

ARTICLE

THE PHILIPPINE PARTY-LIST EXPERIMENT AMENDING A TRAGEDY OF FLAWED MATHEMATICS AND POLICY *Oscar Franklin B. Tan*

TABLE OF CONTENTS

SYNOPSIS	739
I. SCRUTINIZING THE ORIGIN AND INTENT OF THE PARTY-LIST SYSTEM ...	743
A. Probing the Intent of the Party-List System	743
B. Two Conflicting Systems Forced Together in the Con Con	744
C. Examining the German System: A Simple Demo	747
D. The Philippine System Has Little in Common with the German System	749
E. Ang Bagong Bayani: Resolving the Theoretical Absurdity of the System	751
F. The First Vestige of the Theoretical Absurdity: The Two Percent Threshold	753
G. The Second Vestige of the Theoretical Absurdity: The Niemeyer Formula	757
H. The Three-Seat Cap: The Filipino Addition to the German Import ...	762
II. TOUGH LUCK AT FINDING THE RIGHT SOLUTION	763
A. COMELEC's Solution	764
B. The Majority's Solution	767
C. Testing the Court's Formula	770
D. Justice Mendoza's Dissent and Proposed Solution	773
E. Proposed Modifications to the Court's Solution	778
F. Moves to Amend the Party-list Act	782
III. SECTORAL REPRESENTATION AND FAITHFULNESS TO CONSTITUTIONAL INTENT	785
A. How Marginalized Sectors Fared in the Party-List Elections	785
B. A Constitutional Basis for Reserved Sectoral Seats	788
C. Operationalizing Sectoral Representation	790
IV. PRESENTING A MATHEMATICALLY VALID SEAT ALLOCATION FORMULA	792
A. Searching for a More Manageable Reference Point for the Ratios	793
B. A Formula Without a Threshold	793
C. The Proposed Formula: Basic Operation	794
D. The Proposed Formula: Final Solution	796
E. Refining the Proposed Formula by Changing the Cap	799
F. Refining the Proposed Formula by Adding a Reserved Seat Policy	802
G. Refining the Proposed Formula by Adding a Threshold	805
H. Summarizing the Proposed Formula	808
Conclusion	809
Appendix: Other Proposed Amendments to the Party-list Act	812

THE PHILIPPINE PARTY-LIST EXPERIMENT: AMENDING A TRAGEDY OF FLAWED MATHEMATICS AND POLICY

Oscar Franklin B. Tan*

"Nasa amin ang people, wala sa amin ang power."

—Commissioner Jaime Tadeo,
1986 Constitutional Convention¹

"We forget that in the darkest days of the dictatorship, when political parties were abolished or marginalized, it was the people's sectoral organizations that really fought for justice, freedom and democracy."

—Commissioner Lino Brocka²

"The concept of sectoral representation is not just a Marxist aberration. It is the pressing imperative of social justice."

—Commissioner Felicitas Aquino³

*"Kapag ang minority sa ating Batasan
Ay apoyohan ng tinig ng bayan,
Magiging mabisa ang pakikilaban
Kontra sa abuso ng pangasiwaan
Kahit ang minority ay talo sa bilang."*

—Commissioner Soc Rodrigo⁴

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¹ Records of the 1986 Constitutional Convention 254 (Friday, July 26, 1986) [hereinafter, 1986 Convention].

² 1986 Convention 578 (Friday, August 1, 1986).

³ 1986 Convention 581 (Friday, August 1, 1986).

⁴ 1986 Convention 85 (Tuesday, July 22, 1986). This poem is from a book by Soc Rodrigo, and was read by Commissioner Wilfrido Villacorta at the opening of that day's session.

Justice Artemio Panganiban wrote the second landmark party-list system decision, noting thus:

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... Thus, allowing all individuals and groups, including those which now dominate district elections, to have the same opportunity to participate in part-list elections would desecrate this lofty objective and mongrelize the social justice mechanism into an atrocious veneer for traditional politics.⁵

After two elections for party-list representatives an unbridgeable chasm still remains between the vision of the 1987 Constitution and harsh reality. In the first election in 1998, only a third of voters actually voted for a party list group.⁶ Of the thirteen parties that won seats, six had names that began with the letter A,⁷ an indication of a fatigued or confused electorate faced with a ballot that ingenuously listed 123 parties in mere alphabetical order. Worst of all, of the twelve marginalized sectors enumerated in the Party-List System Act,⁸ only four—peasants, women, urban poor and veterans—won seats.⁹

The 2001 elections only revealed similar problems, and the country narrowly missed the peculiar result of recognizing actor Richard Gomez as one of the legislative voices of the marginalized.¹⁰

⁵ Ang Bagong Bayani v. COMELEC, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 708 (2001).

⁶ Raw election data from the Commission on Elections, on file with the House Committee on Suffrage.

⁷ Onesimo Cuyco, *The Party-List System As A Policy Mechanism for Popular Participation*, unpublished policy paper for Master in Public Administration, National College of Public Administration and Governance, University of the Philippines (on file with the House Committee on Suffrage).

⁸ Rep. Act. No. 7941, sec. 5 (labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals).

⁹ Agustin Rodriguez and Djorina Velasco, *Democracy Rising? The Trials and Triumphs of the 1998 Party-List Elections* 13, Institute of Politics and Governance, 1998. Five sectors, if you count the labor constituencies of multisectoral parties Akbayan! and Sanlakas.

¹⁰ Gomez was the nominee of the group Mamamayan Ayaw sa Droga or MAD, which was later disqualified amidst criticism that the party list group was merely a vehicle for Gomez's attempted entry into politics. One author, for example, decried MAD as a "front" and backdoor bid into Congress, see Katherine Adraneda, *Real Party-list Groups As Mock Party-list Groups*, Cyberdyaryo.com, April 16, 2001 at <http://www.cyberdyaryo.com/features/f2001_0416_01.htm> [4]. Another later commented, "In an apparent referral to MAD, the vehicle actor Richard Gomez used for his congressional bid, the SC ruled that a party-list group 'must not be an adjunct of, or a project organized or an entity funded or assisted by, the government.'" Cecille Visto, *COMELEC Told To Discuss Party-list Issue*, Business World Internet Edition, June 27, 2001 at <<http://www.bworld.com.ph/jd2001/SpecialReports/06272001a.html>> [10].

Despite all the criticism regarding procedural blunders and controversy over the qualifications of candidates, the gravest problems in the Philippine party-list system lie at the heart of the entire process: the seat allocation system. What good are the most effective screening processes and voter education campaigns when, after all is said and done, the one-fifth of the House seats set aside for the marginalized cannot even be assigned?

This author posits that the existing seat allocation formula is unworkable, and that its flaws arise from unrealistic or confused policy goals that can be traced all the way to the 1986 Constitutional Convention.

SYNOPSIS

This paper seeks to discuss why one of the most important social justice mechanisms of the 1987 Constitution remains impotent to this day. It is divided into four main parts that probe the veiled problems in the present system, and has the end goal of overhauling the woefully defective Party-List System Act by enacting a simpler yet more effective seat allocation formula into law.

The first part retraces the original vision of the 1986 Constitutional Convention, and goes even further back to the German system from which the Philippine counterpart was allegedly derived. First of all, as envisioned in the 1986 Convention, the party-list system was *not* intended for the *sole* benefit of marginalized sectors. The system also had a *second* aim of enhancing the political party system, and these two policy goals were to be carried out through one party-list system. The Supreme Court has already resolved the conflict between these goals by emphasizing the goal of uplifting marginalized sectors, but it was unable to excise problems inserted into the system during its mongrelization.

These problems arose because Convention delegates had the German parliamentary electoral system in mind, and this system's mechanics precisely compensate for exaggerated majorities obtained by dominant political parties. The German "party-list" system serves as a self-correction mechanism that links Bundestag seats assigned by district and by "party-list" vote. As enacted, the Philippine party-list system imported only part of the German system and the essence of this original system was never realized. However, the incorporation of elements from the German system into the radically different Philippine setting wreaked havoc on seat assignment. This mathematical frustration is explained and tabulated in this paper's first chapter, but to summarize the most problematic imports:

- The crucial self-correction linkage between district and party-list seats was never incorporated.
- Having a fixed threshold number of votes to qualify a party for a seat is appropriate for Germany, where parliamentary elections involve a small number of very large parties. However, implementing this in the Philippines proved disastrous because there are a large number of very small parties, and the threshold prevented the assignment of a majority of party-list seats, due to the wide dispersal of votes.
- The Party-List System Act implies a seat assignment based on a "quota" of 100% divided by number of seats (approximately 2%). This is appropriate for Germany where the small number of large parties means a party's votes are well above the implied quota. However, it disqualifies many of the small but far more numerous Philippine parties because most of their respective shares of the vote do not even reach this quota, again due to the dispersal of the votes.
- The end result is a choice between not filling up all allotted party-list seats or enforcing a wildly out of proportion result. The defects in the law forced the Supreme Court to choose the former, but both choices defeat the intent of the system.

Thus, although this paper emphasizes that the Philippine system that was implemented is quite different from the German, convention records and legislators' sponsorship speeches reveal an erroneous assumption that the Philippine system closely follows the German system. Any meaningful change to the Party-List System Act must first disabuse the law of this mistaken assumption, and expel the carryovers from the German system now festering in its Philippine counterpart.

The second part takes off from the first's theoretical discussion, and delves into how the flawed law was applied to the first party-list elections in 1998. Various decision-makers were trapped between the Scylla of the Party-List Act's 2% threshold and the Charybdis of the Constitution's 20% seat allocation. The second part examines how the COMELEC, the Supreme Court and then legislators tried to translate the problematic policies into mathematical formulas, and made error after subtle error in the middle of these two arithmetic perils. The numerical intricacies

are best left to this second part's detailed tabulations, but it must be emphasized that the errors in attempting to apply the law were *not* all caused by inherent defects traced back to the 1986 Convention—although the 1998 interpretation was greatly restricted by the problematic law, mathematical error within these confines and during the interpretation itself was promulgated as the law of the land.

The basic problem was that all solutions presented failed to produce the proportionality in the system much emphasized by the Court. The second part laments that no more than *basic mathematics* was involved at every turn, and how a lack of its appreciation defeated a grand vision of social justice. Ironically, the best solution that could have been made *under the law* was to assign one seat for every 2% of the vote a party obtained, and this would not fill all the seats allotted by the Constitution. Throughout all the mathematical torment, however, the commissioners, congressmen and justices only unearthed hints of the deep-rooted problems in the Party-List System Act. Present proposed amendments thus remain unimaginative and inadequate.

The third part emphasizes that the party-list system has been unable to produce legislators from all the marginalized sectors who are the supposed beneficiaries of the system. Nothing in the present system addresses this particular problem, yet it must be argued that a Constitutional intent to give these sectors a legislative voice however small exists. Although the Constitution assigned seats to specific sectoral representatives for only three terms, this explicit provision does not nullify a system that gives preference to these Constitutionally enumerated sectors. With this in mind, the third chapter proves that it is mathematically possible to ensure the representation of chosen sectors without destroying the proportionality that must characterize an ideal party-list system. Thus, no bar exists to doing so, not constitutional nor practical.

The fourth part recaps how the jurisprudential seat allocation formula falls short of the ideal proportionality the Court emphasizes:

Quality of ideal formula	Flaw in present system
1) Fill up the Constitution's figure of 20% of the House	Mathematical flaw built into the 2% threshold, plus the <i>Veterans</i> ruling that the 20% is only a maximum figure
2) Return results where the numbers of seats are proportional	Not achieved in both <i>Veterans</i> majority and Justice Mendoza's formulas, and in all proposed amendments

3) Ensure that all parties have a significant number of votes	Ensured by the threshold, although 2% is too high; also defeated by proposal to pass unfilled seats down to the <i>unqualified</i> parties with the most votes, regardless of how many votes they actually receive.
4) Ensure that all marginalized sectors are represented	No mechanism to provide for this in the Party List Act
5) Ensure that no single party dominates the party-list elections	Ensured by the 3-seat cap, although this has encouraged larger sector-based groups to split up instead of forming alliances or consolidating their voter bases

The fourth part also details how none of the few proposed amendments achieve all the goals of an ideal system. It thus takes all the goals and policy concerns discussed in the preceding parts, and then operationalizes them into a radical reinvention of the Party-List System Act: this author's personal seat-allocation formula.

Quality of ideal formula	Quality of author's formula
1) Fill up the Constitution's figure of 20% of the House	Uses an iterative method to find a "natural" threshold that will fill up the seats while still ensuring that qualified parties obtained a reasonable percentage of the vote
2) Return results where the numbers of seats are proportional	Seats are assigned proportionally in reference to a single selected party, and even assignments of zero seats are in proportion, unlike in the results returned by the existing seat assignment formula and proposed amendments
3) Ensure that all parties have a significant number of votes	Ensured by an arbitrarily set threshold, or a "natural" threshold that arises from enforcing a proportional seat assignment among the parties
4) Ensure that all marginalized sectors are represented	Provides for a system for assigning sectoral seats that is flexible, does not disrupt proportionality, and does not take effect when a sector does not need a specially assigned seat
5) Ensure that no single party dominates the party-list elections	Ensured by a seat cap and by ensuring that the higher-ranked qualified party's seat assignment is proportional to the lowest-ranked qualified party's

This author hopes that his personal legislative proposal is a more faithful translation of policy goals, and avoids all the mathematical problems discussed in

this paper, particularly the proportionality problems that plague the existing formula and proposed fixes. Further, he emphasizes that his formula is highly adaptable, and can operationalize any or all of the policy goals discussed in this paper.

It has now been fifteen years since the 1987 Constitution was ratified. Society has thus tarried fifteen years too long in enabling the most important Constitutional tool for social justice. Partisan politics should not bar its path, COMELEC procedural blunders should not bar its path, and errors in basic mathematics most certainly should not bar its path.

I. SCRUTINIZING THE ORIGIN AND INTENT OF THE PARTY-LIST SYSTEM

A. PROBING THE INTENT OF THE PARTY-LIST SYSTEM

At first glance, the system seems simple enough. The Constitution set aside 20% of the seats in the House for the party-list representatives.¹¹ Voters vote for their district's congressman normally, but vote a second time for a party-list group of their choice.¹² The votes for each party are then added up across the country, and seats are distributed as follows:

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.¹³

Many problematic points in the Party-List System Act have been brought to light, however. Going to the most basic one, relatively few parties were able to hurdle the 2% minimum, leaving many of the party-list seats vacant. The Supreme Court was forced to consider the Constitution's 20% a mere maximum figure, not a mandatory number of seats,¹⁴ and the most important proposed amendment in the 12th Congress would rewrite the Act to explicitly state that the seats *must* be filled

¹¹ CONST. art. VI, sec. 5(1).

¹² Rep. Act. No. 7941, sec. 10.

¹³ Rep. Act. No. 7941, sec. 11.

¹⁴ Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244 (2000).

up.¹⁵

This and other key issues, however, are merely part of a single, more fundamental issue: What is the true *intent* of the Philippine party-list system? Looking at the Party-List Act, it seems painfully obvious:

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.¹⁶ (emphasis added)

The emphasis on marginalized sectors is echoed in Supreme Court decisions and popular perception. However, the key phrase does not fit this mold. If the system aims to empower the marginalized, then why does even the Constitution explicitly name, “national, regional and sectoral parties or organizations?”¹⁷ Surely large, national-level political parties such as Lakas-NUCD and LAMP are not intended beneficiaries of the party-list system.

Were stray words written into the constitutional provision?

The simple answer, which sheds new light on every other party-list issue, is that the framers of the Constitution *did not* create the system for the *sole* benefit of the poor and marginalized.

¹⁵ H. No. 4398, Sec. 9, 12th Cong., 1st Sess. (2002) *filed by* Rep. Loretta Ann Rosales; H. No. 474, 12th Cong., 1st Sess. (2002) *filed by* Rep. Bellaflor Angara-Castillo.

¹⁶ Rep. Act. No. 7941, sec. 2.

¹⁷ CONST. art. VI, sec. 5(1).

B. TWO CONFLICTING SYSTEMS FORCED TOGETHER IN THE CONSTITUTIONAL CONVENTION

Contrary to popular perception, the party-list system actually envisions *two* goals. Again, the Constitution reads:

Sec. 5. (1) The House of Representatives shall be composed of... and those who, as provided by law, shall be elected through a party-list system of registered *national, regional and sectoral parties or organizations*.¹⁸ (emphasis added)

The last word in the key phrase, “sectoral,” refers to the marginalized sectors enumerated in both the Constitution¹⁹ and the law.²⁰ However, the first two words “national” and “regional” actually refer to a goal of empowering minority political parties. These were envisioned as parties that lacked the political muscle to elect candidates in national elections but nevertheless enjoy a significant following. In other words, the second goal is to diffuse political power and have more parties represented in the House.

This detail is clarified by a studious reading of the 1986 Convention proceedings:

MR. MONSOD: I would like to make a distinction from the beginning that the proposal for the party list system is *not synonymous with that of sectoral representation*.²¹ (emphasis added)

MR. MONSOD: No, it is not necessarily synonymous, but it does include the right of sectoral parties or organizations to register, but it is not exclusive to sectoral parties or organizations.²²

Commissioner Monsod’s description of the framework was echoed by other delegates such as Commissioners Jaime Tadeo and Joaquin Bernas, S.J. From him, one infers that the framers envisioned a mechanism to empower marginalized sectors, but incorporated this in a much broader party-list system where sectors could participate alongside other political parties. The more dynamic party-list system also avoided the problems of dividing the electorate into clear-cut sectors, which would mean asking each of millions of voters to identify herself exclusively as a peasant, a woman or an elderly person.²³ It was also flexible enough to

¹⁸ CONST. art. VI, sec. 5(1).

¹⁹ CONST. art. VI, sec. 5(2).

²⁰ Rep. Act. No. 7941, sec. 5.

²¹ 1986 Convention 85 (Tuesday, July 22, 1986).

²² 1986 Convention 253 (Friday, July 25, 1986).

²³ 1986 Convention 85-86 (Tuesday, July 22, 1986).

accommodate multisectoral coalitions and alliances, and groups with less identifiable constituencies such as an ideology-based group.

Commissioner Monsod clearly outlined the envisioned place of the marginalized within the broader party-list system:

MR. MONSOD: ...Let us say, UNIDO gets 10 percent or 15 percent of the votes; KMU gets 5 percent; a women's party gets 2½ percent...

...It means that any group or party who has a constituency of, say, 500,000 nationwide gets a seat in the National Assembly... 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.²⁴

Commissioner Monsod proposed the amendment that led to the final phrasing of the provision,²⁵ and his *broader intent* was to strengthen the Philippine party system:

MR. MONSOD: The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third or fourth place in each of the districts. So they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.²⁶

The twin goals of strengthening the party system and empowering the marginalized were made explicit when the delegates, again, were almost evenly split by a proposal to permanently reserve half of the party-list seats for sectoral representatives.²⁷

To further clarify how the party-list system strengthens the party system, one must note that Commissioners Monsod and Blas Ople had European electoral systems in mind—the German electoral system in particular—when they discussed the Philippine system:

²⁴ 1986 Convention 117 (Tuesday, July 22, 1986).

²⁵ 1986 Convention 253 (Friday, July 25, 1986).

²⁶ 1986 Convention 568 (Friday, August 1, 1986) *cited in* Ang Bagong Bayani v. COMELEC, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 750 (2001).

²⁷ See 1986 Convention 583-584 (Friday, August 1, 1986) and prior individual speeches at 560-583 *supra*.

MR. OPLE: In many countries in Europe, the labor parties today are direct competitors for power with the long-established conservative parties... In addition to that, in Germany, of course, the more radical parties win their seats routinely through the party list system...

xxx

...[W]e may, in time, develop this excellent system that they have in Europe where labor organizations and cooperatives, for example, distribute themselves either in the Social Democratic Party and the Christian Democratic Party in Germany, and their very presence there has a transforming effect upon the philosophies and the leadership of those parties.²⁸

The German system for Parliamentary elections has features that meet the exact goals mentioned in the preceding quote from Commissioner Monsod. To better appreciate his mindset, one must take a brief segue into the system the Philippine party-list system was allegedly modeled after.

C. EXAMINING THE GERMAN SYSTEM: A SIMPLE DEMONSTRATION

At first glance, the German system appears similar to the Philippine system. Each voter casts a first “personal” vote (*Zweitstimme*) for the Parliament member of his constituency, the German equivalent of a district, and a second vote (*Landesliste*) for the “party-list” system. At present, the German Parliament or *Bundestag* has 598 seats, reduced from 656.²⁹ Half of the seats are allocated using the first vote, and the other half are allocated using the second.

There is, however, a key difference: German voters choose from the *same* parties in both votes. This simple detail changes the entire scope of their “party-list” system because their equivalents of large, national parties such as Lakas-NUCD and LAMP compete in it, yet these are barred by the Party-List Act from the Philippine system.³⁰

The German allocation formula proper is best explained with a simplified

²⁸ 1986 Convention 568 (Friday, August 1, 1986), *cited in* Ang Bagong Bayani v. COMELEC (Mendoza, J., dissenting), G.R. No. 147589, June 26, 2001, 359 SCRA 698, 756-757 (2001).

²⁹ See <<http://www.bundestag.de/gesetze/bwg/bwgp01.html>> and Rupert Schick and Wolfgang Zeh, *The German Bundestag: Functions and Procedures*, 12 (14th electoral term, 1999) available at <http://www.bundestag.de/cgi-bin/bf.pl?F=informat&L=en>.

³⁰ Rep. Act. No. 7941, sec. 11.

example using only two parties, KBL and UNIDO.³¹ This demonstration assumes:

- 1) Voters always vote for the same party in both votes.
- 2) There are only ten districts in the hypothetical country.
- 3) There are thus ten district seats and ten "party-list" seats.
- 4) KBL gets 60% of the vote in each district, winning in each.
- 5) UNIDO gets 40% of the vote in each district, losing in each.

Now, if Parliament members were elected solely by district, then we get the extreme result of KBL taking 100% of Parliament seats with only a slim majority of 60% of votes nationwide:

Table 1: Distribution of "district" seats in demonstration

District	KBL%	UNIDO%	KBL seats	UNIDO seats
1	60%	40%	1	0
2	60%	40%	1	0
3	60%	40%	1	0
4	60%	40%	1	0
5	60%	40%	1	0
6	60%	40%	1	0
7	60%	40%	1	0
8	60%	40%	1	0
9	60%	40%	1	0
10	60%	40%	1	0
TOTAL	100%	0%	10	0

In this extreme "winner take all" scenario, UNIDO is stifled as an opposition party, and the 40% of the electorate that supported them are effectively disenfranchised. This is what Commissioner Monsod described, and exactly what the second or *Landesliste* vote in the German system seeks to prevent.

The "party-list" seats are distributed by multiplying each party's percentage of the second vote by the number of seats, a proportional allocation. The number of seats won through the first vote are then subtracted from this figure. In the demonstration:

³¹ See Schick and Zeh, *op. cit. supra* note 29 at 31, and Administration and Cost of Elections Project at <<http://www.aceproject.org>>.

Table 2: "Party-list" seat distribution in demonstration

Party	% of "national" or "party-list" votes	% vote multiplied by total seats (20)	"district" seats	Additional seats (subtract "district" seats)
KBL	60%	12	10	2
UNIDO	40%	8	0	8

Adding up the seats received by the two parties, one sees how the simplified system in the demonstration corrects for "manufactured" majorities. In fact, the German system has checked the creation of such majorities in the last five decades. It has also ensured a well-represented opposition and creates incentives for parties to cooperate.³² Proportional representation systems such as the German one are thus used in electorates with "traditional ethnic, linguistic, and religious cleavages or in societies experiencing pervasive class and ideological conflicts."³³

Table 3: Final distribution of seats in demonstration

Party	"district" seats	"party-list" seats	total seats	% of seats
KBL	10	2	12	60%
UNIDO	0	8	8	40%

The German system is more complex in practice because voters do not necessarily vote for the same party twice. Because smaller parties have more difficulty mobilizing enough votes in individual districts, for example, a voter can "split" his vote and give the second to a smaller party. This forms the basis of alliances between larger, stronger parties looking to win in the districts and smaller parties who "borrow" second votes from their partner.³⁴ However, this also creates the problem of "surplus" seats or Überhangmandate (overhang mandate).³⁵

³² Michael Krennerich, *Electoral Systems: Germany: The Original Mixed-Member Proportional System* at <http://www.aceproject.org/main/english/es/esy_de.htm> [9]. However, cooperation among parties is not solely a result of the electoral system. Because of Germany's history and political culture, its party system is much stronger, and voters usually vote for even district representatives along party lines. This certainly does not hold in the Philippines. See Minam Go, *Fixing R.P.'s Party List Mess*, Newsbreak Magazine, July 23, 2002, available at <<http://www.seapabkk.org/alerts/2002/20020723.html>> [4].

³³ Encyclopedia Britannica, *Political systems* <<http://search2.eb.com/elections/macro/5005/17/12.html>> [16].

³⁴ Krennerich, *op. cit. supra* note 32, at 35 [8].

³⁵ Student Information Center, Dartmouth College, *How Are Members of the Bundestag Elected?* at <<http://schiller.dartmouth.edu/~gicnyc/poldocs/wbtg.htm>> [5] and Bundestag, *The Beginning of An Electoral Term* at <http://www.bundestag.de/htdocs_e/orga/02electbg/02composit.html> [1]. Whenever a party wins more district seats than it would be entitled to under the "party-list" vote, it keeps those seats. However, this

As Commissioner Monsod stated:

“The purpose of this is to open the system. In the past elections, we found out that there were certain groups or parties that, if we count their votes nationwide, have about 1,000,000 or 1,500,000 votes. But they were always third or fourth place in each of the districts. So they have no voice in the Assembly. But this way, they would have five or six representatives in the Assembly even if they would not win individually in legislative districts. So, that is essentially the mechanics, the purpose and objectives of the party list system.”³⁶

The features he described are exactly those of the German system.

D. THE PHILIPPINE SYSTEM HAS LITTLE IN COMMON WITH THE GERMAN SYSTEM

The above demonstration reveals a curious detail: *The Philippine system has very little to do with the German*, even if Commissioners Monsod and Ople—and some House members—assumed that they based the Philippine system on the German, as presented in the preceding section.

Again, the Philippine system has the twin goals of:

- 1) empowering marginalized sectors
- 2) empowering minority political parties and diffusing political power in the House

With regard to the first, the German “party-list” system simply does not intend to empower marginalized sectors. The expected sizes of the parties involved in the two countries are very different, as evidenced by the three-seat cap in the Philippines³⁷ that has no equivalent in Germany. The German “party-list” seats simply play a self-correcting role in their system, and it is theoretically possible for their ruling party to capture 100% of “party-list” seats. Thus, whenever a policymaker laments that the Philippines only reserves 20% of the House for the marginalized while democracies like Germany assign 50%, he reveals a *gross misappreciation* of the German system. This is understandable, however, because

temporarily pushes the number of Bundestag seats above the maximum. There were sixteen such extra seats in the 1994-1998 term, and thirteen in the 1998-2002 term.

³⁶ 1986 Convention 568 (Friday, August 1, 1986).

³⁷ Rep. Act. No. 7941, sec. 11.

again, the Philippine system is erroneously described as modeled after the German.

With regard to the second, the German “party-list” system diffuses political power by correcting for “manufactured” majorities, as demonstrated. However, there is no self-correction in the Philippine system because its two votes are for two completely different groups and the party-list seats are allocated in a process completely separate from the one for district seats. Unlike in the German system, the results from one do not affect the results of the other.

Thus, the Philippine party-list system is a homegrown hybrid where sectoral groups and political parties compete against each other. However, since there is no self-correction, a party that already dominates the district seats can gain even more via the party-list, the exact opposite of the German system’s result. What the Philippine system ends up doing, in theory, is to provide a limited “back door” or “bonus” for larger political parties.³⁸ And, because Commissioner Monsod envisioned a small group organized by Aeta tribal elders competing against the present-day Lakas-NUCD, the goal of sectoral representation becomes, theoretically, absurd as well. *The self-correction that is the entire purpose of the German “party-list” system was not incorporated into the Philippine system.*

In effect, what the authors of the Party-List Act actually did was to ignore—intentionally or unintentionally—the goal of strengthening the party system, and focused on the goal of empowering marginalized sectors, as seen in the law’s policy statement.³⁹ This interpretation even led COMELEC to initially ask all party-list groups to register under sectors.⁴⁰ Later, the interpretation of the tricky phrase “national, regional, and sectoral” came to a head, and parties brought the matter before the Court.

³⁸ This is in theory because in practice, the law placed a seat cap and barred the largest political parties from participating in the party-list elections. Past election results showed that the remaining national-level political parties did not in any way dominate. However, no political party has yet exerted great effort to get allied party-list candidates elected. For example, no presidential or senatorial candidate has strongly endorsed a party-list arm. See Rodriguez and Velasco, *op. cit. supra* note 9, at 10. Nevertheless, during his internship with the House Committee on Suffrage, this author observed legislators such as Akbayan! Rep. Etta Rosales and Bayan Muna Rep. Satur Ocampo as well as other party-list and NGO leaders discuss how raising the seat cap may encourage larger political parties to take greater interest in party-list elections. These leaders distinguish their groups as “grassroots” political parties, to use Rep. Rosales’s term. (Transcripts of House Committee on Suffrage hearings and Technical Working Group discussions are on file with the Committee.)

³⁹ Rep. Act. No. 7941, sec. 2.

⁴⁰ Rodriguez and Velasco, *op. cit. supra* note 9, at 10, 13.

E. ANG BAGONG BAYANI: RESOLVING THE THEORETICAL ABSURDITY OF THE SYSTEM

Ang Bagong Bayani v. COMELEC,⁴¹ settled the controversy on the built-in theoretical absurdities of the Constitutional Convention's vision, as described in the preceding section. Again, the theoretical example is administration party Lakas-NUCD dominating *both* district and party-list elections.

To cite a concrete example from the 2001 party-list elections, recall *Mamamayan Ayaw sa Droga (MAD)* and its nominee, popular actor Richard Gomez. It could claim to be a political party that espoused an anti-drug ideology, validly enter the party-list system under Commissioner Monsod's second stated goal, and compete for seats against farmers, fishermen and tribal minorities.

Commissioner Jaime Tadeo, in a passionate speech, decried:

MR. TADEO: Kasama rin ang mga partidong ito (UNIDO, PDP-LABAN, Liberal, Nacionalista, PNP). Nahawakan na nila ang 200 legislative seats, hahawakan pa rin nila ang party list—itututlak nila ang sectoral. Lalamunin din ng mga partidong ito ang sectoral.⁴²

The Court ruled that the party-list system was instituted for the *sole* benefit of the marginalized, and interpreted "national" and "regional" parties to mean national and regional parties *of the marginalized*:

Indeed, the law crafted to address the peculiar disadvantages of Payatas hovel dwellers cannot be appropriated by the mansion owners of Forbes Park...

xxx

This Court, therefore, cannot allow the party-list system to be sullied and prostituted by those who are neither marginalized nor underrepresented... The clear state policy must permeate every discussion of the qualification of political parties and other organizations under the party-list system. (internal citations omitted)⁴³

Significantly, the decision selectively set aside what Commissioner Monsod (the proponent of the provision's wording) said and quoted Commissioner Wilfrido

⁴¹ *Ang Bagong Bayani v. COMELEC*, G.R. No. 147589, June 26, 2001, 359 SCRA 698 (2001).

⁴² 1986 Convention 562-563 (Friday, August 1, 1986). "These parties are also part of the system (UNIDO, PDP-LABAN, Liberal, Nacionalista, PNP). They already hold 200 legislative seats, yet they will also hold the party list—they will shut out the sectoral. These parties will devour the sectoral." *Ibid.*

⁴³ *Ang Bagong Bayani v. COMELEC*, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 723 (2001).

Villacorta (who introduced an amendment to Commissioner Monsod's proposal that was *struck down* in a narrow vote):

Notwithstanding the sparse language of the provision, a distinguished member of the Constitutional Commission declared that the purpose of the party-list provision was to give "genuine power to our people" in Congress. Hence, when the provision was discussed, he exultantly announced: "On this first day of August 1986, we shall, hopefully, usher in a new chapter to our national history, by giving genuine power to our people in the legislature." (internal citations omitted)⁴⁴

The decision further explained that the Constitutional provision intended to leave the specifics of the party-list system to lawmakers,⁴⁵ and stressed that the Party-List Act's declaration of policy emphasized the marginalized:

"Proportional representation" here does not refer to the number of people in a particular district, because the party-list election is national in scope. Neither does it allude to numerical strength in a distressed or oppressed group. Rather, it refers to the representation of the "marginalized and underrepresented" as exemplified by the enumeration of Section 5 of the law; namely, "labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers, and professionals."⁴⁶

F. THE FIRST VESTIGE OF THE THEORETICAL ABSURDITY: THE 2% THRESHOLD

The lamentable fact is that while the misapprehension of the German system still expresses itself in the implementation of the party-list system, these relate to simple mathematical concepts.

The first and most obvious is the 2% threshold.⁴⁷ Under the Party-List Act, only parties that receive at least 2% of the party-list votes may receive seats.

⁴⁴ Ang Bagong Bayani v. COMELEC, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 717-718 (2001), *citing* 1986 Convention 561 (Friday, August 1, 1986). Commissioner Villacorta was introducing the proposal to permanently reserve half the party-list seats for sectoral groups.

⁴⁵ See, *however*, JOAQUIN BERNAS, SJ, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 628 (1st ed., 1996). "Although the Constitution does not set down the mechanics for the operation of the system but leaves these to ordinary legislation, the 1986 Constitutional Commission had a clear understanding of the rough outlines of how the system should operate." *Ibid.*

⁴⁶ Ang Bagong Bayani v. COMELEC, G.R. No. 147589, June 26, 2001, 359 SCRA 698, 719 (2001).

⁴⁷Rep. Act. No. 7941, sec. 11.

This is readily problematic because if there are 52 seats, you need at least 104% of the total vote to fill all the seats—a clear impossibility that forced the Court to declare the Constitution's allotment of seats as a maximum.

However, there are deeper mathematical nuances. Due to the large number of parties in the Philippine system compared to the German, the concept was problematic even with the initial fifty seats, or 20% of the initial House seats. Dividing 100% (or the total party-list vote) by 2%, one gets 50 seats. Speaking roughly, however, one will only fill 50 seats if *exactly* 50 parties *each* receive *exactly* 2% of the vote. If a 51st party receives 0.01% of the vote, for example, then one of the first 50 parties will not reach the required 2%. And even if there are exactly 50 parties, if the first 25 all receive 2.01% or more, then the stray fractions will push the last 25 below the threshold.

This simple explanation explains exactly why only 14 out of 52—no longer 50—seats were assigned after the first party-list election in 1998:

Table 4: 1998 Party-List Election results

Party	Votes	% of vote	Seats
APEC	503,487	5.50%	2
ABA	321,646	3.51%	1
ALAGAD	312,500	3.41%	1
VETERANS FEDERATION	304,902	3.33%	1
PROMDI	255,184	2.79%	1
AKO	239,042	2.61%	1
SCFO	238,303	2.60%	1
ABANSE PINAY	235,548	2.57%	1
AKBAYAN	232,376	2.54%	1
BUTIL	215,643	2.36%	1
SANLAKAS	194,617	2.13%	1
COOP-NATCCO	189,802	2.07%	1
COCOFED	186,388	2.04%	1
TOTAL	-	37.46%	14
SENIOR CITIZENS	143,444	1.57%	0
AKAP	136,650	1.49%	0
AKSYON	132,913	1.45%	0

Simply, the decimal places would defeat the system if 50 or so run, not to mention the dispersion of votes among the 123 that did in 1998.

What few policymakers realize, however, is that the idea of a threshold came from the German system, which has a 5% threshold. The very idea behind the German threshold is to *exclude* small political parties,⁴⁸ small here measured relative to their major national-level parties. This origin was seen in the sponsorship speeches of the Party-List Act:

SENATOR GONZALES: 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 people sufficient basis⁴⁹

MR. ESPINOSA: There is a mathematical formula which this computation is based at, arriving at a five percent ratio which would distribute equitably the number of seats among the different sectors. There is a mathematical formula which is, I think, patterned after that of the party list of the other parliaments or congresses, more particularly the Bundestag of Germany.⁵⁰

Commissioner Monsod's initial reasoning of the threshold in the Convention debates seems to concur:

One proposal is that anybody who has a 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, we are talking about 134,000 families. We believe that there are many sectors who will be able to get seats...⁵¹

Again, however, the differences in the German and the Philippine systems must be emphasized:

- 1) The German system is intended for far larger national parties than the

⁴⁸ See Student Information Center, Dartmouth College, *How are Members of the Bundestag elected?* at <<http://schiller.dartmouth.edu/~gicnyc/poldocs/wbtg.htm>> [7] and Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 274-276 (2000).

⁴⁹ 11 Record of the Senate 145, 9th Cong., 2nd Sess. cited in Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 270-271 (2000).

⁵⁰ Transcript, House of Representatives, November 22, 1994, 34 cited in Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 271 (2000).

⁵¹ 1986 Convention 256 (Friday, July 25, 1986).

Philippine party-list groups. The last German elections were held on September 22, 2002 and six major parties accounted for 97% of votes.⁵² On the other hand, few Philippine groups, to date, have met the 2% threshold.

- 2) The German system does not have the same problem with the decimal places, because there are far less parties than seats. In the last elections, 604 seats were distributed among only five parties.⁵³

Simply put, the above comments echoed the German concept while forgetting the *scope* of the German system.

The authors of the Party-List Act thus failed to check the original context of the imported threshold, and rationalized 2% as the average number of votes (100% divided by 50 seats equals 2% per seat). It was exactly this seemingly logical figure that created the mathematical impossibility.

It is a basic concept in Statistics that the actual value is not necessarily equal to the average value.⁵⁴ In fact, it is usually slightly higher or slightly lower. If a person claims to spend an average of P50 for lunch daily, he might spend P40 on Monday, P50 on Tuesday, and P60 on Wednesday. If a person usually arrives at the office at 9:00 AM, he probably arrives at 8:50 on some days, 9:10 on others, and so on. Thus, if the basis of the threshold is a supposed *average* figure, 2%, then a party-list group that received 1.9% of the vote should not be treated so differently from one that received 2.1%.

What the 2% threshold does, however, is reject everything below the average, which defies the very idea of a statistical average. It would be better, then, for the threshold to have some "allowance," something like:

$$\frac{100\% \text{ of vote}}{\text{number of seats}^{55}} \quad \times \quad \frac{1}{2} \text{ to } \frac{3}{4}$$

⁵² Friedrich Ebert Stiftung, 'Elections to the Bundestag' at <http://www.fes.or.kr/G_Election/Bundestag.html>. Federal Chancellor Gerard Schroeder's Social Democratic Party accounted for 39.5% of the vote. The other five parties were the Christian Democratic Union, Christian Social Union, Free Democratic Party, Green Party, and Party of Democratic Socialism.

⁵³ *Id.* The last party received only 4% of the vote.

⁵⁴ RONALD WALPOLE AND RAYMOND MYERS, PROBABILITY AND STATISTICS FOR ENGINEERS AND SCIENTISTS 83.(5th Ed., 1993).

⁵⁵ Remember that the number of party-list seats increases as the number of congressional districts increases, meaning the average is not a fixed 2%. See CONST. art. VI, sec. 5(1).

A simple adjustment or “discount” of $\frac{1}{2}$ to $\frac{3}{4}$ would allow the system to accept groups that score slightly below average but still receive what should be an acceptable number of votes.⁵⁶

Even then, this does not solve the problem, because the sheer number of parties may make it difficult for legitimate parties to reach even a threshold “with allowance.” Going back to the different contexts of the German and Philippine systems, one wonders why a threshold is needed in the first place. Its only purpose is to establish a minimum number of votes to give each party-list representative some credibility vis-à-vis district representatives,⁵⁷ but it was pointed out during the National Electoral Summit⁵⁸ that a small district such as Batanes has less than 20,000 voters—overwhelmingly far from Commissioner Monsod’s projection of 400,000 to 500,000 votes.

Some have proposed to solve the problem with thresholds *not* based on 100% divided by the number of seats. For example, a UP Public Administration paper proposed to use 100% divided by the number of *parties*,⁵⁹ which is not advisable because of the questionable relevance of the divisor. In theoretical terms, the figure seems arbitrary and unpredictable. In practical terms, this threshold could skew results if a large number of extremely small or weak parties registered.

Nevertheless, it is clear that the 2% threshold was a foreign mechanism that was blindly borrowed.⁶⁰ A mechanism more suited to Philippine circumstances is clearly needed—not necessarily a threshold—and this author shall present his personal solution at the end of this paper.

⁵⁶ The more sophisticated explanation is that the threshold must consider the lower bound of the average and take standard deviation into account, but basic college Statistics may be difficult to introduce into Philippine lawmaking. This author tried to explain standard deviation in a House hearing, and an officer of Bayan Muna countered that if all parties received exactly the threshold number of votes, then the seats won may exceed the maximum allowable number of party-list seats. This showed a lack of understanding of the concept of an average and the reality of the numbers in the last party-list elections. Of course, the argument is addressed by simply assigning seats only to the highest-scoring parties in case a lowered threshold qualifies too many parties. The alternative is the *status quo*, a threshold that is too high and qualifies too few parties.

⁵⁷ See 1986 Convention 256 (Friday, July 25, 1986). Present party-list group leaders explain the concept by saying that they have to show a substantial number of votes lest they be perceived as having second-class mandates in the House.

⁵⁸ April 29-30, 2002, Bayview Hotel, Manila. Minutes and working group discussions on file with the House Committee on Suffrage.

⁵⁹ Cuyco, *op. cit. supra* note 7, at 8.

⁶⁰ In this author’s opinion, the true mathematical significance of addressing the 2% threshold has not yet dawned on policymakers. This is based on this author’s observation of House Committee on Suffrage hearings, and informal conversations with party-list group officers and NGO leaders invited to them. At best, policymakers feel that the threshold is simply “too high” and is better lowered to 1.5% or 1%, without knowing the precise mathematical and historical explanations for the problem.

**G. THE SECOND VESTIGE OF THE THEORETICAL ABSURDITY: THE
NIEMEYER FORMULA**

Because of the way the sheer number of parties, decimal places and the 2% threshold interact, very few party-list seats are filled. COMELEC and party-list groups tried to use the German system's Niemeyer formula to fill them up, but the Court threw the formula out of Philippine jurisprudence, claiming it was incompatible with Philippine needs.

It is submitted that the correct result was obtained, but not for the reasons given in *Veterans*.

The formula involves two different processes. The first divides the seats according to an implicit quota "100% of the vote divided by the number of seats," or the same computation that produced the 2% threshold. Thus, in the original context of 50 seats, the implied quota is 2% per seat. This is perfectly logical and works flawlessly for the German system where there are relatively few but large parties, but creates problems when applied to the Philippine system where there are over a hundred small parties. The wide dispersal of the votes stops many from hurdling the threshold, as discussed.

The second component of the Niemeyer formula is the German system's method of addressing "leftover" decimal places. For example, say there are fifty seats to be assigned and one party got 96.5% of the vote while a second got 3.5%. The Niemeyer formula looks at the seat "left over" by the split of the last 2%, 0.5% to the first party and 1.5% to the second. Another example better illustrates how this is done.

Assume a simplified House with only ten seats, the same 2% threshold⁶¹ and 3-seat cap, and the following winning parties:

⁶¹ The 2% threshold in relation to ten seats is mathematically untenable, but this is merely an abbreviated example.

Table 5: Niemeyer formula demonstration

Party	% of votes
Bayan Muna	6.1%
Mamamayan Ayaw sa Droga	4.5%
Akbayan!	4.1%
True Marcos Loyalist Ass'n	3.9%
Ang Buhay Hayaang Yumabong	3.8%

To shorten the example, simply use the 2% per seat “quota” of the original 50-seat context. One sees that a total of nine seats will be assigned. What about the tenth? One might think to assign it to the party with the highest vote that has not yet reached the 3-seat cap:

Table 6: Niemeyer Formula Demonstration, Plain Guess

Party	% of votes	Seats
Bayan Muna	6.1%	3
Mamamayan Ayaw sa Droga	4.5%	2 + 1
Akbayan!	4.1%	2
True Marcos Loyalist Ass'n	3.9%	1
Ang Buhay Hayaang Yumabong	3.8%	1

However, this seems wrong. Here, a party with 6.1% and another with 4.5% both receive 3 seats, while a party with 4.1% only receives 2. This is quite out of proportion.⁶²

Where was the error?

The party-list elections work differently because a party only has to hurdle the 2% threshold to win something. The Niemeyer formula allocates seats by breaking up the votes each party receives:

⁶² See *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244 (2000), for the emphasis on proportionality.

Table 7: Niemeyer Formula Demonstration, examining largest remainders

Party	% of votes	Seats coming from...				Total Seats
		1 st 2%	2 nd 2%	3 rd 2%	Extra votes	
Bayan Muna	6.1%	2%	2%	2%	0.1%	3
Mamanayan Ayaw sa Droga	4.5%	2%	2%	-	0.5%	2
Akbayan!	4.1%	2%	2%		0.1%	2
True Marcos Loyalist Ass'n	3.9%	2%		-	1.9%	1+1
Ang Buhay Hayaang Yumabong	3.8%	2%			1.8%	1

However, there is still a problem in the example because a party with 4.1% and another with 3.9% got two seats each, while a third with 3.8% got only one. Although the result does not seem proportional, the Niemeyer formula *itself* is a proportional system of assigning extra seats.

The final party-list seat allocation cannot be perfectly proportional because you cannot assign fractions of seats, but a system can be said to be proportional if it counts each vote equally.

With this contrast, one sees that votes are equally valuable under the Niemeyer formula. Each vote has an equal chance of forming a 2% "block" of votes in the example for an automatic seat, or contributing to the "extra votes" which may lead to a seat as well. The Niemeyer formula is thus fair and the *system itself* is proportional. Had there been another extra seat, for example, the fifth party's "extra" votes would have assigned that last seat to that party. Again, the results—differentiated from the system itself—cannot be perfectly proportional only because one cannot assign fractions of seats.

There is nothing wrong with the Niemeyer formula itself; its logic was merely insufficiently articulated in *Veterans*, the first case where the Court had to rule on the seat allocation system.

All the problems associated with the Niemeyer formula arise from the mathematical circumstances of the Philippines system and not from the formula itself. In the first elections in 1998, using the logic of counting largest remainders would have resulted in absurdity:

Table 8: 1998 Party-List Election results, with Niemeyer Formula notation

Party	Votes	% of vote	Seats	1st 2%	2nd 2%	3rd 2%	Extra votes	Extra seats
APEC	503,487	5.50%	2	2%	2%		1.50%	1?
ABA	321,646	3.51%	1	2%			1.51%	1?
ALAGAD	312,500	3.41%	1	2%			1.41%	1?
VETERANS FEDERATION	304,902	3.33%	1	2%			1.33%	1?
PROMDI	255,184	2.79%	1	2%	-		0.79%	1?
AKO	239,042	2.61%	1	2%			0.61%	1?
SCFO	238,303	2.60%	1	2%	-		0.60%	1?
ABANSE PINAY	235,548	2.57%	1	2%			0.57%	1?
AKBAYAN	232,376	2.54%	1	2%	-		0.54%	1?
BUTIL	215,643	2.36%	1	2%	-	-	0.36%	1?
SANLAKAS	194,617	2.13%	1	2%			0.13%	1?
COOP-NATCCO	189,802	2.07%	1	2%			0.07%	1?
COCOFED	186,388	2.04%	1	2%	-	-	0.04%	1?
SENIOR CITIZENS	143,444	1.57%	0					
AKAP	136,650	1.49%	0		-			-
AKSYON	132,913	1.45%	0			-	-	-

The Niemeyer formula has a system for breaking ties, and the problem with applying it to the Philippine system is that there are really no ties to break. Whatever system one uses to assign extra seats, one is forced to give all parties a seat (which would not even fill all party-list seats), a clearly incongruous result. One now readily sees the real problem: the Niemeyer formula cannot be applied when there are so many leftover seats, meaning *there are really no ties for the tiebreaker to break!* There are so many leftover seats because there are so few qualified parties, meaning the problem returns to the mathematically impossible 2% threshold.

Strangely enough, the mathematical flaw was actually brought to the attention of the Court when it rules in *Veterans*, where it had to allocate 52 seats:

[I]t is mathematically impossible; to require that the 52 seats for party-list representatives be filled at the rate of 2 percent per seat. That would mean

that the votes needed to win the 52 seats is 104 percent of the votes cast in the election.⁶³

And:

On the contention that a strict application of the two percent threshold may result in a “mathematical impossibility,” suffice it to say that the prerogative to determine whether to adjust or change this percentage requirement rests in Congress.⁶⁴

In any case, the Court had to avoid the absurd result of assigning three seats to each qualified party. Thus, it ruled that the 20% in the Constitution merely referred to a maximum, and did away with *all* the unfilled seats. It had no choice because other logical steps would be to assign extra seats only to every group with, say, 1.00–1.99% worth of “extra” votes. As *Veterans* stated:

The decision on whether to round off the fractions is better left to the legislature. Since Congress did not provide for it in the present law, neither will this Court.⁶⁵

However, the Court also commented:

[A]n academic rounding off could result in a violation of the twenty percent allocation...

The Court has previously ruled in *Guingona, Jr. v. Gonzales* that a fractional membership cannot be converted into a whole membership when it would, in effect, deprive another party’s fractional membership. It would be a violation of the constitutional mandate of proportional representation.⁶⁶

It must be emphasized that the “tiebreaker” portion of the Niemeyer formula is the simplest yet most logical method of dealing with fractions without exceeding the 20% maximum. Further, *Guingona, Jr. v. Gonzales*⁶⁷ dealt with the assignment of 12 senators to the Commission on Appointments based on the

⁶³ *Veterans Federation Party v. COMELEC* (Mendoza J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 312 (2000).

⁶⁴ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 269 (2000).

⁶⁵ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 278 (2000).

⁶⁶ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 278 (2000).

⁶⁷ G.R. No. 106971, 214 SCRA 789, October 20, 1992; G.R. No. 106971, 219 SCRA 326, March 1, 1993.

affiliations of the 24-member body. In that case, the only possible fraction was 0.5 of a seat, making rounding off quite arbitrary since one would have to take half a seat from one party to turn another party's half-seat into a whole seat.

The decimals involved in the party-list system are far from as extreme. Certainly, the Court would take a different view given a choice between 0.99 and 0.01.

This completes the background explanation of how the main problems that will be discussed in the next part are all traceable to a faulty importation of German ideas so many years ago at the 1986 Constitutional Convention.

H. THE THREE-SEAT CAP: THE FILIPINO ADDITION TO THE GERMAN IMPORT

Before moving on, one should study the main modification the framers made to the German system:

MR. MONSOD: We are for opening up the system, and we would like 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...⁶⁸

Commissioner Monsod's example was a 30% or 15-seat cap, but the Party-List Act eventually contained a 3-seat cap.⁶⁹

Aware of the large size of some of the parties in the German system, the framers discussed a cap to give the smaller parties from marginalized sectors a fighting chance, so to speak. They were confident that parties from such sectors such as the KMU and TUCP that claimed memberships from 500,000 to 1,000,000 could compete in the party-list system. However, the much lower cap that was enacted actually encouraged the larger parties from marginalized sectors *to split up*:

It seems that the sectoral vote was fragmented... TUCP alone was divided into five separate parties, four of which got an average of 75,000 votes and the other one hovering at around 50,000. The affiliated peasant groups also

⁶⁸ 1986 Convention 256 (Friday, July 26, 1986).

⁶⁹ Rep. Act. No. 7941, sec. 11.

broke up into seven groups... [T]he group split because they felt that they could win more than just the maximum allotted 3 seats per group, and therefore their consolidated vote, if used up by one party, would be wasted.⁷⁰

These groups realized too late that their large memberships and networks did not necessarily translate into votes. Nevertheless, this shows an unforeseen side effect of the three-seat cap, and this must be balanced with the policy concern of preventing any one party from dominating the party-list seats. Bayan Muna party-list representative Satur Ocampo, for example, proposed that a party that captures, say, 20% of the party-list vote should be barred from subsequent elections because it would clearly no longer be marginalized.⁷¹ To further complicate the issue, relaxing the cap may draw the interest of large political parties.

This author notes that in any case, a cap defined as a fixed figure repeats the mistake of the fixed 2% threshold. Rather, it should be a percentage, like the 20% figure in the Constitution. This is a preemptive measure, since the number of seats increases.

II. TOUGH LUCK AT FINDING THE RIGHT SOLUTION

The preceding sections outlined the *theoretical* problems in the Party-List Act, and their origins. These led to the difficulty in interpreting and implementing the law, and the problem eventually reached the Supreme Court. Universally dissatisfied with the Court's own interpretation, legislators and larger party-list groups now seek to circumvent it by amending the law.⁷²

The following sections will trace the problems detected—and not detected—by various groups, and will show that unless the original theoretical problems are taken by the horns, minor amendments to the Party-List Act will only lead to further absurdity.

The starting point is deceptively simple. There were 52 party-list seats to be assigned in the first elections in 1998, and the law stated:

⁷⁰ Rodriguez and Velasco, *op. cit. supra* note 9, at 10, 14–17.

⁷¹ Comment made at House Committee on Suffrage Hearing, May 14, 2002. Bayan Muna also filed a bill that proposes to do away with the cap altogether.

⁷² See H. No. 4398, sec. 9, 12th Cong., 1st Sess. (2002) *filed by* Rep. Loretta Ann Rosale; H. No. 474, 12th Cong., 1st Sess. (2002) *filed by* Rep. Bellaflor Angara-Castillo.

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.⁷³

Reviewing the 1998 election results, one asks oneself how he would assign the seats:

Table 9: 1998 Party-List Election results

Party	Votes	% of vote	Seats
APEC	503,487	5.50%	2
ABA	321,646	3.51%	1
ALAGAD	312,500	3.41%	1
VETERANS FEDERATION	304,902	3.33%	1
PROMDI	255,184	2.79%	1
AKO	239,042	2.61%	1
SCFO	238,303	2.60%	1
ABANSE PINAY	235,548	2.57%	1
AKBAYAN	232,376	2.54%	1
BUTIL	215,643	2.36%	1
SANLAKAS	194,617	2.13%	1
COOP-NATCCO	189,802	2.07%	1
COCOFED	186,388	2.04%	1
TOTAL	-	37.46%	14
SENIOR CITIZENS	143,444	1.57%	0
AKAP	136,650	1.49%	0
AKSYON	132,913	1.45%	0

A. COMELEC'S SOLUTION

COMELEC proclaimed the country's first party-list representatives on June 26, 1998, following the above chart.⁷⁴ On July 6, however, PAG-ASA⁷⁵ petitioned COMELEC to fill up the remaining 38 seats, pursuant to the 20% figure in the Constitution. Other groups followed suit, and so began the saga of the

⁷³ Rep. Act. No. 7941, sec. 11.

⁷⁴ Emerito Calderon of the last group, COCOFED (Philippine Coconut Planters' Federation, Inc.), was proclaimed later, on September 8, because his group only passed the 2% threshold after the results of special elections held on July 4, 18 and 25 were added. *See* Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244 (2000).

⁷⁵ People's Progressive Alliance for Peace and Good Government Towards Alleviation of Poverty and Social Advancement.

Philippine Party-List System Act.

COMELEC's Second Division was first at bat. On October 15, it ordered the proclamation of the nominees of the next 38 groups, resulting in the following distribution:

Table 11: 1998 Party List results, COMELEC Second Division distribution

Party	Votes	% of vote	Seats
1. APEC	503,487	5.50%	2 ⁷⁶
2. ABA	321,646	3.51%	1
3. ALAGAD	312,500	3.41%	1
4. VETERANS FEDERATION	304,902	3.33%	1
5. PROMDI	255,184	2.79%	1
6. AKO	239,042	2.61%	1
7. SCFO	238,303	2.60%	1
8. ABANSE PINAY	235,548	2.57%	1
9. AKBAYAN	232,376	2.54%	1
10. BUTIL	215,643	2.36%	1
11. SANLAKAS	194,617	2.13%	1
12. COOP-NATCCO	189,802	2.07%	1
13. COCOFED	186,388	2.04%	1
14. SENIOR CITIZENS	143,444	1.57%	1
15. AKAP	136,650	1.49%	1
16. AKSYON	132,913	1.45%	1
17. PINATUBO	128,122	1.40%	1
18. NUPA	122,183	1.33%	1
19. PRP	121,436	1.33%	1
20. AMIN	111,396	1.22%	1
21. PAG-ASA	102,977	1.12%	1
22. MAHARLIKA	102,064	1.11%	1
23. OCW-UNIFIL	101,739	1.11%	1
24. PCCI	101,147	1.10%	1
25. AMMA-KATIPUNAN	100,895	1.10%	1
26. KAMPIL	100,269	1.10%	1
27. BANTAY BAYAN	95,223	1.04%	1
28. AFW	95,138	1.04%	1
29. ANG LAKAS OCW	93,628	1.02%	1
30. WOMENPOWER, INC.	92,891	1.01%	1
31. FEJODAP	90,404	0.99%	1
32. CUO	87,772	0.96%	1
33. VETERANS CARE	86,689	0.95%	1

⁷⁶ It would seem that COMELEC awarded an additional seat to APEC based on the 2% per seat "quota" implied in the Niemeyer formula and the 2% threshold, and the initial solution was taken for granted by all groups.

34. 4L	81,298	0.89%	1
35. AWATU	80,527	0.88%	1
36. PMP	78,465	0.86%	1
37. ATUCP	75,505	0.82%	1
38. NCWP	73,796	0.81%	1
39. ALU	73,145	0.80%	1
40. BIGAS	69,524	0.76%	1
41. COPRA	69,135	0.76%	1
42. GREEN	69,045	0.75%	1
43. ANAKBAYAN	68,708	0.75%	1
44. ARBA	65,051	0.71%	1
45. MINFA	64,911	0.71%	1
46. AYOS	64,847	0.71%	1
47. ALL COOP	63,820	0.70%	1
48. PDP-LABAN	62,172	0.68%	1
49. KATIPUNAN	61,873	0.68%	1
50. ONEWAY PRINT	60,982	0.67%	1
51. AABANTE KA PILIPINAS	59,068	0.65%	1
TOTAL	-	73.39%	52
52. NACUSIP	58,668	0.64%	0
53. TAPAT FOUNDATION	58,237	0.64%	0
54. BARKADAHAN	57,683	0.63%	0

The Division justified that the 20% figure had to be met and thus disregarded the 2% threshold. Instead, it based its decision on three “elements of the party-list system” it identified as:

- 1) Enabling marginalized sectors
- 2) Representing the broadest sectors
- 3) Encouraging the multi-party system.⁷⁷

This was a doubly problematic move. Legally, COMELEC had no authority to disregard the plain letter of the law, never mind what it believed the Constitution said. Again, the law read:

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:*

⁷⁷ Veterans Federation Party v. COMELEC, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 261 (2000).

*provided, finally, that each party, organization, or coalition shall be entitled to not more than three (3) seats.*⁷⁸

Mathematically, the allocation was grossly out of proportion: ABA with 3.51% and AABANTE KA PILIPINAS with 0.65% both received one seat. The original twelve parties objected, citing the above provision of the Party-List Act.

COMELEC en banc agreed with all parties that the 20% Constitutional requirement had to be met. The issue it decided was whether the seats should instead be parceled out to *only* those who had hurdled the 2% threshold, or simply uphold the Second Division's ruling.

A narrow 3-2 vote upheld the Division, reasoning that a strict application of the 2% threshold would "mean the concentration of representation... to thirteen organizations representing two political parties, three coalitions and four sectors: urban poor, veterans, women and peasantry." The concurring opinion of Commissioner Tancangco also noted the mathematical impossibility of a 2% threshold and 52 seats.⁷⁹

The parties that reached the threshold elevated the matter to the Supreme Court.

B. THE MAJORITY'S SOLUTION

Opening the *Veterans* decision, Justice Panganiban wrote:

[T]he party-list system... presents new paradigms and novel questions, which demand innovative legal solutions convertible into mathematical formulations which are, in turn, anchored on time-tested jurisprudence.⁸⁰

Having witnessed the problematic handling of the Niemeyer formula in its long journey from Germany to the Philippines, one must approach the final "innovative legal solution" with a critical eye. Indeed, the majority also attempted to stay between the Party List Act's Scylla and Charybdis, but also committed subtle mathematical errors along the way, meaning *the problematic methodology cannot be blamed solely on the statute's inherent defects*.

⁷⁸ Rep. Act. No. 7941, sec. 11.

⁷⁹ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 269 (2000), n.17.

⁸⁰ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000 342 SCRA 244, 256 (2000).

Again, review the exact text of Section 11 of the Party-List Act:

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.⁸¹

The Court held that a correct distribution should reflect proportionality, as has been emphasized throughout this paper. It illustrated:

For example, the first party received 1,000,000 votes and is determined to be entitled to two *additional* seats. Another qualified party which received 500,000 votes cannot be entitled to the same number of seats, since it garnered only fifty percent of the votes won by the first party. Depending on the proportion of its votes relative to that of the first party whose number of seats has already been predetermined, the second party should be given less than that to which the first one is entitled.⁸²

The Court then explained that the first step is to determine the number of seats that the party with the most votes would receive. It proposed:

Percentage of votes	Seats
2.00-3.99%	1
4.00-5.99%	2
6.00% or higher	3

The Court never explained how it came up with the above brackets, but it is presumably from the general perception and the 2% per seat "quota" implied in the Niemeyer formula, if one uses the original 50 seats (1/50 is 2%). COMELEC's own primer for the party-list system explained the distribution system using the above brackets and 2% per seat rule.⁸³

The formula continued that the second and succeeding parties would each get one seat, plus possible additional seats determined by:

⁸¹ Rep. Act. No. 7941, sec. 11.

⁸² Rep. Act. No. 7941, sec. 11.

⁸³ Primer on file with the House Committee on Suffrage.

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} \times \text{seats beyond first allocated to first party}^{84}$$

To summarize, the Court based the other parties' additional seats on the ratio of the votes they received to the votes received by the first party, which sounds quite proportional. Fractions would be discarded because the law did not provide for fractions:

The decision on whether to round off the fractions is better left to the legislature. Since Congress did not provide for it in the present law, neither will this Court.⁸⁵

Using the table, the Court assigned two seats to APEC because it fell in the 4.00-5.99% range. Using the formula, the Court then gave the following results:

Table 12: The Court's solution

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	503,487	5.50%	2	-	2
ABA	321,646	3.51%	1	0.64	1
ALAGAD	312,500	3.41%	1	0.62	1
VETERANS FEDERATION	304,902	3.33%	1	0.61	1
PROMDI	255,184	2.79%	1	0.51	1
AKO	239,042	2.61%	1	0.47	1
SCFO	238,303	2.60%	1	0.47	1
ABANSE PINAY	235,548	2.57%	1	0.47	1
AKBAYAN	232,376	2.54%	1	0.46	1
BUTIL	215,643	2.36%	1	0.43	1
SANLAKAS	194,617	2.13%	1	0.39	1
COOP-NATCCO	189,802	2.07%	1	0.38	1
COCOFED	186,388	2.04%	1	0.37	1
TOTAL	-	37.46%	14	-	14
SENIOR CITIZENS	143,444	1.57%	-	-	0
AKAP	136,650	1.49%			0
AKSYON	132,913	1.45%			0

⁸⁴ Simply, the seats of the first party minus 1, unless the first party was allocated only one seat. See *The Legal and Logical Formula for the Philippines in Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 276-278 (2000).

⁸⁵ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 278 (2000).

The Court's solution must hold for all relevant values. As such, the formula must be tested with simple but extreme values that cover *all* possible values.

C. TESTING THE COURT'S FORMULA

Table 12: Possible seats of a second party under the Court's formula

First Party	Second Party		
	2.00-3.99%	4.00-5.99%	6.00% or higher
2.00-3.99%	1	Impossible	Impossible
4.00-5.99%	1	1	Impossible
6.00% or higher	1	1 or 2	1 or 2

1. FIRST SCENARIO: FIRST PARTY GETS ONLY ONE SEAT

The above table shows all possible results for the Court's formula. The simplest scenario is when the first party receives only one seat. The ratio for the other parties will always be less than one, and all parties will receive one seat. It is easy to see that whenever the first party receives only one seat, the Court's formula is always correct.

2. SECOND SCENARIO: FIRST PARTY GETS TWO SEATS

Testing the Court's formula in the other scenarios is more complicated. Another simple scenario is when the first party is in the 4.00-5.99% range and all other parties place below 4%. The first party receives two seats and the other qualified parties receive one. Intuitively, all but the first are below the two seat "quota" in the Niemeyer formula, which is $2/52$ or 3.85%, or approximately 4%. Thus, this is also correct, recalling that the law erroneously assumes that the "quota" is 2% or $1/50$ and not $1/52$.

Table 13: First party gets 2 seats, second party's number of votes is not close

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	503,487	5.50%	2	-	2
ABA	321,646	3.51%	1	0.64	1

One sees that there is no problem if the second party has far fewer votes. However:

Table 14: First party gets 2 seats, second party's number of votes is very close

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	503,487	5.50%	2		2
AKBAYAN!	502,572	5.49%	1	0.9982	1

There is clearly a problem, because even if the second party gets just one less vote than the first, it will never get a second seat.⁸⁶ Examine the Court's formula, and note that if the first party gets 4.00 to 5.99% of the vote, one obtains:

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} \times 1 \text{ extra seat}$$

The formula is reduced to the ratio on the left because there is no need to multiply by 1.⁸⁷

Now, observe the given relationship between the vote of the first and all other parties:

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} < 1.00$$

Manipulating the formula:⁸⁸

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} < 1.00$$

⁸⁶ Note that assuming the number of extra seats is reasonable, the "tiebreaker" component of the Niemeyer formula readily compensates for this close a result. It could easily handle, say, a first party with 4.00% and a second with 3.99%.

⁸⁷ The identity principle. Any number multiplied by 1 equals that same number.

⁸⁸ Divide both sides of the inequality by the percentage of the vote of the first party.

Thus, the ratio for all but the first party will *always* be less than 1, even if the actual difference is just one vote. This is not only clearly out of proportion, it is iniquitous, as noted in the dissenting opinion of Justice Mendoza:

It is even iniquitous. If a party got 5.5 percent of the votes and is given two (2) seats, it is hard to see why the next ranking party, which got 5 percent of the votes should only get one (1) seat.⁸⁹

3. THIRD SCENARIO: FIRST PARTY GETS THREE SEATS

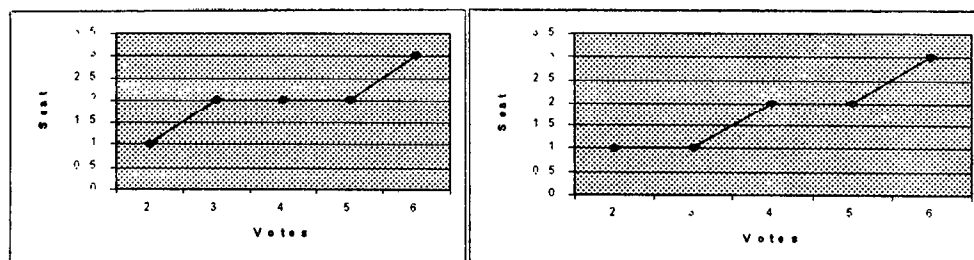
The Court's formula is even more confusing in the last case, where the first party gets three seats. This is the largest range of values, since it covers 6.00% to almost 100% of the vote. First, examine what happens when the first party has exactly 6%:

Table 16: First party gets 3 seats, basic demonstration

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	549,259	6.00%	3	-	3
ABA	457,715	5.00%	1	1.67	2
ALAGAD	366,172	4.00%	1	1.33	2
VETERANS FEDERATION	274,629	3.00%	1	1.00	2
PROMDI	183,086	2.00%	1	0.67	1

Something is clearly wrong, because the result is *not* proportional. Proportionality is observable when one can draw a rough straight line through a set of points. If one were to graph the above, the party with 3% should get just 1 seat to form the rough line. Note that the two seat quota is 4% or 2/50 (again, 2/52 is not built into the law, since its threshold is 2%).

Fig.1: Compare the Court's formula (left) and the actual formula, 1 seat for every 2% (right)



⁸⁹ Veterans Federation Party v. COMELEC (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244 (2000).

Now take a more extreme case:

Table 16: First party gets three seats, extreme demonstration

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	4,577,155	50.00%	3	-	3
ABA	3,661,724	40.00%	1	1.60	2
ALAGAD	732,345	8.00%	1	0.32	1
VETERANS FEDERATION	183,086	2.00%	1	0.08	1

The result is certainly out of proportion because the party that got 8% still receives one seat, despite being well past the Court's 6% benchmark. Equally absurd is a party getting 40% of the vote, but not the maximum of 3 seats. Justice Mendoza also noted this problem:

[T]he majority's inordinate concern with the first ranking party is not consistently carried to the other 2 percenters. The result is that if the first ranking party obtains 5.99 percent of the total votes cast, the second ranking party 5.98 percent, and the last ranking party 2.0 percent, under the majority's formula, the .01 percent difference... will justify the difference of one (1) seat between them. However, the 3.98 percent difference between the second ranking party and the last ranking party is disregarded by the majority. Indeed, even under the majority's novel formula of proportional representation, its own parameters are violated.⁹⁰

From these various scenarios, **one concludes that the Court's formula works only for the results of the 1998 elections.** A mathematical conundrum results when it is applied whenever the numbers fall in the other scenarios in the initial table.

D. JUSTICE MENDOZA'S DIS

SENT AND PROPOSED SOLUTION

One of the first formulas the Court considered was the German formula itself, as described in Justice Mendoza's dissent in *Veteran's*. Here, the number of seats for each party is based on:

$$\frac{\text{votes of party}}{\text{total votes of qualified parties}} \times \text{number of seats}$$

⁹⁰ Veterans Federation Party v. COMELEC (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 314 (2000).

Because the law stated that each party that reached the threshold would receive one seat, the Court *pre-assigned* one seat to each of the 13 parties, and used the following formula:

$$\frac{\text{votes of party}}{3,429,338 \text{ votes}} \times 39 \text{ remaining seats}$$

The result for each party is a decimal number. The party receives as many seats as the whole number in the result, and may receive an extra seat based on the remainder or the decimals, as demonstrated in Part IG.

The Court thus made the following computation:

Table 18: 1998 Party-List results, Justice Mendoza's solution

Party	% of vote	Votes	Formula result	Initial seats	Remainder	Extra seats	Final seats	After cap
APEC	5.50%	503,487	5.73	1 + 5	0.73	1	7	3
ABA	3.51%	321,646	3.66	1 + 3	0.66	1	5	3
ALAGAD	3.41%	312,500	3.55	1 + 3	0.55	-	4	3
VETERANS FEDERATION	3.33%	304,902	3.47	1 + 3	0.47		4	3
PROMDI	2.79%	255,184	2.90	1 + 2	0.90	1	4	3
AKO	2.61%	239,042	2.72	1 + 2	0.72	1	4	3
SCFO	2.60%	238,303	2.71	1 + 2	0.71	1	4	3
ABANSE PINAY	2.57%	235,548	2.68	1 + 2	0.68	1	4	3
AKBAYAN	2.54%	232,376	2.64	1 + 2	0.64	1	4	3
BUTIL	2.36%	215,643	2.45	1 + 2	0.45	-	3	3
SANLAKAS	2.13%	194,617	2.21	1 + 2	0.21		3	3
COOP-NATCCO	2.07%	189,802	2.16	1 + 2	0.16		3	3
COCOFED	2.04%	186,388	2.12	1 + 2	0.12	-	3	3
TOTAL	37.46%	3,429,338	-	13+32	-	7	52	39

The result before applying the cap was wildly out of proportion to each party's actual percentage of the vote. Nevertheless, this was the solution Justice Mendoza preferred in his separate opinion. He interpreted the phrase, "those garnering more than two percent (2%) of the votes shall be entitled to additional

seats in proportion to their total number of votes”⁹¹ as referring specifically to the Niemeyer method, as specified in the House debates. He explained that the seemingly absurd result was due only to the cap and the small number of parties that hurdled the threshold.⁹²

The majority, however, felt that the result was absurd because it violated the basic concept of proportionality, and explained further:

The Niemeyer formula, while no doubt suitable for Germany, finds no application in the Philippine setting, because of our three-seat limit and the non-mandatory character of the twenty percent allocation. True, both our Congress and the Bundestag have threshold requirements—two percent for us and five for them. There are marked differences between the two models, however. As ably pointed out by the private respondents, one half of the German Parliament is filled up by party-list members. More important, there are no seat limitations, because German law discourages the proliferation of small parties. In contrast, RA 7941, as already mentioned, imposes a three-seat limit to encourage the promotion of the multiparty system. This major statutory difference makes the Niemeyer formula completely inapplicable to the Philippines.⁹³

The problem is that the above explanation makes little sense because there is *no mathematical relationship* between the seats to be distributed and the threshold requirements, the percentage of the House composed of party-list seats, and the statutory cap.⁹⁴

It must be emphasized that Justice Mendoza’s solution is the one that limited itself strictly within the confines of the Party List System Act, regardless of this law’s built-in Scylla and Charybdis, or the irreconcilable difference between the 2% threshold and the 20% seat allotment.

What is worrisome about the honorable justice’s solution? A clue is found when the percentage of the seats allocated to each party before the cap is compared to the percentage of the votes—the total party-list votes nationwide—each party

⁹¹ Rep. Act. No. 7941, Sec. 11.

⁹² *Veterans Federation Party v. COMELEC* (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 308 (2000).

⁹³ *Veterans Federation Party v. COMELEC* (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 275-276 (2000).

⁹⁴ The threshold is irrelevant because only the votes of parties that hurdle the threshold are used in the formula, and the resulting percentages will add up to 100%. The number of party-list seats in the House is irrelevant because the Niemeyer formula actually allocates percentages of the total, and only translates these percentages to number of seats later on. The cap is irrelevant because it would only take away seats from parties that received a very high number of votes, but not disturb the other allocations.

actually received:

Table 19: Analyzing the divisor in Justice Mendoza's solution

Party	Votes	% of vote	Final seats	% of seats	After cap	% of seats
APEC	503,487	5.50%	7	13.46%	3	5.77%
ABA	321,646	3.51%	5	9.62%	3	5.77%
ALAGAD	312,500	3.41%	4	7.69%	3	5.77%
VETERANS FEDERATION	304,902	3.33%	4	7.69%	3	5.77%
PROMDI	255,184	2.79%	4	7.69%	3	5.77%
AKO	239,042	2.61%	4	7.69%	3	5.77%
SCFO	238,303	2.60%	4	7.69%	3	5.77%
ABANSE PINAY	235,548	2.57%	4	7.69%	3	5.77%
AKBAYAN	232,376	2.54%	4	7.69%	3	5.77%
BUTIL	215,643	2.36%	3	5.77%	3	5.77%
SANLAKAS	194,617	2.13%	3	5.77%	3	5.77%
COOP-NATCCO	189,802	2.07%	3	5.77%	3	5.77%
COCOFED	186,388	2.04%	3	5.77%	3	5.77%
TOTAL	3,429,338	37.46%	52	99.99%	39	75.01%

The resulting numbers seem in proportion to each other, but all the numbers seem out of proportion to the party-list votes themselves. For example, APEC received 5.50% of the votes, but 13.46% of the seats—almost three times the seats it should have. COCOFED received 2.04% of the votes, but 5.77% of the seats—again, almost three times the seats it should have.

The significance of “three times?” It points to the fact that Justice Mendoza’s formula was based on only 37.46% (or roughly a third) of the party-list votes, not all of them. In other words, one must question the divisor.

To test the formula, let us first use extreme examples:

Table 20: Illustration of the of Justice Mendoza's formula, extreme case

Party	Votes	% of vote	Final seats	% of seats	After cap	% of seats
BAYAN MUNA	183,106	2.00%	52	100%	3	5.77%
AKBAYAN!	182,191	1.99%	0	0%	0	0%
TOTAL	183,106	2.00%	52	100%	3	5.77%

In this hypothetical scenario, only Bayan Muna hurdled the 2% threshold. According to Justice Mendoza's formula, it would be entitled to the entire pie of 100% of the party-list seats—or 20% of the House—with a mere 2% of the votes. This leads to a strange result, yet it could actually happen if the number of parties increases and greatly dilutes the vote,⁹⁵ and if Bayan Muna's proposal to remove the seat cap is enacted into law.

Thus, there is a problem with using "votes of qualified parties" as the divisor, or considering the party-list seats as one big pie to be split among the qualified parties. The problem actually goes back to the misunderstanding of the German system. The Germans use the "wrong" divisor, yet obtain reasonable results. Why?

The parties in the German system are, by nature, large enough for their 5% threshold to be irrelevant for most. Thus, the divisor "total votes of qualified parties" and the divisor "total votes of all parties" are not very far from each other. In the Philippine system where many parties cannot reach the 2% threshold, the two divisors return very different results.

The simple, practical explanation is that Justice Mendoza's formula seems to count all the votes for COCOFED three times or makes them three times as valuable. In the second, more extreme example, the formula seems to count Bayan Muna's votes *fifty* times.⁹⁶ Further, the results appear proportional, but are actually in proportion to each other only. They are not in proportion to the rest of the votes excluded from the formula. For example, COCOFED received 2.04% of the vote and is allocated three seats or 5.77% of the 52 seats, yet a party that receives 1.99% receives zero seats.

Justice Mendoza defended the divisor and insisted the Court stick rigidly to the Germans' divisor:

[The law] provides that "those garnering more than two percent (2%) of the votes shall be entitled to additional seats in proportion to their total number

⁹⁵ See Rodriguez and Velasco, *supra* at 10, 31. ("Many parties claim also that the 2% mark for automatic seat allocation is too high, and that it is a moving target that will keep moving higher as more people participate in the party-list elections.")

⁹⁶ The mathematical explanation is that the error in the divisor creates an artificial "vote multiplier" equal to the reciprocal of the percentage of votes of the qualified parties with respect to the total votes.

of votes.” The operative word is “their” which refers to none other than the total number of votes cast for the 2 percenters.⁹⁷

While the interpretation of the grammar and legal etymology is defensible, the resulting mathematics is clearly not, given that qualifying parties in the Philippine system’s votes represent only a small fraction of the total votes. Because statutory construction must avoid absurd results, an alternative reading is in order, such as taking “total number of votes” to mean the total number of votes of *all parties*, which is what the Court did in the majority decision.

Mathematically speaking, Justice Mendoza’s interpretation would have the qualified party’s number of votes counted in proportion to each other, but the problem, again, is that this is not necessarily in proportion to the figures of all other parties. Nevertheless, he also commented on this point:

RA No. 7941, Sec. 11 requires the determination of two types of proportions. The *first* is the determination of the proportion of the votes obtained by a party *in relation to the total number of votes* cast for the party-list. The purpose of this rule is to determine whether a party was able to *hurdle the 2 percent threshold*. The *second* is the determination of number of votes a party obtained *in proportion to the number of votes cast for all the parties* obtaining at least 2 percent of the votes. The purpose for determining the second proportion is to allocate the seats...

If an analogy is needed to explain this formula, the remaining 39 seats may be likened to a pie to be distributed among the 2 percenters. The way to distribute it is to use the weight of their individual votes in relation to their total number of votes...⁹⁸

The simplest defense of this problematic divisor is to say that the qualified parties represented only about one-third of the party-list vote. Thus, to use the majority’s divisor or “total number of votes of all parties” would fill only a maximum of one-third of party-list seats. In other words, because the percentages of the parties using that divisor would not add up to 100%, then neither would the seats. Nevertheless, the divisor as used in Justice Mendoza’s solution gives results that are not completely proportional.

⁹⁷ Veterans Federation Party v. COMELEC (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 306 (2000).

⁹⁸ Veterans Federation Party v. COMELEC (Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000, 342 SCRA 244, 313 (2000).

E. PROPOSED MODIFICATIONS TO THE COURT'S SOLUTION

The Court in *Veterans* inadvertently undermined its own formula by subtracting one seat beforehand, but using the entire percentages to form the ratios. The left side of its expression used numbers for *total* votes, yet the right used the number for *extra* seats. This would have been more obvious had the cap been higher, but the decision dealt with a choice of 1 or 2 seats for most parties.

Table 21: First party gets 3 seats, basic demonstration

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	549,259	6.00%	3	-	3
ABA	457,715	5.00%	1	1.67	2
ALAGAD	366,172	4.00%	1	1.33	2
VETERANS FEDERATION	274,629	3.00%	1	1.00	2
PROMDI	183,086	2.00%	1	0.67	1

By using "2 extra seats" instead of "3 seats" in its formula, the Court created a set of brackets to gauge the other parties' performance:

Table 22: Brackets implied by Court formula for other parties, using "2 extra seats"

Percentage of votes	Seats
0.00-2.99%	1
3.00%-5.99%	2
6.00% or higher	3

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} \times \text{seats beyond first allocated to first party}$$

Altering this, one gets:

Table 23: Brackets implied by Court formula for other parties, using "3 seats"

Percentage of votes	Seats
0.00-1.99%	0
2.00%-3.99%	1
4.00%-5.99%	2
6.00% or higher	3

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of first party}} \times \text{seats allocated to first party, including first}$$

This result mirrors the 2% per seat or 1/50 quota implied in the law. However, this correction does not solve everything, because if one takes the second, more extreme scenario:

Table 24: First party gets three seats, extreme demonstration

Party	Votes	% of vote	Initial Seats	Ratio	Seats
APEC	4,577,155	50.00%	3		3
ABA	3,661,724	40.00%	1	1.60	2
ALAGAD	732,345	8.00%	1	0.32	1
VETERANS FEDERATION	183,086	2.00%	1	0.08	1

Table 25: Brackets implied by Court formula for other parties, using “2 extra seats” and extreme figures

Percentage of votes	Seats
0.00-24.99%	1
25.00%-49.99%	2
50.00% or higher	3

Table 26: Brackets implied by Court formula for other parties, using “3 seats” and extreme figures

Percentage of votes	Seats
0.00-16.66%	0
16.67-33.32%	1
33.33%-49.99%	2
50.00% or higher	3

Thus, the formula is logical when the first party gets exactly 6.00%, but not in the extreme scenario. Inexplicably, the *Veterans* decision proved inconsistent in its mathematics.

Note that when the *Veterans* decision tried to apply the Niemeyer formula, it computed for the seats *before* applying the cap. However, in its formula, it applied the cap beforehand for the first party, yet disregards the cap when computing for the ratios. In other words, it applies the cap only to one part of its formula.

Clearly, if the first party gets 50% of the vote, the Court applies the cap and only counts the initial 6%. It gives the party two extra seats, using its initial table. However, when it moves to the other parties, it uses *the entire 50%* to determine the other parties' seats. Thus, having a first party with a very high percentage of the vote will drive down the other parties' seats.

Justice Mendoza's dissenting opinion significantly held:

The formula adopted by the majority effectively deprives party-list representatives of representation considering that it eliminates the ratio of 4 district representatives to 1 party-list representative in the House. This is so because, under the rule formulated by the majority, it becomes very difficult to reach the ceiling of 20 percent of the House. *In the case at bar, to fill 52 seats in the House, the first ranking party would have to obtain exactly 6 percent of the votes and 25 other parties must get at least 3 percent...*

xxx

...The ruling announced today would ensure that the proportion of party-list representatives... is even less than 20 percent. The constitutional intent to afford marginalized groups in our society to be represented in the House is thus frustrated if not subverted.⁹⁹ (emphasis added)

Furthermore, there is a problem in the *Veterans* decision's choice of reference point for its ratio. No matter how many votes a party obtains, its number of seats will always depend on how many votes the first party obtains. For example, a party that gets 4% of the vote will receive 1 seat if the highest party gets 5%, 2 seats if the highest party gets 6%, and 1 seat if the highest party gets 8%. Using a non-fixed reference point such as the number of votes of a party (instead of a fixed "quota" such as "100% of votes divided by number of seats") is not unreasonable, but these results are bizarre.

Thus, the *Veterans* formula would be aided by:

- 1) Using total seats obtained by the first party instead of the extra seats, to be consistent with the percentages used
- 2) Applying the cap only after the seats are allocated using the formula
- 3) Using a reference point that will not drive the votes of other parties down, instead of the first party

⁹⁹ *Veterans Federation Party v. COMELEC*(Mendoza, J., dissenting), G.R. No. 136781, October 6, 2000 342 SCRA 244, 314-315 (2000).

The last appears tricky: what reference point is possible if not the votes obtained by one of the parties? The simplest figure is the 2% threshold. Because one knows that 2% of the vote merits one seat (again, following the 1/50 “quota” mistakenly written into the law instead of 1/52), each party’s seats can be counted from this minimum using:

$$\frac{\text{percentage of vote of party}}{2\%} = \text{number of seats of that party}$$

This is the plain mathematical translation of the statement, “a party receives one seat for every 2% of the vote,” and produces a similar series of ratios, albeit using a different reference point. Using the fixed reference point eliminates the problem of having a party with 5.99% and another with 5.98% receiving different seat allocations, and a party receiving different possible numbers of seats depending on how many votes the first party received.

Using the amended formula and dropping fractions, one gets the *same* results as *Veterans’* original formula (which are also the same results from the corrected Niemeyer formula):

Table 27: 1998 Party-List Election results

Party	Votes	% of vote	Seats
APEC	503,487	5.50%	2
ABA	321,646	3.51%	1
ALAGAD	312,500	3.41%	1
VETERANS FEDERATION	304,902	3.33%	1
PROMDI	255,184	2.79%	1
AKO	239,042	2.61%	1
SCFO	238,303	2.60%	1
ABANSE PINAY	235,548	2.57%	1
AKBAYAN	232,376	2.54%	1
BUTIL	215,643	2.36%	1
SANLAKAS	194,617	2.13%	1
COOP-NATCCO	189,802	2.07%	1
COCOFED	186,388	2.04%	1
TOTAL	-	37.46%	14
SENIOR CITIZENS	143,444	1.57%	0
AKAP	136,650	1.49%	0
AKSYON	132,913	1.45%	0

F. MOVES TO AMEND THE PARTY-LIST ACT

Legislators and party-list groups alike are dissatisfied with the *Veterans* formula because it makes filling up party-list seats impossible. Akbayan! party-list representative Loretta Ann Rosales proposes:

SEC. 10. Section 12 is hereby renumbered as Section 14 and amended as follows:

“SEC. [12] 14. Procedure in Allocating Seats for Party-List Representatives.- The COMELEC shall tally the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate the party-list [representatives] SEATS 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: PROVIDED, THAT A VOTE CAST FOR A PARTY, ORGANIZATION OR COALITION NOT ENTITLED TO BE VOTED FOR SHALL NOT BE COUNTED: PROVIDED FURTHER, THAT, IN DISTRIBUTING THE SEATS AMONG THE PARTY-LISTS, ONLY THOSE THAT OBTAINED AT LEAST TWO PERCENT (2%) OF THE TOTAL VOTES CAST FOR PARTY-LIST SHALL BE INCLUDED: PROVIDED FINALLY, THAT, EACH PARTY, SECTORAL ORGANIZATION, OR COALITION SHALL BE ENTITLED TO NOT MORE THAN FIVE (5) SEATS.

THE SEATS RESERVED FOR THE PARTY-LIST SHALL BE DISTRIBUTED AMONG THE PARTY-LISTS ON THE BASIS OF THE SECOND VOTES CAST BY THE VOTERS AS FOLLOWS:

THE TOTAL NUMBER OF SEATS RESERVED FOR PARTY-LIST SHALL BE MULTIPLIED BY THE TOTAL NUMBER OF VOTES OF EACH PARTY-LIST THAT OBTAINED AT LEAST TWO PERCENT (2%) OF THE TOTAL VOTES CAST FOR PARTY-LIST AND THE PRODUCT DIVIDED BY THE SUM TOTAL OF VOTES CAST FOR ALL PARTY-LISTS THAT OBTAINED AT LEAST TWO PERCENT OF THE TOTAL VOTES CAST FOR PARTY-LIST.

EACH PARTY SHALL RECEIVE ONE (1) SEAT FOR EACH WHOLE NUMBER ATTRIBUTED TO IT. THE REMAINING SEATS SHALL THEN BE ALLOCATED IN THE DESCENDING SEQUENCE OF DECIMAL FRACTIONS RESULTING FROM THE CALCULATION.

IN CASE OF EQUAL FRACTIONS, THE ASSIGNMENT OF THE LAST SEAT SHALL BE DECIDED BY THE COMMISSION ON ELECTIONS BY DRAWING LOTS.”¹⁰⁰

Rep. Bellaflor Angara-Castillo proposes a slightly different formula:

“SEC. 12. Procedure in Allocating Seats for Party-List Representatives.

The COMELEC shall tally the votes for the parties, organizations, or coalitions on a nationwide basis, rank them according to the number of votes received and allocate the party-list [representatives] SEATS 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: PROVIDED, THAT A VOTE CAST FOR A PARTY, ORGANIZATION, OR COALITION NOT ENTITLED TO BE VOTED FOR SHALL NOT BE COUNTED: PROVIDED FURTHER, THAT, IN DISTRIBUTING THE SEATS AMONG THE PARTY-LISTS, ONLY THOSE WHO OBTAINED AT LEAST TWO PERCENT (2%) OF THE VALID SECOND VOTES IN THE LEGISLATIVE DISTRICTS SHALL BE INCLUDED: PROVIDED FINALLY, THAT, EACH PARTY, SECTORAL ORGANIZATION, OR COALITION SHALL BE ENTITLED TO NOT MORE THAN TEN (10) SEATS.

THE SEATS RESERVED FOR THE PARTY-LIST NOMINEES SHALL BE DISTRIBUTED AMONG THE PARTY-LISTS ON THE BASIS OF THE SECOND VOTES CAST BY THE VOTERS AS FOLLOWS:

THE TOTAL NUMBER OF PARTY-LIST NOMINEES SHALL BE MULTIPLIED BY THE NUMBER OF SECOND VOTES OBTAINED BY EACH PARTY-LIST IN ALL LEGISLATIVE DISTRICTS AND THE PRODUCT DIVIDED BY THE SUM TOTAL OF SECOND VOTES OBTAINED BY ALL PARTY-LISTS TO BE TALLIED; FIRST, EACH PARTY SHALL, RECEIVE ONE (1) SEAT FOR EACH WHOLE NUMBER ATTRIBUTED TO IT. THE SEATS THEN REMAINING SHALL BE ALLOCATED IN THE DESCENDING SEQUENCE OF DECIMAL FRACTIONS RESULTING FROM THE CALCULATION. IN CASE OF EQUAL FRACTIONS, THE ASSIGNMENT OF THE LAST SEAT SHALL BE DECIDED BY THE COMMISSION ON ELECTIONS BY DRAWING LOTS. SHOULD THERE BE UNFILLED SEATS, THE SAME SHALL BE ALLOCATED AMONG THE PARTIES HAVING THE NEXT HIGHEST NUMBER OF VOTES BASED ON PLURALITY UNTIL ALL THE SEATS RESERVED UNDER THE PARTY-LIST SYSTEM HAVE BEEN ALLOCATED.”¹⁰¹

¹⁰⁰ H. No. 4398, 12th Cong., 1st Sess. (2002).

¹⁰¹ H. No. 474, 12th Cong., 1st Sess. (2002).

Bayan Muna party-list representative Satur Ocampo has proposed a formula similar to Rosales's, except it also proposes to remove the three-seat cap altogether while Rosales's merely increases it to five.¹⁰²

However, if one takes the corrected Niemeyer formula and enacts it into law, and corrects the threshold to "100% divided by number of seats" instead of a fixed 2%, there is still no guarantee that all seats will be filled. Even if one lowers this threshold to 50-75% to provide a statistical "allowance," the votes may still spread out over many parties.

What if one does away with the threshold altogether? The difficulty is crafting a formula that handles this change. The simplest proposal was to simply assign one seat to the first 52 parties,¹⁰³ but this would result in a grossly out of proportion solution. For example, in an extreme case, a party with 90% and another with 1% would both receive one seat, and this would only encourage more parties to split up to gain more seats.¹⁰⁴

The solution presented at the end of this paper begins by proposing a radical rewriting of the Party-List Act precisely to remove the threshold. This author's personal formula will be able to both fill up all the party-list seats and maintain proportionality with respect to all parties, even those that receive no seats.

III. SECTORAL REPRESENTATION AND FAITHFULNESS TO CONSTITUTIONAL INTENT

A. HOW MARGINALIZED SECTORS FARED IN THE PARTY-LIST ELECTIONS

This discussion has still not touched on one part of the relevant Constitutional provisions:

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

¹⁰² In Committee Hearings, however, Rosales has confided that the original intent was to remove the cap altogether. It must be noted that this is contrary to the vision in the Constitutional Convention debates. Transcripts of House Committee on Suffrage hearings and Technical Working Group discussions are on file with the Committee.

¹⁰³ Made during a House Committee on Suffrage Hearing, May 14, 2002. Transcript on file with the committee.

¹⁰⁴ See Rodriguez and Velasco, *op. cit. supra* note 9, at 10, 17.

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.¹⁰⁵

Again, there were actually two goals envisioned in the party-list system, and the “compromise” provision found in the final version of the Constitution shows that the framers envisioned substantial participation—at least half of the seats—by the marginalized sectors.

When the temporary protection lapsed and the first party-list elections were held in 1998, what happened?

Only four sectors—women, peasants, urban poor, and veterans—captured seats. A fifth, labor, may be considered represented by multisectoral groups Akbayan! and Sanlakas. Labor and peasant groups with large memberships actually split up to try to avoid the three-seat cap and capture more seats.

The following table shows how various sectors performed:

Table 28: 1998 Party-List Elections by Sector¹⁰⁶

Sector	Votes	%	Highest	Votes	%
Peasant	920,974	10.06%	BUTIL	215,552	2.35%
Urban Poor	903,440	9.87%	ALAGAD	312,436	3.41%
Women	520,565	5.69%	ABANSE! PINAY	234,330	2.56%
Cooperatives	455,308	4.97%	COOP NATCCO	188,924	2.07%
Veterans	419,332	4.58%	VFP	302,764	3.31%
Youth	367,416	4.01%	ANAKBAYAN	68,266	0.75%
OCWs	320,442	3.50%	OCW-UNIFIL	100,120	1.09%
Indigenous	192,765	2.11%	TRICAP	54,371	0.59%
Handicapped	182,943	2.00%	AKAP	136,434	1.49%
Elderly	165,629	1.81%	ELDERLY	143,227	1.56%
Professionals	144,422	1.58%	PRO-ARIBA	49,364	0.54%
Fisherfolk	67,102	0.73%	BANGKA	40,571	0.44%

The above sectors account for exactly 50% of the party-list vote, but the sectors clearly did not account for 50% of the party-list *seats*. Ateneo de Manila Professor Agustin Rodriguez commented:

¹⁰⁵ CONST., Art. VI, sec. 5(2).

¹⁰⁶ Rodriguez and Velasco, *op. cit. supra* note 9, at 10.

Most of these groups have not been organized for the electoral project, and many have not even been organized as sectors. But it is also possible that some of these sectors do not have a large enough voting population for any of them to make 2% of the party-list vote. Thus, these sectors could either be areas of expansion for multi-sectoral groups, or their poor turnout may indicate a need for some sectors to ally themselves with groups or parties with a wider membership.¹⁰⁷

The results are even more striking when one notes that the first ranked party, APEC, is a cooperative group, but not from any marginalized sector. Rather, its platform covered needs of electricity consumers. Given all this, the issue of reserving seats for marginalized sectors was again raised in Congress.

SECTION 2. Section 10 of R.A. 7941 is hereby amended to read as follows:

"Section 10. Manner of Voting. EVERY VOTER SHALL BE ENTITLED TO THIRTEEN (13) VOTES: THE FIRST VOTE SHALL BE FOR A NATIONAL OR REGIONAL POLITICAL PARTY, AND THE REMAINDER SHALL BE FOR THE SECTORAL PARTIES, ORGANIZATIONS OR COALITIONS SEEKING TO REPRESENT THE SECTORS ENUMERATED UNDER SECTION 5 HEREOF; PROVIDED, THAT A VOTER SHALL VOTE FOR ONLY ONE CANDIDATE FOR EACH SECTOR WHICH HE WANTS REPRESENTED IN THE HOUSE OF REPRESENTATIVES."¹⁰⁸

The above proposal is problematic because it is hard enough to encourage voters to vote for *one* party, let alone face the heavy task of voting for twelve. COMELEC Commissioner Regalado Maambong wrote:

There is no guarantee that if a voter is allowed to vote for all sectors, that he will do so. Statistics will show that most voters do not vote for all positions for Senators, Board Members or Councilors...¹⁰⁹

in the same letter, Commissioner Maambong also said:

I am in complete agreement with Congressman Vercelles that the constitutional intent is to have all thirteen (13) sectors represented... However, I disagree... as to the solution.¹¹⁰

¹⁰⁷ *Id.*, at 18.

¹⁰⁸ H. No. 1091, 12th Cong., 1st Sess. (2002) *filed by* Rep. Imee Marcos. Based on an old bill by Rep. Ernesto Vercelles.

¹⁰⁹ Letter of Commissioner Regalado Maambong representing the COMELEC to House Committee on Suffrage Chairman Rep. Emigdio Tanjuatco, February 19, 1997.

In one Technical Working Group session, this author found himself defending the possibility of reserved seats against the committee secretary, Prof. Rodriguez, and a staff member of Rep. Rosales. Their argument was *expressio unius est exclusio alterius*.¹¹¹ Because the Constitutional Convention rejected permanently reserved seats and instead enacted them temporarily for three terms, they concluded that reserved seats would be unconstitutional and contradictory to the proportional representation embodied in the party-list system.

B. A CONSTITUTIONAL BASIS FOR RESERVED SECTORAL SEATS

However, abovementioned argument might be too simplistic. A Constitution must always be interpreted broadly, because it "is not intended to provide merely for the exigencies of a few years but is to endure through a long lapse of ages... It is neither so inflexible nor immobile as to bar the adoption of novel and unorthodox measures."¹¹²

Reading Sec. 5(2) again, one notices that it states the mechanism for the first three Congressional terms. One may argue that the provision is actually *silent* on the fourth and succeeding terms—in other words, that it *excludes nothing*.

What is included is an implied intent for various marginalized sectors to benefit from the party-list system, because otherwise, why else would there be an enumeration of sectors? Although permanent sectoral representation was not approved in a narrow 22-19 vote at the Convention, the main reason it was opposed was that many commissioners believed the marginalized sectors would mature politically after three terms:

MR. DE LOS REYES: In other words, if we are playing golf, they want to have the "handicap" forever... I think that if we give the sectoral groups their "handicaps" eternally or forever, they could remain weak forever; they will have no incentive to get stronger because they know that they will be enjoying the handicap forever.¹¹³

MR. OPLE: I support this amendment. It installs sectoral representation as a constitutional gift, but at the same time, it challenges the sector to rise to the

¹¹⁰ *Ibid.*

¹¹¹ The express mention of one person, thing or consequence implies the exclusion of all others.

¹¹² RUBEN AGPALO, STATUTORY CONSTRUCTION, 439 (1998, Fourth Ed.), *quoting* Commissioner of Internal Revenue v. Guerrero, G.R. No. 20812, Sept. 22, 1967, 21 SCRA 180 (1967); J.M. Tuason & Co. v. Land Tenure Administration, G.R. No. 21064, Feb. 18, 1970, 31 SCRA 413 (1970).

¹¹³ 1986 Convention 565-566 (Friday, August 1, 1986).

majesty of being elected representatives later on through a party list system; and even beyond that, to become actual political parties capable of contesting political power. . . .¹¹⁴

BISHOP BACANI: Even though I am in favor of sectoral representation . . . the perpetuity . . . would seem to militate against that strengthening of the sectoral representatives. It might mean that the representatives of the sectors will become lax in trying to win the approval of the people. . . .¹¹⁵

FR. BERNAS: It is only upon the attainment of these long range goals that the very gross imbalances in economic power will be remedied, and I anticipate that the remedying of this will take place far longer than just two terms of the House of Representatives, which means only six years. We cannot anticipate that this preferential treatment of the underprivileged will no longer be needed after six years. . . .¹¹⁶

No delegate was against sectoral representation itself. Rather, what they voted on was the *length* of the “handicap” or “constitutional gift” of sectoral representation. Certainly, the framers misjudged the length of time needed for the sectors to mature politically, as Fr. Bernas described. It cannot be imagined that the legislature has no power to compensate for a mere *time period* that the framers misjudged.

Further, *expressio unius est exclusio alterius* is merely a tool of logic and statutory construction, and may be rebutted. Even more fundamental is the spirit of social justice of the 1987 Constitution, and a statute—more so a Constitution—must be interpreted to give life to the whole. For example, another provision reads:

The Congress shall give the 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.¹¹⁷

Even assuming that the party-list provision must be read to exclude sectoral representation, the reading must be tempered by the social justice provisions. Such a balance will tilt towards a system of some sectoral representation that does not—or, perhaps, does not gravely—violate the proportionality of the party-list system.

¹¹⁴ 1986 Convention 568 (Friday, August 1, 1986).

¹¹⁵ 1986 Convention 580 (Friday, August 1, 1986).

¹¹⁶ 1986 Convention 567 (Friday, August 1, 1986).

¹¹⁷ CONST. art. XII, sec. 1

Note that *Ang Bagong Bayan*¹¹⁸ emphasized precisely this spirit of social justice with regard to the party-list system.

C. OPERATIONALIZING SECTORAL REPRESENTATION

The preceding section presumes that sectoral representation can be operationalized without gravely distorting proportional representation. Perhaps no one has yet imagined that this is actually possible.

At the National Electoral Summit, for example, there was a mindset that sectoral representation requires the setting aside of thirteen seats, leaving 39 for the “normal” party-list elections. Discussions fleshed this out as a “third system.” Voters would receive a third vote, for one of the thirteen sectors of their choice. Instead of running under the party-list system, parties could opt to run for the single seat reserved for their sector. Each reserved seat would go to the party that ran under the “third” system with the most votes in that sector.¹¹⁹

Table 29: Overview of proposed “three-tier” system with three separate voting systems for the House

Vote	First	Second	Third
Nature	District	Party-List	Sector
Operation	The candidate with the most votes gets the district seat.	Qualified parties get seats based on the Party-List formula.	Each party runs under a specific sector, and the parties that receive the most votes in their sectors get one seat each, regardless of the actual votes.
Seats at stake	1 per district	20% of House seats, minus 13	13, or one per sector listed in the Party List Act

This is problematic again because it breaks from proportionality altogether and greatly complicates the electoral process. It also forces groups from marginalized sectors to choose, and possibly limit themselves to one seat. Moreover, it adds the rigidity purposely avoided by framers in the party-list system,

¹¹⁸ *Ang Bagong Bayan v. COMELEC*, G.R. No. 147589, June 26, 2001, 359 SCRA 698 (2001).

¹¹⁹ Minutes taken by the author on file with the House Committee on Suffrage.

and removes incentives for alliances and coalitions.

Commissioner Maambong proposed:

The sectoral party with the highest vote in each sector will immediately be allotted one seat. Thus, thirteen (13) seats will be allotted to all thirteen sectors. This leaves a balance of thirty-seven (37) seats. These 37 seats will be allotted proportionately...¹²⁰

There are still undue complications because the above separates the reserved seats from the rest of the party-list system, even if the procedure remains simple. Some sectors, for example, may qualify for both a reserved seat and normally allocated seats, and the result breaks proportionality. The policy also aids sectors that no longer need the “constitutional gift” the framers did not want to dole out forever.

The proposal, however, can be qualified: *when no party* from a specific sector qualifies for a seat, the party with the most votes from that sector automatically receives a seat. This removes the overlap and minimizes the interference with the proportional system because it only affects parties in the low extremes, where the choice is between one and zero seats. Better yet, no changes in the ballot are required.

Thus, if there are 52 seats to be distributed but the indigenous cultural minority parties all fail to hurdle the threshold, one can automatically assign a seat to the highest ranked party from that sector, and distribute the remaining 51 proportionally.

When this author described this modification of Commissioner Maambong’s proposal at the National Electoral Summit, one valid criticism was that it might take away seats from qualified parties. Mathematically, reserving a seat could break the 1/52 “quota” implied in the Niemeyer formula. However, this can be addressed by employing the Niemeyer formula’s tiebreaking system, and if a seat must be removed from a qualified party, the simple explanation is that it had no vested right in that seat under the policy. The law chose to award that seat to a group that, by Congress’s wisdom, was more deserving of a legislative voice.

This author will show how a reasonable reserved seat policy can be

¹²⁰ Letter of Commissioner Regalado Maambong representing the COMELEC to House Committee on Suffrage Chairman Rep. Emigdio Tanjauatco, February 19, 1997. Maambong presumed there were 50 seats.

implemented using his personal formula, one *not* based on the 1/52 “quota.”

IV. PRESENTING A MATHEMATICALLY VALID SEAT ALLOCATION FORMULA

A. SEARCHING FOR A MORE MANAGEABLE REFERENCE POINT FOR THE RATIOS

This paper has actually enumerated the qualities of an ideal party-list system formula, as well as the flaws in the present system that defeat each:

Quality of ideal formula	Flaw in present system
1) Fill up the Constitution's figure of 20% of the House	Mathematical flaw built into the 2% threshold, plus the <i>Veterans</i> ruling that the 20% is only a maximum figure
2) Return results where the numbers of seats are proportional	Not achieved in both <i>Veterans</i> majority and Justice Mendoza's formulas, and in all proposed amendments
3) Ensure that all parties have a significant number of votes	Ensured by the threshold, although 2% is too high; also defeated by proposal to pass unfilled seats down to the <i>unqualified</i> parties with the most votes, regardless of how many votes they actually receive.
4) Ensure that all marginalized sectors are represented	No mechanism to provide for this in the Party List Act
5) Ensure that no single party dominates the party-list elections	Ensured by the 3-seat cap, although this has encouraged larger sector-based groups to split up instead of forming alliances or consolidating their voter bases

So far, the most logical formula presented was the corrected Niemeyer formula with the proper divisor. However, it is based on the “100% divided by the number of seats” quota, and even with a modified threshold, seats will not be filled because too few parties qualify. Further, the tiebreaking mechanism of the Niemeyer formula is rendered inutile by the sheer number of unfilled seats; again, there will be no ties to break. It was also shown that using the votes of only the qualified parties as the divisor leads to extreme results when few parties qualify.

The problem is really the reference point used in the ratios and proportions. The Court, for example, tried using the 3-seat cap (and 6%) as a

reference point for the *Veterans* formula, and this author's version of that formula used the 2% threshold as another.

The Niemeyer formula's implied reference point is the "100% divided by the number of seats" or 1/52 figure. Going back to the German system, this is reasonable because of the large size of the parties involved. In the Philippines, however, it has been shown that many parties are unable to reach the implied 1/52 figure, because of the dispersion of votes.

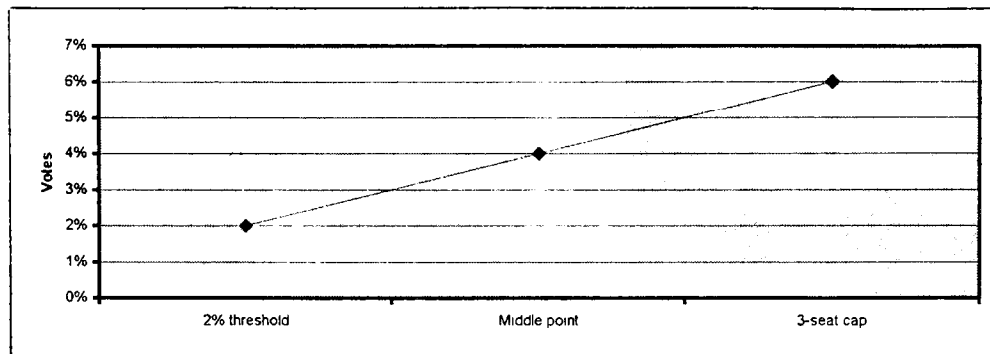
Thus, one must devise a formula that breaks out of 1/52 and find another reference point, one that can work even with more than a hundred or even a thousand parties.

B. A FORMULA WITHOUT A THRESHOLD

This paper seeks to provide a formula, guided by the concerns enumerated in the above table. Its main approach is to do away with the threshold altogether, and use a novel reference point for proportionality: The number of votes of one of the parties, but not the highest-ranked one.

There is nothing mathematically wrong with this, because proportionality implies that a straight line can be drawn through several points, and there are many points on a single line. The Court tried to take the lowest and highest points on the line, and this author will now take a point in the middle. It does not really matter with respect to which point one's ratios are since it is the same line. What is important is consistency; simply, one must refer to the same point each step of the way.

Fig. 2: There are an infinite number of points on the line implied by the proportionality requirement. It does not matter which point one uses; one can take any point as a reference point so long as one consistently uses that point in the formula. One may use the highest, lowest or a middle point.



The problem with doing away with the threshold, however, is determining the qualified parties. The proposed formula determines this by itself; the formula corrects itself and ends up with a “natural” threshold for given data.

C. THIS PROPOSED FORMULA: BASIC OPERATION

The central operation of the formula proceeds as follows:

- 1) Rank all parties in order of votes received.
- 2) Select any middle party from all parties.
- 3) *Divide the number of votes for each party by the number of votes of the selected party.* The figures are all converted into ratios, as in the Court’s solution.
- 4) Each party receives seats equal to the whole number in its ratio, as in the Niemeyer formula. (Ignore fractions first.)

We shall demonstrate using the 1998 data. It does not matter which party one selects, so for this demonstration the 35th party has been arbitrarily selected:

$$\frac{\text{percentage of vote of party}}{\text{percentage of vote of selected middle party}} = \text{ratio used in formula}$$

Table 29: Author's formula, using 35th party as a reference point

Reference point: AWATU, 80,527 votes			Cap: 3 seats		
Party	Votes	%vote	Ratio	Seats	After Cap
1. APEC	503,487	5.50%	6.2524	6	3
2. ABA	321,646	3.51%	3.9943	3	3
3. ALAGAD	312,500	3.41%	3.8807	3	3
4. VETERANS FEDERATION	304,902	3.33%	3.7863	3	3
5. PROMDI	255,184	2.79%	3.1689	3	3
6. AKO	239,042	2.61%	2.9685	2	2
7. SCFO	238,303	2.60%	2.9593	2	2
8. ABANSE PINAY	235,548	2.57%	2.9251	2	2
9. AKBAYAN	232,376	2.54%	2.8857	2	2
10. BUTIL	215,643	2.36%	2.6779	2	2
11. SANLAKAS	194,617	2.13%	2.4168	2	2
12. COOP-NATCCO	189,802	2.07%	2.3570	2	2
13. COCOFED	186,388	2.04%	2.3146	2	2
14. SENIOR CITIZENS	143,444	1.57%	1.7813	1	1
15. AKAP	136,650	1.49%	1.6969	1	1
16. AKSYON	132,913	1.45%	1.6505	1	1
17. PINATUBO	128,122	1.40%	1.5910	1	1
18. NUPA	122,183	1.33%	1.5173	1	1
19. PRP	121,436	1.33%	1.5080	1	1
20. AMIN	111,396	1.22%	1.3833	1	1
21. PAG-ASA	102,977	1.12%	1.2788	1	1
22. MAHARLIKA	102,064	1.11%	1.2675	1	1
23. OCW-UNIFIL	101,739	1.11%	1.2634	1	1
24. PCCI	101,147	1.10%	1.2561	1	1
25. AMMA-KATIPUNAN	100,895	1.10%	1.2529	1	1
26. KAMPIL	100,269	1.10%	1.2452	1	1
27. BANTAY BAYAN	95,223	1.04%	1.1825	1	1
28. AFW	95,138	1.04%	1.1814	1	1
29. ANG LAKAS OCW	93,628	1.02%	1.1627	1	1
30. WOMENPOWER, INC.	92,891	1.01%	1.1535	1	1
31. FEJODAP	90,404	0.99%	1.1227	1	1
32. CUO	87,772	0.96%	1.0900	1	1

33. VETERANS CARE	86,689	0.95%	1.0765	1	1
34. 4L	81,298	0.89%	1.0096	1	1
35. AWATU	80,527	0.88%	1.0000	1	1
TOTAL:	5,738,243	62.67%	-	56	53
36. PMP	78,465	0.86%	0.9744	0	0
37. ATUCP	75,505	0.82%	0.9376	0	0
38. NCWP	73,796	0.81%	0.9164	0	0
39. ALU	73,145	0.80%	0.9083	0	0
40. BIGAS	69,524	0.76%	0.8634	0	0

What the formula does is set 80,527 votes as the arbitrary threshold and express all parties' votes as ratios to that figure. Naturally, the ratio for AWATU itself is 1.00. Unlike the results from the Niemeyer formula's, the above results are more spread out because the lowered threshold compensates for how spread out the votes are in the Philippine system.

The cap is important in extreme cases, when one party has a far larger number of votes than the other parties. Unlike the Court's formula, the new formula uses the lowest—not the highest—ranked qualified party as the reference point, so no party drives another party's seats down. The formula handles the first ranked parties by automatically ignoring the "surplus" votes with respect to the threshold. In other words, the formula treats APEC as having no more than 80,527 votes multiplied by three, and ignores the rest. This prevents APEC from receiving too many seats, while keeping the other parties in proportion to each other. This is not unfair to APEC because it is awarded the maximum number of seats anyway, and loses nothing.

The only problem is that the formula has returned 53 seats, or one too many.

This is not a problem, because the above is only the first step. The process should simply be repeated until the result no longer exceeds the maximum. In this case, because there are too many seats, the cutoff created by selecting a threshold of 80,527 votes includes too many parties. The process should be repeated using the 34th party, then the 33rd, and so on.

D. THE PROPOSED FORMULA: FINAL SOLUTION

One repeats the process until one finds the lowest ranked possible party

that returns a total less than or equal to 52 (or whatever the maximum number of party-list seats for the election is). Repeating the process, one finds that using the 34th party as the reference point returns exactly 52 seats. (Using the 33rd returns 50 seats, so the final solution must be the 34th.)

Table 30: Author's formula final solution, using Party #34 as a reference point

Reference point: 4L, 81,298 votes			Cap: 3 seats		
Party	Votes	vote	Ratio	Seats	After Cap
1. APEC	503,487	5.50%	6.1931	6	3
2. ABA	321,646	3.51%	3.9564	3	3
3. ALAGAD	312,500	3.41%	3.8439	3	3
4. VETERANS FEDERATION	304,902	3.33%	3.7504	3	3
5. PROMDI	255,184	2.79%	3.1389	3	3
6. AKO	239,042	2.61%	2.9403	2	2
7. SCFO	238,303	2.60%	2.9312	2	2
8. ABANSE PINAY	235,548	2.57%	2.8973	2	2
9. AKBAYAN	232,376	2.54%	2.8583	2	2
10. BUTIL	215,643	2.36%	2.6525	2	2
11. SANLAKAS	194,617	2.13%	2.3939	2	2
12. COOP-NATCCO	189,802	2.07%	2.3346	2	2
13. COCOFED	186,388	2.04%	2.2927	2	2
14. SENIOR CITIZENS	143,444	1.57%	1.7644	1	1
15. AKAP	136,650	1.49%	1.6809	1	1
16. AKSYON	132,913	1.45%	1.6349	1	1
17. PINATUBO	128,122	1.40%	1.5760	1	1
18. NUPA	122,183	1.33%	1.5029	1	1
19. PRP	121,436	1.33%	1.4937	1	1
20. AMIN	111,396	1.22%	1.3702	1	1
21. PAG-ASA	102,977	1.12%	1.2667	1	1
22. MAHARLIKA	102,064	1.11%	1.2554	1	1
23. OCW-UNIFIL	101,739	1.11%	1.2514	1	1
24. PCCI	101,147	1.10%	1.2442	1	1
25. AMMA- KATIPUNAN	100,895	1.10%	1.2411	1	1
26. KAMPIL	100,269	1.10%	1.2334	1	1

27. BANTAY BAYAN	95,223	1.04%	1.1713	1	1
28. AFW	95,138	1.04%	1.1702	1	1
29. ANG LAKAS OCW	93,628	1.02%	1.1517	1	1
30. WOMENPOWER, INC.	92,891	1.01%	1.1426	1	1
31. FEJODAP	90,404	0.99%	1.1120	1	1
32. CUO	87,772	0.96%	1.0796	1	1
33. VETERANS CAR	86,689	0.95%	1.0663	1	1
34. 4L	81,298	0.89%	1.0000	1	1
TOTAL:	5,657,716	61.79%	=	55	52
35. AWATU	80,527	0.88%	0.9905	0	0
36. PMP	78,465	0.86%	0.9652	0	0
37. ATUCP	75,505	0.82%	0.9287	0	0
38. NCWP	73,796	0.81%	0.9077	0	0
39. ALU	73,145	0.80%	0.8997	0	0
40. BIGAS	69,524	0.76%	0.8552	0	0

The change in the party used did not change the results, except that AWATU was dropped. However, note that the votes of AWATU and 4L were very close.

One may also notice that ABA has a ratio of 3.9564 or almost 4.00, yet is not assigned an additional seat for coming very close. This is not an error, because the formula only assigns one seat for every 81,298 votes, and ignores fractions of seats. Unlike in the Court's formula, however, "extra" seats are not lost. When the total is too low, repetitions of the process pass seats down to lower-ranking parties as the selected threshold decreases. The formula actually favors lower ranked parties by preferring to assign one seat to a lower ranked party instead of counting fractions and assigning an additional seat to a higher ranked party. This is in line with the policy of including as many parties as possible.

If the final result produces extra seats, these can be allocated using the decimal values, much like in the Niemeyer formula. If, for example, using the 35th party returned 53 seats but using the 34th returned only 51, then the last seat would go to AWATU with a decimal value of 0.9905. Note that because there is no explicit threshold, AWATU can still qualify for an extra seat because its votes come closest to 81,298.

One may also think that the result is similar to Rep. Angara-Castillo's proposed formula, where extra seats are passed down. This is not the case, because the new formula produces a more proportional result. Rep. Angara Castillo's proposed formula would concentrate the votes in the highest-ranked parties, then pass down one seat each to the highest ranked unqualified parties, resulting in a very lopsided distribution. The difference is caused by the cleaner "break" of the parties in this author's formula. The latter uses a threshold based on how the votes are distributed, and creates implied brackets based on the party used as a reference point:

Table 31: Implied brackets in author's formula

<i>Votes received</i>	<i>Seats received</i>
Less than 81,298	0
81,298 to 162,595	1
162,596 to 243,893	2
243,894 or higher	3

If one excludes each party's votes in excess of the cap and counts only up to the first 243,894 votes, the results are perfectly logical and proportional. This will continue to hold even when extreme values are run through the formula, but there have to be a good number of parties. Finally, the formula only gives seats to those with reasonably significant numbers of votes, but determines "reasonably significant" based on how spread out the vote is, not based on a fixed "quota" such as 2%. This flexibility allows it to fill the 20% maximum.

Solving for each iteration is also very easy, and the entire series of calculations can be done in less than a minute once the names of the parties and their respective votes are entered into a standard spreadsheet program.¹²¹

E. REFINING THE PROPOSED FORMULA BY CHANGING THE CAP

The proposed formula can accept changes in legislative policy. A change in

¹²¹ The author used Microsoft Excel and first set up the spreadsheet by entering the names of the parties and their respective votes into the first two columns. A third column divides each party's votes by the total number of votes, showing that party's percentage of the vote. Next, the ratio formula is entered into the fourth column by referencing the numbers of votes and another cell which contains the chosen reference number of votes. The fifth column is filled with Excel's ROUNDDOWN function, which discards the decimal values of the fourth column's ratios. The sixth column is filled with Excel's IF function, which compares the values in the fifth column with another cell which contains the value for the cap. The sum of the sixth column's values also tells the user how close to 52 seats the result is. Finally, a seventh column containing the difference of the fourth and fifth columns reflects the decimal values in case there are extra seats. The seventh column is not shown above.

the cap, for example, will not affect how the formula functions, and the results will only change drastically if the highest ranked parties have significantly more votes than the others. In this case, if the cap is very high, the higher ranked parties will have to be allocated a large share of the seats to the detriment of the others, because the seats are allocated based on the ratio of a party's votes to the lowest ranked qualified party's votes.

To demonstrate, what if the same formula were used on the 1998 data, but using Rep. Rosales's proposed cap of five seats?

Table 32: Author's formula, using a five-seat cap

Reference point: 86,689 votes			Cap: 5 seats		
Party	Votes	Vote %	Ratio	Seats	After Cap
1. APEC	503,487	5.50%	5.8080	5	5
2. ABA	321,646	3.51%	3.7103	3	3
3. ALAGAD	312,500	3.41%	3.6048	3	3
4. VETERANS FEDERATION	304,902	3.33%	3.5172	3	3
5. PROMDI	255,184	2.79%	2.9437	2	2
6. AKO	239,042	2.61%	2.7575	2	2
7. SCFO	238,303	2.60%	2.7489	2	2
8. ABANSE PINAY	235,548	2.57%	2.7172	2	2
9. AKBAYAN	232,376	2.54%	2.6806	2	2
10. BUTIL	215,643	2.36%	2.4875	2	2
11. SANLAKAS	194,617	2.13%	2.2450	2	2
12. COOP-NATCCO	189,802	2.07%	2.1895	2	2
13. COCOFED	186,388	2.04%	2.1501	2	2
14. SENIOR CITIZENS	143,444	1.57%	1.6547	1	1
15. AKAP	136,650	1.49%	1.5763	1	1
16. AKSYON	132,913	1.45%	1.5332	1	1
17. PINATUBO	128,122	1.40%	1.4779	1	1
18. NUPA	122,183	1.33%	1.4094	1	1
19. PRP	121,436	1.33%	1.4008	1	1
20. AMIN	111,396	1.22%	1.2850	1	1
21. PAG-ASA	102,977	1.12%	1.1879	1	1
22. MAHARLIKA	102,064	1.11%	1.1774	1	1
23. OCW-UNIFIL	101,739	1.11%	1.1736	1	1

24. PCCI	101,147	1.10%	1.1668	1	1
25. AMMA-KATIPUNAN	100,895	1.10%	1.1639	1	1
26. KAMPII	100,269	1.10%	1.1567	1	1
27. BANTAY BAYAN	95,223	1.04%	1.0984	1	1
28. AFW	95,138	1.04%	1.0975	1	1
29. ANG LAKAS OCW	93,628	1.02%	1.0800	1	1
30. WOMENPOWER, INC.	92,891	1.01%	1.0715	1	1
31. FEJODAP	90,404	0.99%	1.0429	1	1
32. CUO	87,772	0.96%	1.0125	1	1
33. VETERANS CARE	86,689	0.95%	1.0000	1	1
TOTAL:	5,576,418	60.90%	-	52	52
34. 4L	81,298	0.89%	0.9378	0	0
35. AWATU	80,527	0.88%	0.9289	0	0
36. PMP	78,465	0.86%	0.9051	0	0
37. ATUCP	75,505	0.82%	0.8710	0	0
38. NCWP	73,796	0.81%	0.8513	0	0
39. ALU	73,145	0.80%	0.8438	0	0
40. BIGAS	69,524	0.76%	0.8020	0	0

Because APEC would be entitled to two more seats in the result in the preceding section, the total increases to 54, and another repetition using a new reference point is in order. Using the 33rd party, the brackets shift slightly, one seat each from PROMDI and 4L are assigned to APEC, and the total returns to 52. This is not arbitrary because if one takes a look at the implied brackets in the preceding section, APEC was very far from the lower bound of its bracket, while the two parties were very close. Thus, they fall into the next lower brackets of the new solution, because the brackets changed with the reference point.

Table 33: Implied brackets in author's formula, using a 5-seat cap

<i>Votes received</i>	<i>Seats received</i>
Less than 86,689	0
86,689 to 173,377	1
173,378 to 260,066	2
260,067 or higher	3

The formula is unchanged because the cap is not integral to its operation.

If one does further tests by increasing the cap to ten seats or removes it altogether, the above result will not change because the 33rd party provides the “natural threshold” for all the parties. APEC cannot get more than five seats if its result is to be proportional with respect to every other party.

On the other hand, if one takes a degenerate case and fixes the cap at one seat, the formula simply assigns one seat to the top 52 parties.

F. REFINING THE PROPOSED FORMULA BY ADDING A RESERVED SEAT POLICY

The new formula is perfectly capable of accepting a reserved seat policy, because the number of seats is irrelevant to its accuracy. Unlike the Niemeyer formula, it is not tied to the figure “100% of the vote divided by number of seats” and thus has no predetermined “quota” per seat.

Assuming that the policy is to assign *at least* one seat to the highest ranked party for each sector, the first step is to identify these parties (this assumes that the multisectoral group Akbayan! represents labor):

Table 34: 1998 Party-List Elections by Sector¹²²

<i>Sector</i>	<i>Votes</i>	<i>%</i>	<i>Highest</i>	<i>Votes</i>	<i>%</i>
Peasant	920,974	10.06%	BUTIL	215,552	2.35%
Urban Poor	903,440	9.87%	ALAGAD	312,436	3.41%
Women	520,565	5.69%	ABANSE! PINAY	234,330	2.56%
Cooperatives	455,308	4.97%	COOP NATCCO	188,924	2.07%
Veterans	419,332	4.58%	VFP	302,764	3.31%
Youth	367,416	4.01%	ANAKBAYAN	68,266	0.75%
OCWs	320,442	3.50%	OCW-UNIFIL	100,120	1.09%
Indigenous	192,765	2.11%	TRICAP	54,371	0.59%
Handicapped	182,943	2.00%	AKAP	136,434	1.49%
Elderly	165,629	1.81%	ELDERLY	143,227	1.56%
Professionals	144,422	1.58%	PRO-ARIBA	49,364	0.54%
Fisherfolk	67,102	0.73%	BANGKA	40,571	0.44%

Based on the reference point in the preceding section of 86,689 votes, four sectors still need specially allocated seats: youth, indigenous cultural minorities, professionals and fisherfolk. The maximum number of seats thus drops to 48, and a new reference point must be used.

¹²² Rodriguez and Velasco, *op. cit. supra* note 9, at 10.

Using the 32nd party yields a total of 51 seats, Using the 31st party yields 50, the 30th yields 49, and finally, the #29th yields 47:

Table 35: Author's formula, adding a reserved seat policy

Reference point: ANG LAKAS OCW, 93,628 votes				Cap: 5 seats	
Party	Votes	%vote	Ratio	Seats	After Cap
1. APEC	503,487	5.50%	5.3775	5	5
2. ABA	321,646	3.51%	3.4354	3	3
3. ALAGAD	312,500	3.41%	3.3377	3	3
4. VETERANS FEDERATION	304,902	3.33%	3.2565	3	3
5. PROMDI	255,184	2.79%	2.7255	2	2
6. AKO	239,042	2.61%	2.5531	2	2
7. SCFO	238,303	2.60%	2.5452	2	2
8. ABANSE PINAY	235,548	2.57%	2.5158	2	2
9. AKBAYAN	232,376	2.54%	2.4819	2	2
10. BUTIL	215,643	2.36%	2.3032	2	2
11. SANLAKAS	194,617	2.13%	2.0786	2	2
12. COOP-NATCCO	189,802	2.07%	2.0272	2	2
13. COCOFED	186,388	2.04%	1.9907	1	1
14. SENIOR CITIZENS	143,444	1.57%	1.5321	1	1
15. AKAP	136,650	1.49%	1.4595	1	1
16. AKSYON	132,913	1.45%	1.4196	1	1
17. PINATUBO	128,122	1.40%	1.3684	1	1
18. NUPA	122,183	1.33%	1.3050	1	1
19. PRP	121,436	1.33%	1.2970	1	1
20. AMIN	111,396	1.22%	1.1898	1	1
21. PAG-ASA	102,977	1.12%	1.0999	1	1
22. MAHARLIKA	102,064	1.11%	1.0901	1	1
23. OCW-UNIFIL	101,739	1.11%	1.0866	1	1
24. PCCI	101,147	1.10%	1.0803	1	1
25. AMMA-KATIPUNAN	100,895	1.10%	1.0776	1	1
26. KAMPIL	100,269	1.10%	1.0709	1	1
27. BANTAY BAYAN	95,223	1.04%	1.0170	1	1
28. AFW	95,138	1.04%	1.0161	1	1
29. ANG LAKAS OCW	93,628	1.02%	1.0000	1	1

30. WOMENPOWER, INC.	92,891	1.01%	0.9921	0	1
43. ANAKBAYAN	68,266	0.75%	-	0	1
60. TRICAP	54,371	0.59%		0	1
67. PRO-ARIBA	49,364	0.54%	-	0	1
76. BANGKA	40,571	0.44%	-	0	1
TOTAL:	5,524,125	60.32%	-	47	52
31. FEJODAP	90,404	0.99%	0.9656	0	0
32. CUO	87,772	0.96%	0.9375	0	0
33. VETERANS CARE	86,689	0.95%	0.9259	0	0
34. 4L	81,298	0.89%	0.8683	0	0
35. AWATU	80,527	0.88%	0.8601	0	0
36. PMP	78,465	0.86%	0.8381	0	0
37. ATUCP	75,505	0.82%	0.8064	0	0
38. NCWP	73,796	0.81%	0.7882	0	0
38. NCWP	73,796	0.81%	0.8513	0	0
39. ALU	73,145	0.80%	0.8438	0	0
40. BIGAS	69,524	0.76%	0.8020	0	0

The extra seat goes to WOMENPOWER because of its high decimal figure (narrowly beating COCOFED's 0.9907 figure), meaning its excess votes are closest to the new reference point. As one can see, the proportionality of the result is hardly affected because only the results at the bottom of the list are modified. The sacrifice can be justified by the social justice principle enshrined in the Constitution. Again, if such a policy is enacted, the parties that would have received the four seats cannot complain, because they are not entitled to those seats in the first place.

Also note, however, that because the effective threshold has been drastically lowered based on how spread out the votes are, more sectors receive seats even without a reserved seat policy. This is a result that cannot be achieved with any fixed threshold, or one tied to the "100% divided by number of seats quota."

Finally, note that this author's mechanism for sectoral representation has the ingenuity of *not taking effect* whenever no sector needs its aid, without future amendments to the law. This addresses *both* social justice and the fears of the framers concerning permanent sectoral representation.

G. REFINING THE PROPOSED FORMULA BY ADDING A THRESHOLD

A formula that completely removes the threshold may worry some legislators, because there is a theoretical possibility that a party with very few votes will be given a seat. This may happen if the votes are highly concentrated in just a few highly ranked parties, and the cap forces the formula to accept even parties that received very few votes.

Again, however, note that the very idea of a threshold was taken from the German system, and the scale envisioned in the Constitutional Convention—400,000 to 500,000 votes—was far too high. In fact, the previous tables show that even a lowered arbitrary threshold such as 1.0% or 1.5% is still dangerous because the initial solution of the new formula allocated a seat to a party with a mere 0.89% of the vote.

Placing an absolute threshold may prevent the formula from filling up all seats, because it places an artificial floor value on the reference point. However, a very low threshold to prevent absurdity may be reasonable. This may, for example, be the “Batanes threshold” mentioned in the National Electoral Summit, which would be the number of voters in the smallest district.

Taking an arbitrary value, suppose lawmakers decided that the reference point should not be lower than 100,000 votes. One then takes the solution in the preceding section and uses an imaginary party with 100,000 votes as the reference point. Extra seats are distributed normally, but to prevent the formula from simply assigning a seat to each party, a rule is added so that only parties with decimal values of at least 0.5 in the ratio (or at least 50,000 “extra” votes) qualify for an extra seat:

Table 36: New formula, adding a threshold

Reference point: 100,000 votes			Cap: 5 seats		
Party	Votes	%vote	Ratio	Seats	After Cap
1. APEC	503,487	5.50%	5.0349	5	5
2. ABA	321,646	3.51%	3.2165	3	3
3. ALAGAD	312,500	3.41%	3.1250	3	3
4. VETERANS FEDERATION	304,902	3.33%	3.0490	3	3
5. PROMDI	255,184	2.79%	2.5518	2	3
6. AKO	239,042	2.61%	2.3904	2	2
7. SCFO	238,303	2.60%	2.3830	2	2

8. ABANSE PINAY	235,548	2.57%	2.3555	2	2
9. AKBAYAN	232,376	2.54%	2.3238	2	2
10. BUTIL	215,643	2.36%	2.1564	2	2
11. SANLAKAS	194,617	2.13%	1.9462	1	2
12. COOP-NATCCO	189,802	2.07%	1.8980	1	2
13. COCOFED	186,388	2.04%	1.8639	1	2
14. SENIOR CITIZENS	143,444	1.57%	1.4344	1	1
15. AKAP	136,650	1.49%	1.3665	1	1
16. AKSYON	132,913	1.45%	1.3291	1	1
17. PINATUBO	128,122	1.40%	1.2812	1	1
18. NUPA	122,183	1.33%	1.2218	1	1
19. PRP	121,436	1.33%	1.2144	1	1
20. AMIN	111,396	1.22%	1.1140	1	1
21. PAG-ASA	102,977	1.12%	1.0298	1	1
22. MAHARLIKA	102,064	1.11%	1.0206	1	1
23. OCW-UNIFIL	101,739	1.11%	1.0174	1	1
24. PCCI	101,147	1.10%	1.0115	1	1
25. AMMA-KATIPUNAN	100,895	1.10%	1.0090	1	1
26. KAMPIL	100,269	1.10%	1.0027	1	1
43. ANAKBAYAN	68,266	0.75%	-	0	1
60. TRICAP	54,371	0.59%	-	0	1
67. PRO-ARIBA	49,364	0.54%	-	0	1
76. BANGKA	40,571	0.44%	-	0	1
TOTAL:	5,147,245	56.21%	-	42	50
27. BANTAY BAYAN	95,223	1.04%	0.9522	0	0
28. AFW	95,138	1.04%	0.9514	0	0
29. ANG LAKAS OCW	93,628	1.02%	0.9363	0	0
30. WOMENPOWER, INC.	92,891	1.01%	0.9289	0	0
31. FEJODAP	90,404	0.99%	0.9040	0	0
32. CUO	87,772	0.96%	0.8777	0	0
33. VETERANS CARE	86,689	0.95%	0.8669	0	0
34. 4L	81,298	0.89%	0.8130	0	0
35. AWATU	80,527	0.88%	0.8053	0	0
36. PMP	78,465	0.86%	0.7847	0	0
37. ATUCP	75,505	0.82%	0.7551	0	0
38. NCWP	73,796	0.81%	0.7380	0	0

39. ALU	73,145	0.80%	0.7315	0	0
40. BIGAS	69,524	0.76%	0.6952	0	0
27. BANTAY BAYAN	95,223	1.04%	0.9522	0	0

With this arbitrary 100,000 threshold, all parties below KAMPIL are automatically disqualified, and 42 seats are distributed. Adding the four reserved seats increases the figure to 46, leaving six seats. Only four parties, however, have decimal values of at least 0.5, so two seats are left unoccupied.

Note that an arbitrary but extremely low threshold such as the Batanes threshold would not affect the results unless the distribution of the votes is very extreme. Also note that if the arbitrary threshold of 100,000 votes were also applied to the reserve seats in the above result, the result would not change except that the four sectors' parties would lose their seats. Finally, the 100,000 threshold could also be modified so that parties that did not meet this could still qualify for extra seats, and the formula would still remain logical. Parties immediately below KAMPIL would receive the extra seats due to their very high decimal values, but only because their decimal values compare favorably to the higher ranked parties' values.

Note that any, all or none of the refinements detailed may be added to the basic formula, because none of them affect the basic operation of the formula itself. For example, a cap and a reserved seat policy may be added, but not a threshold. The formula accepts any mix of policies.

After all this testing, this author believes that his proposed formula meets all the goals of the party-list system:

Quality of ideal formula	Quality of author's formula
1) Fill up the Constitution's figure of 20% of the House	Uses an iterative method to find a "natural" threshold that will fill up the seats while still ensuring that qualified parties obtained a reasonable percentage of the vote
2) Return results where the numbers of seats are proportional	Seats are assigned proportionally in reference to a single selected party, and even assignments of zero seats are in proportion, unlike in the results returned by the existing seat assignment formula and proposed amendments
3) Ensure that all parties have a significant number of votes	Ensured by an arbitrarily set threshold, or a "natural" threshold that arises from enforcing a proportional seat assignment among the parties

4) Ensure that all marginalized sectors are represented	Provides for a system for assigning sectoral seats that is flexible, does not disrupt proportionality, and does not take effect when a sector does not need a specially assigned seat
5) Ensure that no single party dominates the party-list elections	Ensured by a seat cap and by ensuring that the higher-ranked qualified party's seat assignment is proportional to the lowest-ranked qualified party's

Any of the solutions of the new formula would have been a better distribution for the 1998 data. However, it must be emphasized that no result could have been produced except for the one produced by the Court's formula and the corrected Niemeyer formula because of the flaws built into the law. This author's formula is precisely designed to break away from the "quota" per seat implied in the Party-List Act.

H. SUMMARIZING THE PROPOSED FORMULA

This author's formula can be summarized as follows:

1. Arrange the parties in order of votes received.
2. Note the sector represented by each party, and note the party with the highest number of votes in each sector.
3. Select any middle party arbitrarily. If it has less votes than the threshold, instead use an imaginary party with the threshold value as its number of votes.
4. Note which parties from Step 2 are ranked below the selected party (or the threshold), and reserve a special seat for each. Subtract the number of reserved seats from the maximum number of seats.
5. Divide the votes of all parties by the number of votes of the selected party (or the threshold). This produces a set of ratios similar to the one used in the Court's formula.
6. Take the whole number or integer in each party's ratio, and assign that many seats to it. If a party is assigned more seats than the cap allows, it receives the maximum number of seats allowed instead.
7. If the sum of these seats plus the reserved seats exceeds the maximum, repeat Steps 3 to 6 until one finds the lowest ranked party that yields a total equal to or less than the minimum. (If two reference points yield the same total, use the lower ranked party.)

8. Distribute extra seats using the decimal values, similar to how the Niemeyer formula distributes them.
 - a. Parties with a number of votes below the reference point may receive extra seats.
 - b. Parties with a number of votes below the threshold may *not* receive extra seats.
 - c. Parties with decimal values less than 0.5 may *not* receive extra seats.
9. Each party has a final number of seats equal to the value in Step 6 plus any reserved or extra seat allocated to it.

CONCLUSION

In his separate opinion in *Veterans*, Justice Reynato Puno wrote:

[T]he two formulae may be faulted by mathematicians obsessed with exactitude, but the fault lies with the inexactitude of the law itself.¹²³

The first part of this paper showed that the 2% threshold and the mindset behind the Party-List Act originated from a flawed understanding of the German electoral system. Sectoral representation was merged with the party-list system envisioned to parallel the German one without an appreciation of the scale of the latter. Commissioner Monsod proposed that parties that could muster 500,000 votes would be qualified to a seat, yet only one party reached that figure in the very first party-list elections. Moreover, parts of the German system were copied without copying the entire system. The German party-list system essentially corrects exaggerated majorities the district elections might produce, but the mechanisms for this self-correction were never even mentioned in the Philippines.

The second part traced all the mathematical errors committed in the attempt to apply the flawed Party-List Act to the very first party-list elections, where only thirteen parties hurdled the 2% threshold. COMELEC broke proportionality when it ignored the 2% threshold and assigned one seat each to the next 38 parties.

The Court upheld the 2% threshold plain in the law, but the impossibility of meeting the 20% figure of the Constitution led them to declare that the figure was a mere maximum, not a mandatory one. They first tried to apply the German

¹²³ *Veterans Federation Party v. COMELEC*, G.R. No. 136781, October 6, 2000, 342 SCRA 244, 285 (2000).

Niemeyer formula, but committed two simple but fatal mathematical errors—and note that these errors were *not* a result of the inherent problems in the Party-List Act:

- 1) Problematic divisor, which led to a result proportional only with respect to qualified parties, and allowed the extreme possibility where one party would be entitled to 100% of party-list seats.
- 2) Unnecessary pre-assignment of one seat to parties, which led to the percentages for *total* votes used with *excess* seats, which was like comparing apples to oranges.

The Court ended up crafting its own formula, but also committed errors:

- 1) Unnecessary pre-assignment of one seat to parties, which led to the percentages for *total* votes used with *excess* seats, which was like comparing apples to oranges.
- 2) Wrong treatment of the cap, which was like a professor lowering the grades of the entire class because one student got 110% due to bonus points.
- 3) Solution was designed so that only one party could get the maximum of 3 seats, unless it tied with another.
- 4) Solution was designed to drive down the total number of seats assigned to parties.

The most correct solution in 1998, given the flaws in the Party-List Act, would have been the corrected Niemeyer formula. However, one could not use the tiebreaker component of the formula to distribute unfilled seats, because it would simply assign an additional seat to each party. This was because the flaws in the Party-List Act made it impossible to fill all the seats.

Ironically, the most correct solution that the Court considered was the simple 2% per seat rule. This mimicked the implied “100% divided by 52 seats” quota in the Niemeyer formula, although the law erroneously fixed the quota at 2%. This, the corrected Niemeyer formula, and the Court’s formula (corrected or not) yield the same final result of 14 seats.

The third part showed that the party-list system is unable to elect

representatives from all the marginalized sectors enumerated in the Constitution and the Party-List Act. Many of these obtain a substantial number of votes, but cannot meet the 2% threshold, and the Constitutional intent is thus left incompletely fulfilled.

The Constitutional Convention discussed special reserved seats for sectors, but voted to implement these for only the first three terms of Congress. This, however, does not prevent the legislature from implementing some mechanism to aid weaker sectors in the party-list system, especially when one considers the social justice provisions. This is especially true if one can find a mechanism that does not distort the proportionality in the system.

The last part detailed this author's basic formula and how a number of refinements could be added to the current system. The formula could work because it breaks away from the $1/52$ "quota" the current seat allocation formula is based on. Instead, the proposed solution compensates for the wide dispersal of votes in the Philippine system among a large number of small parties.

At present, the House of Representatives is considering amendments to the Party-List Act, but the most popular one aims to enact the Court's flawed application of the Niemeyer formula into law. Society demands, however, a more critical eye and greater imagination with respect to both the legal and the mathematical. Legislators and larger party-list groups who want to fill up the party-list seats cannot rush towards the first solution that presents itself.

The law is compelled to expand in the face of medical advances, technological marvels, and increasingly complex social dynamics. Consistency with basic mathematics, then, seems so little to ask of the Party-List Act.

APPENDIX: OTHER PROPOSED AMENDMENTS TO THE PARTY-LIST ACT

This appendix details minor, miscellaneous points on the proposed amendments to the law compiled by this author during his internship.

A. ENACTING ANG BAGONG BAYANI INTO LAW

Ang Bagong Bayani, aside from ruling on the nature of the party-list system, listed a set of guidelines for disqualifying a party. Reps. Rosales and Angara-Castillo have proposed that these be included in the amended Party-List Act:

SEC. 4. Section 6 of Republic Act No. 7941 is hereby amended as follows:

“SEC. 6. Refusal and/ or Cancellation of Registration.- xxx

(7) IT IS AN ADJUNCT OF, OR A PROJECT ORGANIZED OR AN ENTITY FUNDED OR ASSISTED BY THE GOVERNMENT;

(8) IT IS MILITARY OR POLICE-RELATED OR A SECURITY AGENCY;

(9) IT PROMOTES POLITICAL DYNASTIES;

(10) IT IS A BIG BUSINESS ORGANIZATION:

(11) [It has ceased to exist for at least one year] IT WAS DISSOLVED, ABSORBED, MERGED, AND/OR HAS CEASED TO EXIST;

[(8)](12) It fails to participate in the last two (2) IMMEDIATELY preceding elections; or HAVING [It] PARTICIPATED fails to obtain at least two percentum (2%) of the PARTY-LIST votes THEREIN. [cast under the party-list system in the two (2) preceding elections for the constituency in which it has registered.]”¹²⁴

SEC. 6. (7) [It has ceased to exist for at least one (1) year] IT WAS DISSOLVED, ABSORBED, MERGED, AND/OR HAS CEASED TO EXIST;

(8) IT IS A BUSINESS ORGANIZATION;

¹²⁴ H. No. 4398, Sec. 6, 12th Cong., 1st Sess. (2002) *filed by* Rep. Loretta Ann Rosales.

[(8)] (9) It fails to participate in the last two (2) IMMEDIATELY preceding elections; or HAVING [It] PARTICIPATED, fails to obtain at least two percentum (2%) of the PARTY-LIST votes THEREIN. [cast under the party-list system in the two (2) preceding election for the constituency in which it has registered.]¹²⁵

Some of Justice Panganiban's original guidelines need to be clarified, however.

Sec. 6(7) in Rep. Rosales's bill was actually inspired by Richard Gomez and MAD, but it has to be clarified because it is too vague. At the National Electoral Summit, representatives of party-list groups and NGOs even noted that Akbayan! could be considered an "entity funded or assisted by the government" if it somehow benefited from Rep. Rosales's congressional funds. The same provision might unduly affect government funding for grassroots organizations and, ironically, prejudice efforts to organize marginalized sectors. A more precise definition of a government instrumentality may be included, or a more specific list of questionable funding.

Sec. 6(8) was actually discussed in the Constitutional Convention when Commissioner Ople proposed to specify that soldiers would be allowed to organize themselves and enjoy greater participation in democratic processes. His proposal was not accepted however:

MR. DE CASTRO: May we remove the phrase "*BONAFIDE SOLDIERS MAY FORM THEIR OWN PEOPLE'S ORGANIZATION AND*"... [W]e do not like an organization within the organization of the armed forces. It is very divisive in nature. Right now, several organizations within the military, like RAM-MND, RAM-AFP and "El Diablo" are the ones destroying the morale and the efficiency of our armed forces...

Xxx

If we still form another people's organization within the armed forces, I really wonder what kind of armed forces we shall have.

Also note:

MS. AQUINO: We cannot forget the fact that the military has been infected with the virus of politics a long time ago... [T]he military's intrusion into the civilian affairs is an interesting story that began with the administration of President Magsaysay... The military has no place in civilian government.

¹²⁵ H. No. 474, 12th Cong., 1st Sess. (2002) *filed by* Rep. Bellaflor Angara-Castillo.

Thus, what survived into the final draft was the simple word, “veterans.” However, perhaps the amendment could be more explicit in not excluding, for example, an organization of security guards or retired enlisted personnel.

Sec. 6(9) was inspired by the Marcos loyalists, and the phrasing may also be clarified. The idea of the party-list is to vote for parties and their platforms and not specific personalities. Thus, one could conceivably organize a marginalized group called “Fans of Richard Gomez” with the aim of electing Richard Gomez or some other particular personality, and the wording “political dynasties” would not exclude such an organization. Wording the provision to exclude a group organized around a specific personality or family may be a broader but more neutral phrasing.

Rosales’s Sec.6(10) and Angara-Castillo’s Sec.6(8) is likewise problematic because it is too broad. It really aims to exclude *big* business organizations, but it may be interpreted to exclude, say, microfinance groups or cooperatives. At the National Electoral Summit, no one in the party-list workshop could reword the provision to be more specific. It is better enforced through other means such as campaign finance reforms, better screening of nominees, and screening of parties in the context of *Ang Bagong Bayani* to ensure that truly represent the marginalized.

Sec. 6(11) is quite clear and has no problems, because it aims to prevent the backdoor entry of parties that absorb smaller but legitimate groups.

Finally, Sec. 6(12) may appear harsh in the face of the Equal Protection Clause because national level parties are not subject to such a requirement. However, this facilitates the screening of the many party-list groups. The provision would be better separated into a separate provision that instead requires the re-screening of an inactive group, to ensure that it is still representing its constituency.

B. INFORMING THE PUBLIC

SEC. 5. Section 7 of Republic Act No. 7941 is hereby amended as follows:

“SEC. 7. Certified List of Registered Parties.- The COMELEC shall, not later than [sixty (60)] SEVENTY FIVE (75) days before election, prepare a certified list of national, regional, or sectoral parties, organizations or coalitions which have applied or who have manifested their desire to participate under the party-list system and distribute copies thereof to all precincts for posting in the polling places on election day. The names of the party-list nominees shall not be shown on the certified list.

SAID CERTIFIED LIST SHALL BE PUBLISHED, FREE OF CHARGE, IN A NEWSPAPER OF GENERAL CIRCULATION AT LEAST ONCE A WEEK FOR TWO (2) CONSECUTIVE WEEKS. THEREAFTER, THE SAME SHALL BE DISTRIBUTED TO ALL POLLING PRECINCTS FOR POSTING IN EVERY POLLING PLACE ON ELECTION DAY.”¹²⁶

SEC.7. Certified List of Registered Parties. - The COMELEC shall, not later than [sixty (60)] SEVENTY FIVE (75) days before election, prepare a certified list of national, region, or sectoral parties, organization or coalitions which have applied or who have manifested their desire to participate under the party-list system and distribute copies thereof to all precincts for posting in the polling places on election day. The names of the party-list nominees shall not be shown on the certified list.

SAID CERTIFIED LIST SHALL BE PUBLISHED, FREE OF CHARGE, IN A NEWSPAPER OF GENERAL CIRCULATION AT LEAST ONCE A WEEK FOR TWO (2) CONSECUTIVE WEEKS. THEREAFTER, THE SAME SHALL BE DISTRIBUTED TO ALL POLLING PRECINCTS FOR POSTING IN EVERY POLLING PLACE ON ELECTION DAY.¹²⁷

This is a procedural requirement, but based on past procedural problems, COMELEC should explicitly be ordered to list the parties by sector instead of by alphabetical order. This should also be done on the ballots.¹²⁸

Legislators should also consider making the list of nominees available through some practical medium (for example, lists in barangay halls or on a website), so that voters can scrutinize them instead of just their parties. This is in line with the requirement that they must truly be qualified to represent the constituency they claim. In fact, it may be practical to explicitly require COMELEC to make information available through the Internet.

C. RESIGNATION OF NOMINEES

SEC. 7. Two new Sections are hereby inserted after Section 9 and denominated as Sections 10 and 11 as follows:

“SEC. 10. CANDIDATES HOLDING APPOINTIVE OFFICE OR POSITION.- ANY PERSON HOLDING A PUBLIC APPOINTIVE

¹²⁶ H. No. 4398, Sec. 7, 12th Cong., 1st Sess. (2002) *filed by* Rep. Loretta Ann Rosales.

¹²⁷ H. No. 474, Sec. 7, 12th Cong., 1st Sess. (2002) *filed by* Rep. Bellaflor Angara-Castillo.

¹²⁸ A similar recommendation was made by NAMFREL at the House Committee on Suffrage Hearing, May 16, 2002.

OFFICE OR POSITION, INCLUDING ACTIVE MEMBERS OF THE ARMED FORCES OF THE PHILIPPINES AND OFFICERS AND EMPLOYEES IN GOVERNMENT OWNED OR CONTROLLED CORPORATIONS, SHALL BE CONSIDERED IPSO FACTO RESIGNED FROM HIS OFFICE UPON THE SUBMISSION OF HIS NAME AS PARTY-LIST NOMINEE WITH THE COMELEC.”

“SEC. 11. CANDIDATES HOLDING ELECTIVE OFFICE.- ANY ELECTIVE OFFICIAL EXCEPT INCUMBENT PARTY-LIST REPRESENTATIVES SHALL BE CONSIDERED IPSO FACTO RESIGNED FROM HIS OFFICE UPON THE SUBMISSION OF HIS NAME AS PARTY-LIST NOMINEE WITH THE COMELEC.”¹²⁹

Rep. Salacnib Bateria had very incisive comments on this proposed amendment.¹³⁰ He proposed that any resignation should take effect once the candidate is *proclaimed*, not when his name is submitted as a nominee. Otherwise, he explained, it would discourage the creme of civil servants from participating in the party-list elections, especially considering the number of nominees who participate in each election. The amendment should be watered down to require resignation for mere nominees of a certain rank or office.

Rep. Bateria also added that the law should not be so strict and require that nominees must specifically come from the sector they represent. For example, a more educated and affluent person may effectively represent the urban poor if he himself began as a laborer. The more important factor is the person’s track record.

Finally, this author adds that there should be a more specific provision that handles substitution of nominees who withdraw for any reason.

Many of the other amendments deal with minor procedural issues and clarifications, and are no longer discussed. However, some procedural issues are very important to the party-list elections. For example, more explicit guidelines regarding COMELEC’s voter education campaigns would be well justified.

¹²⁹ H. No. 4398, Sec. 10-11, 12th Cong., 1st Sess. (2002) *filed by* Rep. Loretta Ann Rosales.

¹³⁰ House Committee on Suffrage Hearing, May 12, 2002. Transcript on file with the Committee.