

In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al.*, the Court categorically pronounced that the *Amparo* Rule, as it presently stands, is confined to extralegal killings and enforced disappearances, or to threats thereof, and jurisprudentially defined these two instances, as follows:

> [T]he *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. **"Extralegal killings" are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings**. On the other hand, **enforced disappearances are attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to**

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[18] G.R. No. 232395, July 3, 2018. (Emphases ours; citations omitted)

acknowledge the deprivation of liberty which places such persons outside the protection of law. (Citations omitted)

The above definition of "enforced disappearance" appears in the Declaration on the Protection of All Persons from Enforced Disappearances and is as statutorily defined in Section 3 (g) of R.A. No. 9851. Thus, in *Navia, et al. v. Pardico*, the elements constituting "enforced disappearance," are enumerated as follows:

(a) that there be an arrest, detention, abduction or any form of deprivation of liberty;

(b) that it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;

(c) that it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *Amparo* petition; and,

(d) that the intention for such refusal is to remove subject person from the protection of the law for a prolonged period of time.

In *Lozada, Jr., et al. v. President Macapagal-Arroyo, et al.*, the Court reiterates that the privilege of the writ of *Amparo* is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual. (Citations omitted; emphasis supplied)

Here, there is not much issue that AJ's situation does not qualify either as an actual or threatened enforced disappearance or extralegal killing. AJ is not missing. Her whereabouts are determinable. By all accounts, she is staying with the *Anakbayan* and its officers which, at least insofar as AJ's case is concerned, are not agents or organizations acting on behalf of the State. Indeed, against these facts, petitioners' invocation of the remedy of *amparo* cannot pass.

II

Petitioners' prayer for the issuance of a writ of *habeas corpus* is, moreover, dismissible for lack of merit.

The Rules of Court envisions the writ of *habeas corpus* as a remedy applicable to cases of illegal confinement or detention **where a person is deprived of his or her liberty**, or **where the rightful custody of any person is withheld from the person entitled thereto**.[19] Section 1, Rule 102 of the Rules of Court states:

> SECTION 1. *To what habeas corpus extends.* — Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

In this case, however, it did not at all appear that AJ had been deprived of her liberty or that petitioners had been excluded from their rightful custody over the person of AJ.

First. The petitioners failed to make out a case that AJ is being detained or is being kept by the *Anakbayan* against her free will. To start, there was never any accusation that the *Anakbayan* employed violence, force or threat against AJ that would have influenced her in deciding to stay with the *Anakbayan*. Neither is there an allegation that the *Anakbayan* is employing such violence, force or threat so as to prevent AJ from eventually changing her mind and from possibly leaving the *Anakbayan* in the future.

The only argument raised by the petitioners to support the view that AJ is being detained — *i.e.*, AJ's decision to stay with the *Anakbayan* is not a product of free and informed consent but of the indoctrination and brainwashing she endured from the group when she was still a minor — fails to persuade for it rests on pure speculation and assumption. If anything, such an argument has been discredited by the established facts and even by AJ herself.

As mentioned, AJ already categorically denied being abducted by the *Anakbayan* during a press conference[20] conducted by

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[19] Rules of Court, Rule 102, Sec. 1. (Emphasis ours)

[20] Annex "W" of the Petition.

the representatives of the *Kabataan*, *Bayan Muna*, ACT Teacher and *Gabriela* Party-lists on August 14, 2019.

In a *Sinumpaang Salaysay*[21] she executed on September 9, 2019,[22] on the other hand, AJ disputed the allegations of being brainwashed as she relayed that her decision to leave the custody of her parents for *Anakbayan* was reasoned and a conscious one on her part. As AJ explained:

x x x x

5. Pinasisinungalingan ko ang mga paratang ng mommy kong si [Relissa] Santos Lucena laban sa mga kasamahan ko sa Anakbayan na sina Ate Charie, Bianca Gacos, Jayroven Villafuente at Alex Danday at laban kina Cong. Sarah Elago ng Kabataan Partylist at Atty. Neri Colmenares.

6. Hindi totoo at gawa-gawa lang niya ang mga paratang niyang ako raw ay kinidnap, ayaw pauwiin sa aming bahay at bine-brainwash ng mga kasama ko sa Anakbayan para maging isang NPA.

7. Ang totoo, tumakas talaga ako sa poder ng aking mga magulang at nanatiling kasapi ng Anakbayan dahil hindi ko na kaya [ang] ginagawa nilang pagmamalupit at pananakit sa akin.

x x x x

47. Hindi ako "missing." Umalis talaga ako sa bahay dahil hindi ko na kinakaya ang ginagawa niyang pang-aabuso, pagkulong at pangrerepress sa akin. Hindi niya rin alam na dahil sa ginagawa niya, mas lalo lang niya akong nilagay sa panganib.

x x x x

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[21] Annex "2" of the Compliance of respondents Jayroven Balais, Chary Delos Reyes and Bianca Gasos, *rollo*, pp. 287-292.

[22] The affidavit of AJ was executed in connection with the criminal complaints filed before the Department of Justice (DOJ) by petitioner Relissa Lucena against herein respondents and others for violation of RA No. 9208, as amended by RA 10364; violation of Section 9 (b) (5) of RA 11188; Section 10 (a) and 10 (c) of RA 7610; violation of Article 270 of the Revised Penal Code; and violation of RA No. 9851. The complaints were docketed as NPS Nos. XVI-INV-19H-00283 and XVI-NVI-191-00337, and are still pending resolution. (*Rollo*, p. 258).

51. Inuulit ko. Hindi ako nawawala. Hindi ako kinidnap ninuman. Hindi totoong kinukumbinsi ako ng mga kasamahan ko sa Anakbayan, ni Cong. Sarah Elago at Atty. Neri Colmenares na maging kasapi ng NPA. Gawa-gawa lang ang lahat ng paratang na ito at sa tingin ko ay kailangan na itong ibasura.

Against these explicit submissions, petitioners' claim that AJ is being held against her will certainly cannot stand.

Second. It also cannot be said that petitioners were being excluded from their rightful custody over the person of AJ. As it was established, AJ has already reached the age of majority and is, thus, legally emancipated.[23] The effect of such emancipation is clear under the law. It meant the termination of the petitioners' parental authority — which include their custodial rights — over the person and property of AJ, who is now deemed qualified and responsible for all acts of civil life save for certain exceptions provided by law.[24]

As she has already attained the age of majority, AJ — at least in the eyes of the State — has earned the right to make independent choices with respect to the places where she wants to stay, as well as to the persons whose company she wants to keep. Such choices, so long as they do not violate any law or any other persons' rights, has to be respected and let alone, lest we trample upon AJ's personal liberty — the very freedom supposed to be protected by the writs of *amparo* and *habeas corpus*. While we understand that petitioners may feel distressed over AJ's decision to leave their home and stay with the *Anakbayan*, their recourse unfortunately does not lie with the Court through the instant petition. The writs of *amparo* and *habeas corpus* were never meant to temper the brashness of youth. The resolution of the conflict besetting petitioners and their daughter AJ is simply beyond the competence of the writs applied for.

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[23] Article 234 of Executive Order No. 209, s. of 1987 as amended by RA No. 6809.

[24] Article 234 of Executive Order No. 209, s. of 1987 as amended by RA No. 6809. *See* also *In Re: Lopez v. Garon*, 160-A Phil. 922, 925 (1975).

IN VIEW WHEREOF, the prayers for the issuance of the writs of *amparo* and *habeas corpus* are hereby **DENIED**. The instant petition is **DISMISSED.**

SO ORDERED.

Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Reyes, Jr., Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and *Gaerlan, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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ATTORNEYS

Duties — It is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community; a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses, but also to conduct himself in such a way as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. (Villarente *v*. Villarente, Jr., A.C. No. 8866 [Formerly CBD Case No. 12-3385], Sept. 15, 2020) p. 1

— The Code of Professional Responsibility, which all lawyers have vowed to uphold, clearly states that a lawyer shall not engage in immoral conduct; neither shall he engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. (*Id*.)

Grossly immoral conduct — Immorality or immoral conduct is that which is so willful, flagrant or shameless as to show indifference to the opinion of good and respectable members of the community; grossly immoral conduct is one that is so corrupt that it amounts to a criminal act; it is so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. (Villarente *v*. Villarente, Jr., A.C. No. 8866 [Formerly CBD Case No. 12-3385], Sept. 15, 2020) p. 1

— In keeping with the high standards of morality imposed upon every member of the legal profession, respondent should have desisted with his relationship with his mistress; any lawyer guilty of gross misconduct should be suspended or disbarred, even if the misconduct relates to his personal life, for as long as the misconduct evinces his lack of moral character, honesty, probity or good demeanor; any lawyer who cannot abide by the laws in

under her charge. (Office of the Court Administrator *v.* Del Rosario, Court Interpreter I, *et al.*, A.M. No. P-20-4071, Sept. 15, 2020) p. 18

Gross neglect of duty — Indeed, it is settled that any shortages in the amounts remitted and any delays incurred in the actual remittance of collections shall constitute gross neglect of duty for which the clerks of court concerned shall be held administratively liable; this principle squarely applies to the instant administrative matter. (Office of the Court Administrator *v.* Del Rosario, Court Interpreter I, *et al.*, A.M. No. P-20-4071, Sept. 15, 2020) p. 18

COMMISSION ON ELECTIONS (COMELEC)

Jurisdiction — Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), *et al. v.* Commission on Elections (Sitting as the National Board of Canvassers), *et al.*, G.R. No. 246816, Sept. 15, 2020) p. 333

COURT PERSONNEL

Dishonesty — As an administrative offense, is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duties; it implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. (Office of the Court Administrator *v.* Del Rosario, Court Interpreter I, *et al.*, A.M. No. P-20-4071, Sept. 15, 2020) p. 18

— Dishonesty, like bad faith, is not simply bad judgment or negligence, but a question of intention; in ascertaining the intention of a person charged with dishonesty, consideration must be taken not only of the facts and

they are not the ones who committed respondent's infractions; and yet, should this Court proceed with the case and impose a penalty upon a guilty verdict, it is respondent's heirs who would bear that punishment. (*Id.*)

— In *Government Service Insurance System v. Civil Service Commission*, this Court pronounced that a respondent's death during the pendency of an administrative proceeding was cause to dismiss the case, due to the futility of the imposition of any penalty; the same rationale should apply to members of the Judiciary, as they are held to an even higher standard than other public officers and employees. (*Id.*)

— It is a settled doctrine that a disciplinary case against a court official or employee may continue, even if the officer has ceased to hold office during the pendency of the case; however, the opportunity to be heard can only be exercised by those who have resigned or retired. (*Id.*)

— Since the punishment for administrative infractions is personal to the respondent, it is irrational and illogical for the court to continue with disciplinary proceedings despite the respondent's death; remorse is impossible when the erring judge or justice dies before this Court can hand down its judgment. (*Id.*)

— The imposition of penalties in administrative cases takes on a slightly different character than that of criminal penalties; the objective of the imposition of penalties on erring public officers and employees is not punishment, but accountability. (*Id.*)

— The justification for the imposition of dismissal from service is neither prevention, nor self-defense, nor exemplarily, nor retribution, nor reformation; it is part of public accountability, which arises from the State's duty to preserve the public trust; the penalty attaches to the erring public officer or employee and to no other; only that erring public officer or employee is dismissed from service. (*Id.*)

DUE PROCESS

Procedural and substantial due process — Due process encompasses two concepts: substantial due process and procedural due process; substantial due process is generally premised on the "freedom from arbitrariness" or "the embodiment of the sporting idea of fair play"; it "inquires whether the government has sufficient justification for depriving a person of life, liberty, or property"; procedural due process, on the other hand, "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere. (Flores-Concepcion *v.* Castañeda, RTC, Br. 67, Paniqui, Tarlac, A.M. No. RTJ-15-2438 [Formerly OCA I.P.I. No. 11-3681-RTJ, Sept. 15, 2020) p. 66

Procedural due process — Administrative proceedings require that the respondent be informed of the charges and be given an opportunity to refute them; even after judgment is rendered, due process requires that the respondent not only be informed of the judgment but also be given the opportunity to seek reconsideration of that judgment; this is the true definition of the opportunity to be heard. (Flores-Concepcion *v.* Castañeda, RTC, Br. 67, Paniqui, Tarlac, A.M. No. RTJ-15-2438 [Formerly OCA I.P.I. No. 11-3681-RTJ, Sept. 15, 2020) p. 66

— In administrative cases, however, the essence of procedural due process is merely one's right to be given the opportunity to be heard; in *Casimiro v. Tandog*: the essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard; in administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. (*Id.*)

— The failure to strictly apply the cardinal primary rights will not necessarily result in the denial of due process, as long as the respondent is given the opportunity to be

— Shall include all salary increases and benefits granted under the law and other government issuances, collective bargaining agreements, employment contracts, established company policies and practices, and analogous sources which the employees would have been entitled to had they not been illegally dismissed, but salary increases and other benefits which are contingent or dependent on variables such as an employee's merit increase based on performance or longevity or the company's financial status shall not be included in the award. (*Id.*)

EQUAL PROTECTION CLAUSE

Right to — Section 1, Article III of the Constitution decrees that no person shall be denied equal protection of the laws; although first among the fundamental guarantees enshrined in the Bill of Rights, the equal protection clause is not absolute; it does not prevent legislature from establishing classes of individuals or objects upon which different rules shall operate so long as the classification is not unreasonable. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), *et al. v.* Commission on Elections (Sitting as the National Board of Canvassers), *et al.*, G.R. No. 246816, Sept. 15, 2020) p. 333

EQUITY

Principle of — The well-known principle of equity that "he who comes to court must come with clean hands" further bars petitioners from being granted the remedy applied for. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), *et al. v.* Commission on Elections (Sitting as the National Board of Canvassers), *et al.*, G.R. No. 246816, Sept. 15, 2020) p. 333

ESTOPPEL

Principle of — "Estoppel by silence" arises where a person, who by force of circumstances is under a duty to another to speak, refrains from doing so and thereby leads the other to believe in the existence of a state of facts in

JUDICIAL REVIEW

Actual case or controversy — An actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion; a question is ripe for adjudication when there is an actual act that had been performed or accomplished that directly and adversely affected the party challenging the act. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), *et al. v.* Commission on Elections (Sitting as the National Board of Canvassers), *et al.*, G.R. No. 246816, Sept. 15, 2020) p. 333

Locus standi or legal standing — Legal standing or *locus standi* is defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged; a party is allowed to raise a constitutional question when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action; jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest; by real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." (Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. (FCBPFAI), represented by its Chairman, Rodolfo Cadampog, Sr., *et al. v.* The Secretary of the Department of Environment and Natural Resources (DENR), *et al.*, G.R. No. 247866, Sept. 15, 2020) p. 564

— *Lis mota* is a Latin term meaning the cause or motivation of a legal action or lawsuit; the literal translation is "litigation moved"; under the rubric of *lis mota*, in the context of judicial review, the Court will not pass upon

constitutional questions must be preserved by raising them at the earliest opportunity after the grounds for objection become apparent. (*Id.*)

Presumption of constitutionality — Every statute has in its favor the presumption of constitutionality; this presumption is rooted in the doctrine of separation of powers which enjoins upon the three (3) coordinate departments of the government a becoming courtesy for each other's acts; the theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law; the presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the Constitution. (Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. (FCBPFAI), represented by its Chairman, Rodolfo Cadampog, Sr., *et al. v.* The Secretary of the Department of Environment and Natural Resources (DENR), *et al.*, G.R. No. 247866, Sept. 15, 2020) p. 564

— The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional; in effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction; thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative; the fundamental criterion is that all reasonable doubts should be resolved in favor of the constitutionality of a statute. (*Id.*)

JUSTICES AND JUDGES

Liability of — A.M. No. 01-8-10-SC provides that justices and judges found guilty of serious charges are punishable by the following penalties: the first two penalties, dismissal and suspension, are forms of negative reinforcement;

its Chairman, Rodolfo Cadampog, Sr., *et al. v.* The Secretary of the Department of Environment and Natural Resources (DENR), *et al.*, G.R. No. 247866, Sept. 15, 2020) p. 564

— The burden of proof in overcoming the presumption of state ownership of the lands of the public domain is on the person applying for registration that the land subject of the application is alienable or disposable; unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. (*Id.*)

LEGISLATIVE DEPARTMENT

Electoral Tribunal — The Senate and the House of Representatives shall each have an Electoral Tribunal, which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members; each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein; the senior Justice in the Electoral Tribunal shall be its Chairman. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc. (ANGKLA), *et al. v.* Commission on Elections (Sitting as the National Board of Canvassers), *et al.*, G.R. No. 246816, Sept. 15, 2020) p. 333

Party-list system — All votes, whether cast in favor of two-percenters and non-two-percenters, are counted once; the perceived "double-counting of votes" does not offend the equal protection clause, it is an advantage given to two-percenters based on substantial distinction that the rule of law has long acknowledged and confirmed. (Angkla: Ang Partido ng mga Pilipinong Marino, Inc.

gives substance to this threshold; Round 2, Part 1: a. the percentage of votes garnered by each of the parties, organizations and coalitions is multiplied by the remaining available seats after Round 1; all party-list participants shall participate in this round regardless of the percentage of votes they garnered; b. The party-list participants shall be entitled to additional seats based on the product arrived at; (a) the whole integer of the product corresponds to a party's share in the remaining available seats; fractional seats shall not be awarded; rationale: this formula gives flesh to the proportionality rule in relation to the total number of votes obtained by each of the participating party, organization, or coalition; c. a Party-list shall be awarded no more than two (2) additional seats; rationale: the three-seat cap in the statute is to be observed; Round 2, Part 2: a. the party-list party, organization or coalition next in rank shall be allocated one additional seat each until all available seats are completely distributed; rationale: this algorithm endeavors to complete the 20% composition for party-list representation in the House of Representatives. (*Id.*)

— Section 11, Article VI of the Constitution, however, does not prescribe absolute proportionality in distributing seats to party-list parties, organizations or coalitions; neither does it mandate the grant of one seat each according to their rank; on the contrary, Congress is given a wide latitude of discretion in setting the parameters for determining the actual volume and allocation of party-list representation in the House of Representatives. (*Id.*)

— The Constitution mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives; but the matter on how party-lists could qualify for a seat is left to the wisdom of the legislature. (*Id.*)

— The Court maintained the 2% threshold for the first round of seat allocation to ensure a guaranteed seat for a qualifying party-list party, organization, or coalition; as the basis for the additional seats is proportionality to

the total number votes obtained by each of the participating party, organization, or coalition, however, it was inevitable that the number of votes included, in computing the 2% threshold would have to be still factored in in allocating the party-list seats' among all the participating parties, organizations, or coalitions. (*Id.*)

— The nullification of the 2% threshold for the second round was not meant to remove the distinction between two-percenters and non-two-percenters; the nullification was not for any undue advantage extended to two-percenters; the rationale for the second round was to fulfill the constitutional mandate that the party-list system constitute 20% percent of the total membership in the House of Representatives, within the context of the rule of proportionality to the total number of votes obtained by the party, organization, or coalition. (*Id.*)

— The number of votes cast for each party in the first round is preserved to ensure that all votes are counted only once. (*Id.*)

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

— The system of counting pertains to two (2) different rounds and for two (2) different purposes: the first round is for purposes of applying the 2% threshold and ensuring that only party-lists with sufficient constituencies shall be represented in Congress, while the second round is for the purpose of ensuring compliance with the constitutional fiat that 20% of the members of the House of Representatives shall be elected via a party-list system, thus, seats are computed in proportion to a party-list's total number of votes. (*Id.*)

— The three-seat limit; this ensures the entry of various interests into the legislature and bars any single party-list from dominating the party-list representation; otherwise, the rationale behind party-list representation in Congress would be defeated; but viewed from a different perspective, this safeguard dilutes, if not negates, the number of votes that a party-list party, organization, or coalition obtains. (*Id.*)

— The two percent threshold is consistent not only with the intent of the framers of the Constitution and the law, but with the very essence of "representation"; under a republican or representative state, all government authority emanates from the people, but is exercised by representatives chosen by them; but to have meaningful representation, the elected persons must have the mandate of a sufficient number of people. (*Id.*)

— The two-tiered seat allocation; this serves to maximize representation and fulfil the 20% requirement under Section 5(1), Article VI of the Constitution; seen in a different light, however, this arithmetical allocation in practice inflates the weight of each of the votes considered in the second round, as far as the non-two percenters are concerned, but deflates the weight of each of the votes considered in the second round, as regards the two-percenters; this is because the two-percent (2%) vote-threshold needed to guarantee a seat in the House of Representatives would definitely be more than the votes it would take to earn an additional seat, whether we apply petitioners' proposal or the doctrine in *BANAT*. (*Id.*)

OMBUDSMAN, OFFICE OF THE (OMB)

Doctrine of non-interference — Both the Constitution and the Ombudsman Act of 1989 give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees; the consistent policy of the Court has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause; as this Court is not a trier of facts, we

Court when powers of prosecution are in danger of being used for persecution; dismissing the case against the accused for palpable want of probable cause not only spares him of the expense, rigors and embarrassment of trial, but also prevents needless waste of the court's time and saves the precious resources of the government. (*Id.*)

PUBLIC LAND ACT (C.A. NO. 141)

Classification of lands of public domain — Under the 1935 Constitution, Commonwealth Act (C.A.) No. 141 or the present Public Land Act, was enacted; it retained the provision that the President of the Philippines had the power to classify lands of public domain, the State, through the legislature enacting Act No. 2874 and C.A. No. 141, delegated to the Executive Branch the power to classify lands of public domain and finally removed from the courts the power to classify such. (Federation of Coron, Busuanga, Palawan Farmer's Association, Inc. (FCBPFAI), represented by its Chairman, Rodolfo Cadampog, Sr., *et al. v.* The Secretary of the Department of Environment and Natural Resources (DENR), *et al.*, G.R. No. 247866, Sept. 15, 2020) p. 564

PUBLIC OFFICERS AND EMPLOYEES

Habitual absenteeism — Administrative Circular No. 14-2002 provides that an employee is considered habitually absent if the employee incurred unauthorized absences exceeding the 2.5 days allowed per month for three (3) months in a semester or at least three (3) consecutive months during the year. (Discreet Investigation Report Relative to the Anonymous Complaint Against Presiding Judge Renante N. Bacolod, MCTC, Mandaon-Balud, Mandaon, Masbate, A.M. No. MTJ-18-1914, Sept. 15, 2020) p. 43

REGALIAN DOCTRINE

Concept of — All lands not appearing to be clearly under private ownership are presumed to belong to the state, and public lands remain part of the inalienable land of

CITATION

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