

EN BANC

[G.R. No. 179271, July 08, 2009]

BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY (BANAT), PETITIONER, VS. COMMISSION ON ELECTIONS (SITTING AS THE NATIONAL BOARD OF CANVASSERS), RESPONDENT. ARTS BUSINESS AND SCIENCE PROFESSIONALS, INTERVENOR. AANGAT TAYO, INTERVENOR. COALITION OF ASSOCIATIONS OF SENIOR CITIZENS IN THE PHILIPPINES, INC. (SENIOR CITIZENS), INTERVENOR.

G.R. NO. 179295

BAYAN MUNA, ADVOCACY FOR TEACHER EMPOWERMENT THROUGH ACTION, COOPERATION AND HARMONY TOWARDS EDUCATIONAL REFORMS, INC., AND ABONO, PETITIONERS, VS. COMMISSION ON ELECTIONS, RESPONDENT.

R E S O L U T I O N

CARPIO, J.:

The House of Representatives, represented by Speaker Prospero C. Nograles, filed a motion for leave to intervene in G.R. Nos. 179271 and 179295. The House of Representatives filed a motion for clarification in intervention and enumerated the issues for clarification as follows:

- A. There are only 219 legislative districts and not 220. Accordingly, the allotted seats for party-list representation should only be 54 and not 55. The House of Representatives seeks clarification on which of the party-list representatives shall be admitted to the Roll of Members considering that the Court declared as winners 55 party-list representatives.
- B. The House of Representatives wishes to be guided on whether it should enroll in its Roll of Members the 32 named party-list representatives enumerated in Table 3 or only such number of representatives that would complete the 250 member maximum prescribed by Article VI, Sec. 5(1) of the Constitution. In the event that it is ordered to admit all 32, will this act not violate the above-cited Constitutional provision considering that the total members would now rise to 270.
- C. The Court declared as unconstitutional the 2% threshold only in relation to the distribution of additional seats as found in the second clause of Section 11(b) of R.A. No. 7941. Yet, it distributed first seats to party-list groups which did not attain the minimum number of votes that will entitle them to one seat. Clarification is, therefore, sought whether the term "additional seats" refer to 2nd and 3rd seats only or all remaining available seats. Corollary thereto, the House of Representatives wishes to be clarified whether there is no more minimum vote requirement to qualify as a party-list representative.

D. For the guidance of the House of Representatives, clarification is sought as to whether the principle laid down in Veterans that "the filling up of the allowable seats for party-list representatives is not mandatory," has been abandoned.^[1]

On the other hand, Armi Jane Roa-Borje (Roa-Borje), third nominee of Citizens' Battle Against Corruption (CIBAC), filed a motion for leave for partial reconsideration-in-intervention, alleging that:

The Supreme Court, in ruling on the procedure for distribution of seats, has deprived without due process and in violation of the equal protection clause, parties with more significant constituencies, such as CIBAC, Gabriela and APEC, in favor of parties who did not even meet the 2% threshold.^[2]

Following the Court's Decision of 21 April 2009, the Commission on Elections (COMELEC) submitted to this Court on 27 April 2009 National Board of Canvassers (NBC) Resolution No. 09-001. NBC Resolution No. 09-001 updated the data used by this Court in its Decision of 21 April 2009. The total votes for party-list is now 15,723,764 following the cancellation of the registration of party-list group Filipinos for Peace, Justice and Progress Movement (FPJPM). Moreover, the total number of legislative districts is now 219 following the annulment of Muslim Mindanao Autonomy Act No. 201 creating the province of Shariff Kabunsuan. Thus, the percentage and ranking of the actual winning party-list groups are different from Table 3 of the Decision in G.R. Nos. 179271 and 179295.

**The Number of Members of the House of Representatives
in the 2007 Elections**

Section 5(1), Article VI of the 1987 Constitution reads:

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 supplied)

The 1987 Constitution fixes the maximum number of members of the House of Representatives at 250. However, the 1987 Constitution expressly allows for an increase in the number of members of the House of Representatives provided a law is enacted for the purpose. This is clear from the phrase "**unless otherwise provided by law**" in Section 5(1), Article VI of the 1987 Constitution. The Legislature has the option to choose whether the increase in the number of members of the House of Representatives is done by piecemeal legislation or by enactment of a law authorizing a general increase. Legislation that makes piecemeal increases of the number of district representatives is no less valid than legislation that makes a general increase.

In 1987, there were only 200 legislative districts. Twenty legislative districts were added by piecemeal legislation after the ratification of the 1987 Constitution:

	Republic Act	Year Signed into Law	Legislative District
1	7160	1992	Biliran
2	7675	1994	Mandaluyong City
3	7854	1994	Makati (2 nd

			District)
4	7878	1995	Apayao
5	7896 and 7897	1995	Guimaras
6	7926	1995	Muntinlupa City
7	8470	1998	Compostela Valley
8	8487	1998	Taguig City (2 nd District)
9	8526	1998	Valenzuela City (2 nd District)
10	9229	2003	Parañaque (2 nd District)
11	9230	2003	San Jose del Monte City
12	8508 and 9232	1998 and 2003	Antipolo (1 st District)
13	9232	2003	Antipolo (2 nd District)
14	9269	2004	Zamboanga City (2 nd District)
15	9355	2006	Dinagat Island
16	9357	2006	Sultan Kudarat (2 nd District)
17	9360	2006	Zamboanga Sibugay (2 nd District)
18	9364	2006	Marikina City (2 nd District)
19	9371	2007	Cagayan de Oro (2 nd District)
20	9387	2007	Navotas City

Thus, for purposes of the 2007 elections, there were only 219 district representatives. Navotas City became a separate district on 24 June 2007, more than a month after the 14 May 2007 elections.

**The Number of Party-List Seats
in the 2007 Elections**

Section 5(2), Article VI of the 1987 Constitution reads in part:

The party-list representatives shall constitute twenty *per centum* of the total number of representatives including those under the party-list. $x \times x$

The 1987 Constitution fixes the ratio of party-list representatives to district representatives. This ratio automatically applies whenever the number of district representatives is increased by law. The mathematical formula for determining the number of seats available to party-list representatives is

Number of seats

Number of seats available to

$$\frac{\text{available to legislative districts}}{\text{.80}} \times .20 = \text{party-list representatives.}$$

As we stated in our Decision of 21 April 2009, "[t]his formula allows for the corresponding increase in the number of seats available for party-list representatives whenever a legislative district is created by law." Thus, for every four district representatives, the 1987 Constitution mandates that there shall be one party-list representative. There is no need for legislation to create an additional party-list seat whenever four additional legislative districts are created by law. Section 5(2), Article VI of the 1987 Constitution automatically creates such additional party-list seat.

We use the table below to illustrate the relationship between the number of legislative districts and the number of party-list seats for every election year after 1987.

Election Year	Number of Legislative Districts	Number of Party-List Seats	Total Number of Members of the House of Representatives
1992	200	50	250
1995	206	51	257
	<i>New Districts:</i> Biliran Mandaluyong City Makati (2 nd District) Apayao Guimaras Muntinlupa City		
1998	209	52	261
	<i>New Districts:</i> Compostela Valley Taguig City (2 nd District) Valenzuela City (2 nd District)		
2001	209	52	261
2004	214	53	267
	<i>New Districts:</i> Parañaque City (2 nd District) San Jose del Monte City Antipolo (1 st District) Antipolo (2 nd District) Zamboanga City (2 nd District)		
2007	219	54	273
	<i>New Districts:</i> Dinagat Island Sultan Kudarat (2 nd District) Zamboanga Sibugay (2 nd District) Marikina City (2 nd District) Cagayan de Oro (2 nd District)		
2010	220	55	275
	<i>New District:</i> Navotas City (assuming no additional districts are created)		

We see that, as early as the election year of 1995, the total number of members of the House of Representatives is already beyond the initial maximum of 250 members as fixed in the 1987 Constitution.

Any change in the number of legislative districts brings a corresponding change in the number of party-list seats. However, the increase in the number of members of the House of Representatives went unnoticed as the available seats for party-list representatives have never been filled up before. As of the oral arguments in G.R. Nos. 179271 and 179295, there were 220 legislative districts. Fifty-five party-list seats were thus allocated. However, the number of legislative districts was subsequently reduced to 219 with our ruling on 16 July 2008 declaring void the creation of the Province of Sharif Kabunsuan.^[3] Thus, in the 2007 elections, the number of party-list seats available for distribution should be correspondingly reduced from 55 to 54.

The filling-up of all available party-list seats is not mandatory. Actual occupancy of the party-list seats depends on the number of participants in the party-list election. If only ten parties participated in the 2007 party-list election, then, despite the availability of 54 seats, the maximum possible number of occupied party-list seats would only be 30 because of the three-seat cap. In such a case, the three-seat cap prevents the mandatory allocation of all the 54 available seats.

Under Section 11(b) of R.A. No. 7941, garnering 2% of the total votes cast guarantees a party one seat. This 2% threshold for the first round of seat allocation does not violate any provision of the 1987 Constitution. Thus, the Court upholds this 2% threshold for the guaranteed seats as a valid exercise of legislative power.

In the second round allocation of additional seats, there is no minimum vote requirement to obtain a party-list seat because the Court has struck down the application of the 2% threshold in the allocation of additional seats. Specifically, the provision in Section 11(b) of the Party-List Act stating 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" can no longer be given any effect. Otherwise, the 20 percent party-list seats in the total membership of the House of Representatives as provided in the 1987 Constitution will mathematically be impossible to fill up.

However, a party-list organization has to obtain a sufficient number of votes to gain a seat in the second round of seat allocation. What is deemed a sufficient number of votes is dependent upon the circumstances of each election, such as the number of participating parties, the number of available party-list seats, and the number of parties with guaranteed seats received in the first round of seat allocation. To continue the example above, if only ten parties participated in the 2007 party-list election and each party received only one thousand votes, then each of the ten parties would receive 10% of the votes cast. All are guaranteed one seat, and are further entitled to receive two more seats in the second round of seat allocation.

Similarly, a presidential candidate may win the elections even if he receives only one thousand votes as long as all his opponents receive less than one thousand votes. A winning presidential candidate only needs to receive more votes than his opponents. The same policy applies in every election to public office, from the presidential to the barangay level. Except for the guaranteed party-list seat, there is no minimum vote requirement before a candidate in any election, for any elective office, can be proclaimed the winner. Of course, the winning candidate must receive at least one vote, assuming he has no opponents or all his opponents do not receive a single vote.

In the absence of a minimum vote requirement in the second round of party-list seat allocation, there is no need to belabor the disparity between the votes obtained by the first and last ranked winning parties in the 2007 party-list elections. In the same manner, no one belabors the disparity between the votes obtained by the highest and lowest ranked winners in the senatorial elections. However, for those interested in comparing the votes received by party-list representatives vis-a-vis the votes received by district representatives, the