GHOST OF REDISTRICTING PAST: REVISITING *AQUINO III V. COMMISSION ON ELECTIONS* AND RECONTEXTUALIZING ITS DOCTRINAL APPLICATION IN FUTURE LEGISLATIVE APPORTIONMENTS*

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ABSTRACT

The Supreme Court *en banc* in *Aquino III v. Commission on Elections* addressed, head-on, the question of how the people of the entire Province of Camarines Sur should be properly represented in the House of Representatives. But in its wake, the *Aquino III* decision attracted controversy within the political context, as well as strong opposition from the Supreme Court justices who dissented against the *ponencia*. This Note traverses this thicket of controversy and dissent and comes out with the conclusion that *Aquino III* remains to be a source of sound legal doctrine, albeit incomplete, within the realm of legislative apportionments, and need not be overturned. *Aquino III* can act as a base case to determine whether, under a limited set of facts, a future provincial legislative apportionment must be struck down as unconstitutional for being attended with grave abuse of discretion. This Note also concludes that *Aquino III* need not be applied lock, stock, and barrel to all future legislative apportionments. In this light, this Note presents improvements or modifications on the doctrinal teachings of *Aquino III* which the Supreme Court may consider in the likely event that constitutional challenges will once again be lodged against future provincial legislative apportionments which do not fit the factual milieu of *Aquino III*.

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"I do not believe in taking the right decision,
I take a decision and make it right."
—Muhammad Ali Jinnah,
Founder and
First Governor-General of Pakistan

I. INTRODUCTION

Aquino III v. Commission on Elections[1] was a divisive case. It was decided on a 9-5-1 vote, with nine justices dismissing the petition questioning the constitutionality of the legislative apportionment made in the Province of Camarines Sur through Republic Act No. 9716.[2]

Yet, more than the legal battle waged in the Supreme Court, *Aquino III* has become more controversial when viewed within its political context. According to news reports, the special reapportionment in Camarines Sur had been made to accommodate Diosdado "Dato" Arroyo, son of then President Gloria Macapagal-Arroyo.[3] Due to the reapportionment, the new district reportedly prevented a face-off between the presidential son and then Budget Secretary Rolando Andaya, Jr., who had then wanted to return to the House of Representatives. Andaya had held Dato's congressional post in the First District for three terms before being appointed as budget secretary. The result? Both won congressional seats in the May 2010 elections: Andaya in the First District; Dato in the Second District.

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[1] [Hereinafter "*Aquino*"], G.R. No. 189793, 617 SCRA 623, Apr. 7, 2010.

[2] Otherwise known as "An Act Reapportioning the Composition of the First (1st) and Second (2nd) Legislative Districts in the Province of Camarines Sur and Thereby Creating a New Legislative District From Such Reapportionment."

[3] Karen Tiongson-Mayrina & Brenda Barrientos-Vallarta, *Is 'piecemeal' redistricting a questionable process?*, GMA NEWS ONLINE, *at* https://www.gmanetwork.com/news/news/specialreports/553675/is-piecemeal-redistricting-a-questionable-process/story/; Edu Punay & Paolo Romero, *Noynoy asks Supreme Court to stop Camarines Sur redistricting*, PHILSTAR.COM, at https://www.philstar.com/headlines/2009/10/28/517872/noynoy-asks-supreme-court-stop-camarines-sur-redistricting; Jess Diaz, *Nograles defends creation of new Camarines Sur district*, PHILSTAR.COM, *at* https://www.philstar.com/headlines/2009/10/29/518173/nograles-defends-creation-new-camarines-sur-district.

Well after a decade of its promulgation, *Aquino III* continues to find relevance in today's political arena. Since then, a number of bills[4] have been filed in the House of Representatives, citing *Aquino III* as basis for the legislative reapportionment of certain cities and provinces. These bills claim that, once they are enacted, the new legislative districts they propose to be created are constitutional.

This Note revisits *Aquino III* and its lasting doctrinal impact on legislative apportionment in the Philippines.

Part II first explains the overall concept of legislative apportionment and its accompanying sub-concepts of redistricting, apportionment, and reapportionment; the pertinent constitutional provisions and jurisprudence that regulate and animate these concepts; and their relation to the principle of equality of representation and the proscription against the practice called as "gerrymandering."

Part III then discusses *Aquino III*: its factual background, the parties' arguments, the *ponencia*'s ruling, and the dissenting opinions. The Note provides a detailed analysis alongside each of these discussions to distill the essential doctrinal teaching of *Aquino III* and point out its shortcomings.

Finally, Part IV discusses how *Aquino III* should figure in future controversies involving legislative reapportionment. This section discusses the relevance of the set of facts and circumstances as-is, and which of these will require improvement of *Aquino III*'s doctrinal application.

II. LEGISLATIVE APPORTIONMENT IN THE PHILIPPINES

Legislative apportionment is an all-encompassing term that captures three distinct concepts: redistricting, apportionment, and reapportionment.

Redistricting, also known as "*boundary delimitation*," is the process of drawing lines on maps "to partition a territory into a set of discrete electoral constituencies, from which one or more representatives are to be elected."[5] Apportionment, on the other hand, refers to "the determination of exactly

[4] These bills are as follows: H. No. 3074, 18th Cong. (2019), substituted by H. No. 8477, 18th Cong. (2021). Sought to redistrict Iloilo City; H. No. 1913, 17th Cong. (2016). This bill sought to redistrict Nueva Ecija; H. No. 836, 16th Cong. (2016). This bill sought to redistrict Laguna; H. No. 3718, 16th Cong. (2014). This bill sought to redistrict Nueva Ecija.

[5] BERNARD GROFMAN & LISA HANDLEY, REDISTRICTING IN COMPARATIVE PERSPECTIVE 3 (2008).

how many representatives any given unit (either an administrative unit such as the State or a province, or a multimember electoral constituency) will be entitled to elect."[6] Finally, reapportionment refers to the realignment or change in the *initial or original* redistricting made based on a set criteria, such as, but not limited to, changes in population.[7]

These three concepts may also be expressed in terms of what question they seek to answer. For redistricting, the questions are: "Which group or unit of people is entitled to elect representatives in Congress? Who and how will this group or unit of people be determined?" Meanwhile, apportionment seeks to answer the question: "How many representatives in Congress can the same group or unit of people elect?" Lastly, reapportionment seeks to answer the question: "What factors will require a change in the group or unit of people entitled to elect representatives in Congress?"

Legislative apportionment and its component concepts are all embodied in Article VI, Section 5(1), (3), and (4) of the Constitution:

> Section 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
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> (3) Each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory. Each city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative.

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[6] *Id.* at 6.

[7] This is a restatement of the definition of reapportionment in *Bagabuyo v. Commission on Elections*, [hereinafter "Bagabuyo"], G.R. No. 176970, 573 SCRA 290, 291, Dec. 8, 2008. The Court there said that "the realignment or change in legislative districts brought about by *changes in population* and mandated by the constitutional requirement of equality of representation." But, as will be discussed further in this Note, territory, in tandem with population, is also considered in reapportionment, at least in the Philippine constitutional setting.

> (4) Within three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section.

A. Redistricting

Article VI, Section 5 provides the criteria for redistricting. Section 5(1) requires that legislative districts be "apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio"; meanwhile, Section 5(3) requires that each "legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory."

B. Apportionment

Meanwhile, Article VI, Section 5(3) contains a limited *apportionment* provision, as it merely provides the minimum number of representatives a city or province is entitled to elect: "[E]ach city with a population of at least two hundred fifty thousand, or each province, shall have at least one representative." Section 5(3) appears to merely secure a guarantee, in favor of all cities with a population of at least 250,000 *and* all provinces, that the number of representatives that they can send to Congress shall not be less than one.

However, Section 5 does not provide a complete *apportionment* provision, silent as it is on how many representatives to which *each legislative district* is entitled.

To contextualize the impact of the Constitution's silence as to how many congressional representatives a legislative district may elect, it is worthy to note the very same silence that afflicts the Apportionment Clause of the US Constitution.

1. Apportionment within the US Context

Article 1, Section 2, Clause 3[8] of the US Constitution (the "Apportionment Clause"), as it now reads after the Fourteenth Amendment

[8] U.S. CONST. art. I, § 1, cl. 3 states: "Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three

had been enacted, states that "[t]he number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative[.]" Hence, similar to the limited apportionment provision under Article VI, Section 5(3) of the Philippine Constitution, the US Constitution entitles a state to elect at least one representative to the US Congress.

Just the same, the Apportionment Clause does not state how many representatives to which a legislative district is entitled. In fact, it makes no mention of the term "legislative district" at all, as the concept of district representation in the US is governed by federal statute, which vests the US Congress with the power to make or alter the manner of holding elections for the US House of Representatives under the "Elections Clause"[9] of the US Constitution:

> Article I, Section 4 of the Constitution—the Elections Clause—gives Congress the power to "make or alter" the "Manner of holding Elections" for members of the House. Congress's first major exercise of this power came in 1842, when it required, after heated debate involving both constitutional and policy-based arguments, that *states elect their representatives from single-member districts*.[10]

Existing federal statutes in the United States, which mandate single-member districts[11] as basis for congressional representation, apply only when

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Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three."

[9] U.S. CONST. art. I, § 4, cl. 1: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

[10] Pamela S. Karlan, *Reapportionment, Nonapportionment, and Recovering Some Lost History of One Person, One Vote*, 59 E. WM. & MARY L. REV. 1921, 1929 (2018). (Citations omitted.)

[11] 2 U.S. Code, § 2c. Number of Congressional Districts; number of Representatives from each District. "In each State entitled in the Ninety-first Congress or in any subsequent Congress thereafter to more than one Representative under an apportionment made pursuant to the provisions of section 2a(a) of this title, there shall be established by law a number of districts equal to the number of Representatives to which such State is so entitled, and Representatives shall be elected only from districts so established, no district to elect more

a state is entitled to more than one representative under an apportionment per the US Code. Therefore, theoretically, if pursuant to an apportionment a state is entitled to only one representative, there is no legislative district to speak of. The state's entitlement to a single representative should be traced to the Apportionment Clause, not the statutes governing single-member districts.

Thus, it is Congress that has the power to determine the number of representatives that each district will send. Congress may even do away with the concept of legislative districts and election via single-member districts and come up with a new basis for electing representatives.

In the Philippines, the concept of legislative districts as basis for electing representatives to the House of Representatives is one that is established by constitutional fiat. Elections shall be based on legislative districts, and Congress cannot simply pass legislation that will create any other basis.

2. Single-Member District Representation

Nonetheless, the Philippines has seemingly adopted the concept of single-member district representation. Otherwise known as "single member plurality systems," a single geographical area (such as the entire Philippine archipelago) will be subdivided into smaller geographical areas (i.e., districts), with each district being entitled to elect one representative.[12] This is the practice in the Philippines. The House of Representatives of the 18th Congress is composed of 307 members, where 243 belong to separate legislative districts, while the remaining 64 belong to party-lists.[13]

In her concurring opinion in the recent case of *ANGKLA v. Commission on Elections*,[14] Justice Estela Perlas-Bernabe explained how the concept of single-member district representation is embedded in our political system:

> *In a republican, democratic system of government like ours, people traditionally vote for certain personalities to represent their interests as part of a constituency*

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than one Representative (except that a State which is entitled to more than one Representative and which has in all previous elections elected its Representatives at Large may elect its Representatives at Large to the Ninety-first Congress)."

[12] Fairvote: Program for Representative Government, *Single-Member Districts,* available at http://archive.fairvote.org/?page=765.

[13] *List of Members*, House of Representatives, at https://www.congress.gov.ph/members/.

[14] G.R. No. 246816, Sept. 15, 2020.

> *based on geographical division (which, in the case of Congressmen, are called legislative districts).* Whether in a national or a local election, voting and consequently, winning an election under ordinary tradition is based on who the people believe will be able to effectively translate these interests into legislative or executive action. Because the idea of a traditional electoral contest is a matter of "person-preference" over another, candidates compete in *simple plurality voting, or a system of "first-past-the-post" (FPTP)*:
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> > *In an FPTP system (sometimes known as a plurality single-member district system) the winner is the candidate with the most votes but not necessarily an absolute majority of the votes.*[15]

During the deliberations of the 1986 Constitutional Commission, Commissioner Christian Monsod forwarded a similar idea. He explained:

> When we allocate legislative districts, *we are saying that any district that has 200,000 votes gets a seat.* There is no reason why a group that has a national constituency, even if it is a sectoral or special interest group, should not have a voice in the National Assembly.[16]

The Constitution does not expressly provide a limit to the number of representatives a legislative district may send to the House of Representatives. Instead, it is implied that one legislative district shall have one representative.

C. Redistricting and the Principle of Equality of Representation

A legislative district is the most basic political unit from which the Filipino people elect their representatives in Congress.

In *Bagabuyo v. Commission on Elections*,[17] the Supreme Court distinguished between a legislative district and a local government unit to settle whether a legislative district requires, for its creation, the conduct of a plebiscite. The Court held that unlike a local government unit, a legislative district needs no plebiscite requirement, it not being a political subdivision but a representative unit. Explaining the import of Article VI, Section 5 of the 1987 Constitution, the Court explained:

> The legislative district that Article VI, Section 5 speaks of may, in a sense, be called a political unit because *it is the basis for the election of a member of the House of Representatives and members of the local legislative*

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[15] *Id.* (Emphasis supplied.)
[16] 2 RECORD CONST. COMM'N 36, 86 (July 22, 1986). (Emphasis supplied.)
[17] *Bagabuyo*, 573 SCRA 290.

> *body*. It is not, however, a political subdivision through which functions of government are carried out. *It can more appropriately be described as a representative unit* that may or may not encompass the whole of a city or a province, but unlike the latter, it is not a corporate unit. *Not being a corporate unit, a district does not act for and in behalf of the people comprising the district; it merely delineates the areas occupied by the people who will choose a representative in their national affairs.*[18]

For the important role that legislative districts play in our republican government, Article VI, Section 5 provides the authority and criteria for legislative apportionment. As discussed earlier, Section 5(1) provides the uniform and progressive ratio standard, while Section 5(3) imposes the territory requirement. *Bagabuyo* explains the rationale behind these criteria:

> The concern that leaps from the text of Article VI, Section 5 is political representation and the means to make a legislative district sufficiently represented so that the people can be effectively heard. As above stated, *the aim of legislative apportionment is "to equalize population and voting power among districts."* Hence, emphasis is given to the *number of people represented; the uniform and progressive ratio* to be observed among the representative districts; and *accessibility* and *commonality of interests* in terms of each district being, as far as *practicable, continuous, compact and adjacent territory*.[19]

In *Bagabuyo*, the Court highlighted how the ultimate aim of legislative apportionment under Article VI, Section 5 of the Constitution, and the accompanying criteria for legislative redistricting, is equality of representation among legislative districts. But what is meant by "equality of representation" within our constitutional framework?

1. *Absolute Equality or Mere Proportionality?*

The Court first tackled the principle of equality of representation, in the context of reapportionment and redistricting, in *Macias v. Commission on Elections*.[20] There, the Court struck down as unconstitutional Republic Act No. 3040,[21] a reapportionment law enacted in 1961, for violating then Article VI,

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[18] *Id.* at 304. (Emphasis supplied.)

[19] *Id.* at 299–300. (Emphasis supplied.)

[20] [Hereinafter "*Macias*"], G.R. No. 18684, 3 SCRA 1, Sept. 14, 1961.

[21] Otherwise known as "An Act to Apportion Representative Districts in the Philippines, Amending for this Purpose Section One Hundred Sixteen and One Hundred Twenty-Three of the Administrative Code, As Amended."

Section 5 of the 1935 Constitution, the predecessor of Article VI, Section 5 of the present Constitution. The provision then stated:

> SECTION 5. The House of Representatives shall be composed of not more than one hundred and twenty Members who shall be apportioned among the several provinces as nearly as may be accorded to the number of their respective inhabitants, but each province shall have at least one Member. The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts. Each representative district shall comprise, as far as practicable, contiguous and compact territory.

At the onset, it is worthy to note that Article VI, Section 5 of both the 1935 and 1987 Constitutions share important similarities in that:

1. The "*number of respective inhabitants*" shall be a basis for reapportionment;

2. A *province* shall be entitled to at least one House representative; and

3. Each representative or legislative district shall comprise, as far as practicable, *contiguous and compact territory.*

Nonetheless, the 1935 and 1987 Constitutions have substantial distinctions[22] as to the "number of respective inhabitants" requirement. First, the 1935 Constitution qualifies that apportionment of members be made "as nearly as may be accorded to the number of their respective inhabitants," while the 1987 Constitution does not so qualify; and second, the entitlement to at least one representative of cities with a population of at least 250,000 was only present under the 1987 Constitution.

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[22] Other notable distinctions between the two provisions are: First, the 1935 Constitution does not require that apportionment be made on the additional basis of "a uniform and progressive ratio," while the 1987 Constitution requires the same; second, under the 1935 Constitution, the apportionment shall only be made among provinces, while the 1987 Constitution requires that apportionment be made among "provinces, cities and the Metropolitan Manila area"; and third, under the 1935 Constitution, what is apportioned is the number of House membership itself, while under the 1987 Constitution, the legislative districts are being apportioned.

In *Macias*, the Court did *not* rule that the legislative districts created under Republic Act No. 3040 failed to meet a specific population requirement, and understandably so, since there was no specific population requirement under the 1935 Constitution for cities or provinces. Yet, it struck down the law because there existed a "disproportion of representation"[23] when more populous provinces received a lesser number of legislative districts compared to less populous provinces that received a higher number of legislative districts.[24] In so ruling, the Court cited, among others, a decision of the Supreme Court of the State of Massachusetts, to wit:

> Such *disproportion of representation* has been held sufficient to avoid apportionment laws enacted in States having Constitutional provisions similar to ours. For instance, in Massachusetts, the Constitution required division "into representative district ... equally, as nearly as may be, according to the relative number of legal voters in the several districts." The Supreme Judicial Court of that state found this provision violated by an allotment that gave 3 representatives to 7,946 voters and only 2 representatives to 8,618 voters, and further gave two representatives to 4,854 voters and one representative to 5,598 voters. Justice Rugg said:
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> > It is not an approximation to equality to allot three representatives to 7,946 voters, and only two representatives to 8,618 voters, and to allot two representatives to 4,854 voters, and one representative to 5, 596 voters[.]
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> > Whenever this kind of inequality of apportionment has been before the courts, it has been held to the contrary to the constitution. It has been said to be "arbitrary and capricious and against the vital principle of equality."[25]

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[23] *Macias*, 3 SCRA 1, 6.

[24] *Id.* at 6. The Court enumerated the "disproportion of representation" committed under Republic Act No. 3040, saying: (a) it gave Cebu seven members, while Rizal with a bigger number of inhabitants got four only; (b) it gave Manila four members, while Cotabato with a bigger population got three only; (c) Pangasinan with less inhabitants than both Manila and Cotabato got more than both, five members having been assigned to it; (d) Samar (with 871,857) was allotted four members while Davao with 903,224 got three only; (e) Bulacan with 557,691 got two only, while Albay with less inhabitants (515,691) got three[;] and (f) Misamis Oriental with 387,839 was given one member only, while Cavite with less inhabitants (379,904) got two. These were not the only instances of unequal apportionment. We see that Mountain Province has 3 whereas Isabela, Laguna and Cagayan with more inhabitants have 2 each. And then, Capiz, La Union and Ilocos Norte got 2 each, whereas Sulu that has more inhabitants got 1 only. And Leyte with 967,323 inhabitants got 4 only, whereas Iloilo with less inhabitants (966,145) was given 5.

[25] *Id.* (Emphasis supplied, citations omitted.)

Macias established the standard used to strike down the reapportionment law. The "*as nearly as may be*" standard with respect to the number of inhabitants is one that exists only in the 1935 Constitution. This is significant because, while it does not provide the specific number of inhabitants a legislative district must possess, it provides a jurisprudential yardstick that courts can employ to determine whether an apportionment of a number of legislative districts, *made between or among* provinces or cities, is so disproportionate that the less-inhabited governmental units are granted more legislative districts than higher-inhabited governmental units. The "*as nearly as may be*" standard is a yardstick for measuring equality of representation. Thus, the Court in *Macias* concluded:

> Needless to say, *equality of representation in the Legislature being such an essential feature of republican institutions, and affecting so many lives*, the judiciary may not with a clear conscience stand by to give free hand to the discretion of the political departments of the Government. Cases are numerous wherein courts intervened upon proof of violation of the constitutional principle of equality of representation.[26]

In *Macias*, the Court treated the term "proportional representation" as bearing the same meaning as "equality of representation." The *Macias* formulation of proportional representation recognizes that the lack of disproportional representation must mean that there exists *equal* representation. When the Court employed the "*as nearly as may be*" standard as an adjunct to the "number of respective inhabitants" or population requirement, it recognized the near impossibility of arriving at an equal number of inhabitants per district.

That the absence of disproportional representation is tantamount to equal representation finds support in *Imbong v. Ferrer*,[27] which dealt with the issue of apportioning districts to appoint delegates to a proposed constitutional convention. The Court held that the apportionment of delegates need not comply with the principle of proportional representation since, "[u]nlike in the apportionment of representative districts, the Constitution does not expressly or impliedly require such apportionment of delegates to the convention on the basis of population in each congressional district."[28]

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[26] *Id.* at 7–8. (Emphasis supplied.)
[27] [Hereinafter "*Imbong*"], G.R. No. 32432, 35 SCRA 28, Sept. 11, 1970.
[28] *Id.* at 34.

Relying on *Macias*, the petitioners in *Imbong* argued that the apportionment must also adhere to the principle of proportional representation. The Court rejected this, saying that *Macias* did not apply since the cases have different factual milieus. In *Macias*, the provinces with less population received more districts than provinces with more inhabitants; in *Imbong*, all provinces received an equal number of delegates, regardless of population. The Court went on to discuss, as *obiter*, that "absolute proportional apportionment" even in the case of *apportionment of congressional districts* based on the number of inhabitants is not possible. Held the Court:

> *The impossibility of absolute proportional representation is recognized by the Constitution itself* when it directs that the apportionment of congressional districts among the various provinces shall be "as nearly as may be according to their respective inhabitants, but each province shall have at least one member". The employment of the phrase "as nearly as may be according to their respective inhabitants" emphasizes the fact that the human mind can only approximate a reasonable apportionment but *cannot effect an absolutely proportional representation with mathematical precision or exactitude*.[29]

2. Proportional and Quality Representation

While the phrase "*as nearly as may be*" is absent from the text of the 1987 Constitution, the standard appears to still apply today, as evident in *Bagabuyo*.

In *Bagabuyo*, another issue that was raised was whether an apportionment law[30] that increased Cagayan de Oro's legislative districts by regrouping all its barangays and distributing them into two separate districts "violate[s] the equality of representation doctrine[.]"[31] The Court took judicial notice of the disparity in the districts' population sizes: The First District had a population of 254,644, while the Second District had 299,322. Nonetheless, the Court upheld the constitutionality of the law, finding no violation of the equality-of-representation principle.

In so ruling, the Court in *Bagabuyo* explained what Article VI, Section 5 aimed to achieve in reapportioning legislative districts, which, as discussed

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[29] *Id.* at 36. (Emphasis supplied, citation omitted).

[30] Rep. Act No. 9371 (2007). An Act Providing for the Apportionment of the Lone Legislative District of the City of Cagayan De Oro.

[31] *Bagabuyo*, 573 SCRA 290, 296.

earlier, was "to equalize population and voting power among districts."[32] The Court then explained why the population disparity between the two legislative districts did not suffice to invalidate the assailed apportionment law:

> Undeniably, these figures show a disparity in the population sizes of the districts. *The Constitution, however, does not require mathematical exactitude or rigid equality as a standard in gauging equality of representation*. In fact, for cities, all it asks is that "each city with a population of at least two hundred fifty thousand shall have one representative," while ensuring representation for every province regardless of the size of its population. *To ensure quality representation through commonality of interests and ease of access by the representative to the constituents, all that the Constitution requires is that every legislative district should comprise, as far as practicable, contiguous, compact, and adjacent territory*. Thus, the Constitution leaves the local government units as they are found and does not require their division, merger or transfer to satisfy the numerical standard it imposes. Its requirements are satisfied despite some numerical disparity if the units are contiguous, compact and adjacent as far as practicable.[33]

While the 1987 Constitution does not explicitly provide the "*as nearly as may be*" standard, the reapportionment provisions under Article VI, Section 5 must be read as still adhering to this standard. It must not be so rigidly construed so as to require absolute equality of representation among legislative districts. *Bagabuyo* emphasized that the 1987 Constitution does not guarantee absolutely equal representation, but *proportional* and *quality* representation. In turn, these terms must be read within the context of Article VI, Section 5 as infused with the teachings in *Macias* and *Bagabuyo*, such that:

1. Proportional representation is achieved so long as the redistricting is made "in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio,"[34] there being no resulting "disproportion of representation,"[35] following *Macias*; and

2. Quality representation is achieved if legislative districts "comprise, as far as practicable, contiguous, compact, and adjacent territory"[36] so as to ensure "commonality of interests"

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[32] *Id.* at 300.
[33] *Id.* at 309–10. (Emphasis supplied, citations omitted.)
[34] CONST. art. VI, § 5(1).
[35] *Macias*, 3 SCRA 1, 6.
[36] CONST. art. VI, § 5(3).

> and "ease of access" by the representatives to the constituents, following *Bagabuyo*.

Notably, quality representation is achieved if one of the constitutional mandates under Article VI, Section 5(3) is followed. If legislative districts "shall comprise, as far as practicable, contiguous, compact, and adjacent territory[,]" then this will ensure commonality of interests and ease of access, as *Bagabuyo* instructs.

In *Navarro v. Ermita*,[37] the Court explained that the "contiguous, compact, and adjacent territory" requirement was placed in the Constitution to proscribe the practice of "gerrymandering." Said the Court:

> "Gerrymandering" is a term employed to describe an apportionment of representative districts so contrived as to give an unfair advantage to the party in power. Fr. Joaquin G. Bernas, a member of the 1986 Constitutional Commission, defined "gerrymandering" as the formation of one legislative district out of separate territories for the purpose of favoring a candidate or a party. *The Constitution proscribes gerrymandering, as it mandates each legislative district to comprise, as far as practicable, a contiguous, compact and adjacent territory.*[38]

In *Ceniza v. Commission on Elections*,[39] the Court explained that gerrymandering is limited to cases involving apportionment of legislative districts. *Miranda v. Aguirre*[40] later expanded this concept in that the plebiscite requirement for the creation, division, merger, abolition, or substantial alteration of boundaries in a local government unit is also a check against gerrymandering.

Proportional representation and quality representation are not merely legal constructs. In jurisdictions that adopt the single-member district mode of representation, such as the United States and the Philippines, debates over whether the advantages and disadvantages justify the continued use of single-member district representation continue. The ACE Electoral Knowledge Network[41] lists the main arguments of supporters and critics alike, thus:

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[37] G.R. No. 180050, 612 SCRA 131, Feb. 10, 2010.

[38] *Id.* at 162–63. (Emphasis supplied, citations omitted.)

[39] G.R. No. 52304, 95 SCRA 763, Jan. 28, 1980.

[40] G.R. No. 133064, 314 SCRA 603, Sept. 16, 1999.

[41] *About ACE*, ACE Electoral Knowledge Network, at https://aceproject.org/about-en/. It "is the world's largest online community and repository

Advantages	**Disadvantages**
Single-member districts: 1. *provide voters with strong constituency representation because each voter has a single, easily identifiable, district representative;* 2. encourage constituency service by providing voters with an easily identifiable 'ombudsman'; 3. *maximi[z]e accountability because a single representative can be held responsible and can be re-elected or defeated in the next election;* 4. ensure geographic representation.	Single-member districts: 1. *must be redrawn on a regular basis to maintain populations of relatively equal size;* 2. *are usually artificial geographic entities whose boundaries do not delineate clearly identifiable communities, and as a consequence, the entities have no particular relevance to citizens;* 3. because of their tendency to over-represent the majority party and under-represent other parties, cannot produce proportional representation for political parties.[42]

Notably, the first disadvantage reflects the principle of proportional representation. On the other hand, the second and fourth advantages, as well as the second disadvantage, reflect the quality representation principle, alluding to qualities of community of interests and ease of access.

D. Reapportionment

Reapportionment, the last of the three concepts within the legal umbrella of legislative apportionment, is explicitly provided in the Constitution and is composed is of two modes.

The first mode is general reapportionment, also known as nationwide reapportionment, which is a form of mandatory periodic reapportionment under Article VI, Section 5(4) of the Constitution. The provision states that "[w]ithin three years following the return of every census, the Congress shall make a reapportionment of legislative districts based on the standards provided in this section."

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of electoral knowledge. It provides comprehensive information and speciali[z]sed advice on any aspect of electoral processes. The foremost aim of ACE, is to foster the integrity of elections and to promote credible, sustainable, professional and inclusive electoral processes throughout the globe."

[42] ACE Electoral Knowledge Network, *Single-Member Districts: Advantages and Disadvantages*, at https://aceproject.org/main/english/bd/bda02a02.htm.

The second mode is a special reapportionment, a "localized reapportionment" made through a special law passed by Congress, and is authorized by Article VI, Section 5(1) of the Constitution.

That reapportionment is a two-mode constitutional creature was explained by the Supreme Court in the case of *Sema v. Commission on Elections*:[43]

> Under the present Constitution, as well as in past Constitutions, the power to increase the allowable membership in the House of Representatives, and to reapportion legislative districts, is vested exclusively in Congress.
>
> * * *
>
> *Section 5 (1), Article VI* of the Constitution vests in Congress the *power to increase, through a law*, the allowable membership in the House of Representatives. *Section 5(4)* empowers Congress to *reapportion legislative districts*. The power to reapportion legislative districts necessarily includes the power to create legislative districts out of existing ones. Congress exercises these powers through a law that Congress itself enacts, and not through a law that regional or local legislative bodies enact.[44]

As to the special reapportionment within a province, the Court in *Felwa v. Salas*,[45] a case decided under the 1935 Constitution, distinguished between two methods of creating a representative district, specifically within a province, namely: (1) the first method of *indirect creation* of legislative districts resulting from the creation of a *new province*, and (2) the second method of *direct creation* of legislative districts within an *existing province*.

Read together, *Sema* and *Felwa* show that new legislative districts within a *province*, whether new or existing, are created either through: (1) a general reapportionment law passed by Congress, where new legislative districts may be created within *existing* provinces but without creating *new* provinces; or (2) a special reapportionment law passed by Congress, which either: (a) creates a *new* province, thereby automatically creating a new legislative district; or (b) creates *new* legislative districts within a *single*, *specific* and *existing* province.

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[43] G.R. No. 177597, 558 SCRA 700, July 16, 2008.

[44] *Id.* at 731–32. (Emphasis supplied, citations omitted.)

[45] G.R. No. 26511 [hereinafter "*Felwa*"], 18 SCRA 606, Oct. 29, 1966.

In *Felwa*, the Court upheld the constitutionality of Republic Act No. 4695,[46] which divided a then larger Mountain Province and created four new provinces: Benguet, Ifugao, Kalinga-Apayao, and Mountain Province.[47] This division led to the creation of four new legislative districts, each corresponding to one province. The petitioners assailed the law since the legislative districts' creation did not result from a general reapportionment under then Article VI, Section 5 of the 1935 Constitution. The Court, however, dismissed the petition and declared that the requirement only applied to the second method of direct creation:

> *The requirements concerning the apportionment of representative districts and the territory thereof refer only to the second method of creation of representative districts, and do not apply to those incidental to the creation of provinces, under the first method.* This is deducible, not only from the general tenor of the provision above quoted, but, also, from the fact that the apportionment therein alluded to refers to that which is made by an Act of Congress. *Indeed, when a province is created by statute, the corresponding representative district comes into existence neither by authority of that statute—which cannot provide otherwise—nor by apportionment, but by operation of the Constitution, without a reapportionment.*[48]

As discussed earlier, under the 1935 Constitution, the second method of direct creation required compliance with the "*as nearly as may be*" standard. Yet, in *Felwa*, since new provinces *per se* were created, falling under the first method, and not the apportionment of new legislative districts within an existing province, the Court did not consider the "as nearly as may be" standard. It held that "provinces have been created or subdivided into other provinces, with the consequent creation of additional representative districts without complying with the aforementioned requirements."[49]

Since the 1987 Constitution was ratified, Congress has never undertaken a general reapportionment. Though several House bills[50] had pushed for it, not one has been passed into law. Instead, multiple special

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[46] Otherwise known as "An Act Creating the Provinces of Benguet, Mountain Province, Ifugao and Kalinga-Apayao."

[47] Rep. Act No. 4695 (1966), § 1.

[48] *Felwa*, 18 SCRA at 615. (Emphasis supplied.)

[49] *Id.*

[50] H. No. 3007, 15th Cong., (2010), at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_15/HB03007.pdf; House Bill No. 7643 (2018), 17th Cong., at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_17/HB07643.pdf; H. No. 3743, 18th Cong. (2019), at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_18/HB03743.pdf.

reapportionments, colloquially referred to as "piecemeal redistricting," have been enacted.[51]

A number of criticisms have been lodged against the practice of piecemeal redistricting. Some of these note how the practice appears to perpetuate the political careers of incumbent House representatives. In the 2010 elections, for one, nine new congressional districts were created, much to the benefit of the very authors of these laws or their relatives, who then went on to run under these newly created districts.[52]

Artiaga and Garcia[53] similarly argue against piecemeal redistricting, which, they argue, directly contravenes the constitutional mandate of passing general reapportionment laws:

> This theory is affirmed by Bernas who, describing the Constitutional provisions, said "this periodic reapportionment commanded by the Constitution must be done nationwide and not piecemeal, as is happening now. Piecemeal reapportionment affecting only one province will necessarily result in unconstitutional disproportion with provinces whose districts are not readjusted."[54]

Artiaga and Garcia also argue why piecemeal redistricting may become a means for perpetuating *gerrymandering*:

> Since the promulgation of the 1987 Constitution, almost all bills on legislative reapportionment filed in the House of Representatives were only piecemeal apportionments—a clear conflict to the requirement under the Constitution to pass general reapportionment laws. This would have been permissible if every city or province entitled to reapportionment were to file a reapportionment bill creating additional legislative districts proportionate to the increase in their respective populations. Such, however, is not the case. *The timing of the filing of the reapportionment bills are left solely to the discretion of the members, who often do so only when the resulting reapportionment would be favorable in retaining or extending their power. This results in inequality in representation in the national legislature, in favor of those provinces whose*

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[51] Tiongson-Mayrina & Brenda Barrientos-Vallarta, *supra* note 3.

[52] *Id.*

[53] Juan Paolo M. Artiaga & Jermaine Q. Garcia, *Resisting Redistricting: Giving Life to the Standard of Uniform Progressive Ratio and the State Policy of Anti-Gerrymandering*, 93 PHIL. L.J. 764 (2020).

[54] *Id.* at 805. (Citation omitted.)

> *representatives often partake (or are allowed to partake) of redistricting, which creates a situation conducive to gerrymandering.*[55]

1. Jurisprudence ante-Aquino III on Special Reapportionment

i. On indirect creation of legislative districts

Before *Aquino III*, two cases decided under the 1987 Constitution dealt with the first method of indirect creation.

In *Tobias v. Abalos*,[56] the Court upheld Republic Act No. 7675,[57] the law that converted Mandaluyong from a municipality to a highly urbanized city. Before this, Mandaluyong and San Juan had been municipalities that belonged to a single legislative district. The law paved the way for two separate legislative districts, stating that "[a]s a highly urbanized city, the City of Mandaluyong shall have its own legislative district" and that "[t]he remainder of the former legislative district of San Juan/Mandaluyong shall become the new legislative district of San Juan."[58]

Tobias afforded the Court an opportunity to formulate a two-fold rule as to: *first*, whether a new legislative district created through the first method of indirect creation should comply with a minimum population requirement; and *second*, if yes, then how large the population requirement should be. These were the questions posed by the petitioners when they contended that "there is no mention in the assailed law of any census to show that Mandaluyong and San Juan had each attained the minimum requirement of 250,000 inhabitants to justify their separation into two legislative districts[.]"[59] The petitioners cited Article VI, Section 5(3) of the Constitution in claiming that to be entitled to two representatives, Mandaluyong and San Juan should each have a population of at least 250,000.

To be clear, the Court in *Tobias* could not have cited *Felwa* in ruling that the indirect creation of legislative districts need not meet the population requirement under the Constitution. *Felwa* involved an indirect creation of legislative districts arising from the creation of a province, not a city. Hence,

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[55] *Id.* at 765–66.

[56] [Hereinafter "Tobias"], G.R. No. 114783, 239 SCRA 106, Dec. 8, 1994.

[57] Rep. Act No. 7675 (1994). Otherwise known as "An Act Converting the Municipality of Mandaluyong into a Highly Urbanized City to be known as the City of Mandaluyong."

[58] § 49.

[59] *Tobias*, 239 SCRA 106, 111.

the Court in *Tobias* had to establish a new doctrine that applied to a case of indirect creation of legislative districts arising from the creation of a city.

Instead, the Court chose to afford Congress a wide latitude when it upheld the assailed law and relyed on the presumption of regularity. It said:

> [As to the argument] that there is no mention in the assailed law of any census to show that Mandaluyong and San Juan had each attained the minimum requirement of 250,000 inhabitants to justify their separation into two legislative districts, the same does not suffice to strike down the validity of R.A. No. 7675. *The said Act enjoys the presumption of having passed through the regular congressional processes, including due consideration by the members of Congress of the minimum requirements for the establishment of separate legislative districts.* At any rate, it is not required that all laws emanating from the legislature must contain all relevant data considered by Congress in the enactment of said laws.[60]

It was only later in *Mariano v. Commission on Elections*[61] that the Court turned more categorical. As in *Tobias*, the Court in *Mariano* upheld the constitutionality of Republic Act No. 7854,[62] which converted Makati from a municipality to a highly urbanized city. From only one legislative district, the City of Makati now had two legislative districts.[63] The petitioners assailed the addition of a legislative district since, back then, Makati only had a population of 450,000 per the 1990 census. Implicitly, the petitioners in *Mariano* also cited Article VI, Section 5(3) of the 1987 Constitution as basis for their claim that to be entitled to two representatives, Makati should have a population double that of 250,000, i.e., 500,000.

In upholding the law, the Court simply held that even if Makati's population had only then stood at 450,000, "its legislative district may still be increased since it ha[d] met the minimum population requirement"[64] of

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[60] *Id.* at 111–12.

[61] [Hereinafter "*Mariano*"], G.R. No. 118577, 242 SCRA 211, Mar. 7, 1995.

[62] Rep. Act No. 7854 (1994). Otherwise known as "An Act Converting the Municipality of Makati into a Highly Urbanized City to be known as the City of Makati."

[63] § 52 states:

Section 52. Legislative Districts. — Upon its conversion into a highly urbanized city, Makati shall thereafter have at least two (2) legislative districts that shall initially correspond to the two (2) existing districts created under Section 3(a) of Republic Act No. 7166 as implemented by the Commission on Elections to commence at the next national elections to be held after the effectivity of this Act. Henceforth barangays Magallañes, Dasmariñas, and Forbes shall be with the first district, in lieu of Barangay Guadalupe-Viejo which shall form part of the second district.

[64] *Mariano*, 242 SCRA 211, 223.

250,000. Therefore, the Court answered the questions that it failed or omitted to answer in *Tobias*. The *Mariano* doctrine established that a new legislative district created through *indirect creation* need not have a minimum population requirement, so long as what is involved is a legislative district created out of a city that has already met the 250,000 population requirement. And since the first question was answered in the negative, the issue of how large the minimum population should be was rendered irrelevant.

ii. On direct creation of legislative districts

Later came *Aldaba v. Commission on Elections*.[65] But unlike in *Felwa* and *Mariano*, the Court in *Aldaba* struck down Republic Act No. 9591,[66] the law that created a new legislative district in the City of Malolos, Bulacan. The petitioners in *Aldaba* also cited Article VI, Section 5(3) of the 1987 Constitution in claiming that to be entitled to a legislative district, the City of Malolos should have a population of 250,000. The Court agreed with the petitioners, holding that since the City of Malolos failed to prove[67] that its population was at least 250,000 when the law was enacted, it was not entitled to a new legislative district.

However, the factual milieu of *Aldaba* was different from *Felwa* or *Mariano*, where what had been involved was the indirect creation of legislative districts with a new province's or city's creation. In *Aldaba*, what transpired was the direct creation of a new legislative district through the apportionment within an *existing city*. The assailed law involved in *Aldaba* merely provided that "[t]he City of Malolos shall have its own legislative district to commence in the next national election after the effectivity of this Act."[68] The City of Malolos was already *existing* at the time the assailed law was promulgated. Along with five other municipalities, it had already formed part of the First Legislative District of Bulacan.

Therefore, applying *Felwa*, the direct creation of a legislative district in the City of Malolos must comply with the constitutional requirements

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[65] [Hereinafter "*Aldaba*"], G.R. No. 188078, 611 SCRA 137, Jan. 25, 2010.

[66] Rep. Act No. 9591 (2009). Otherwise known as "An Act Amending Section 57 Of Republic Act No. 8754, Otherwise Known as the Charter of the City of Malolos."

[67] *Aldaba*, 611 SCRA 137, 145. The Court's ruling was anchored on a finding that the Certification issued by the Regional Director of Region III of the National Statistics Office was void because the Regional Director had no basis and no authority to issue the Certification. In any case, when the Certification stated that the population growth rate of Malolos would be 3.78% annually between 1995 and 2000, the population of Malolos would only reach 241,550 in 2010.

[68] Rep. Act No. 9591 (2009), § 1, amending Rep. Act No. 8754 (1999), § 57.

"concerning the apportionment of representative districts" based on the "number of their respective inhabitants[.]" Even if *Felwa* was promulgated before the 1987 Constitution took effect, it was implicitly applied in *Aldaba* when the Court declared that a new legislative district created through the second method of direct creation should comply with a minimum population requirement of 250,000 under Article VI, Section 5(3) of the 1987 Constitution.

2. Summarizing the ante-Aquino III decisions

Prior to *Aquino III*, the creation of new legislative districts had been governed by the following doctrines:

1. If the new legislative district is created via the first method of *indirect creation* of legislative districts resulting from the creation of a *new province*, *Felwa* governs. Thus, the number of respective inhabitants need not be considered in the creation of the new legislative district.

2. If the new legislative district is created via the second method of *direct creation* of legislative districts resulting from the *apportionment within an existing province*, both Article VI, Section 5 of the 1987 Constitution and *Felwa* (promulgated under Article VI, Section 5 of the 1935 Constitution, which is similarly worded to Article VI, Section 5 of the 1987 Constitution) govern. Thus, the constitutional requirements i.e., "in accordance with the number of respective inhabitants"; "on the basis of a uniform and progressive ratio"; and "as far as practicable, contiguous, compact and adjacent territory," must be complied with.

3. If the new legislative district is created via the first method of *indirect creation* of legislative districts resulting from the creation of a *new city*, and that city already has a minimum population of 250,000, both Article VI, Section 5 of the 1987 Constitution and *Mariano* govern. Thus, that *new city* is entitled to at least one legislative district, and any additional legislative district that will be created under this first method need not meet the minimum population requirement.

4. If the new legislative district is created via the second method of *direct creation* of legislative districts resulting from the apportionment of legislative districts in an *existing city*, and that city has not met the minimum population of 250,000, both Article

VI, Section 5 of the 1987 Constitution and *Aldaba* govern. Thus, that *existing city* is not entitled to any legislative district, and the creation of any new legislative district, while the minimum population requirement is not met, must be struck down as unconstitutional.

III. THE *AQUINO III* DECISION

A. Background of the Case

On October 12, 2009, Congress enacted Republic Act No. 9716, otherwise known as "An Act Reapportioning the Composition of the First (1st) and Second (2nd) Legislative Districts in the Province of Camarines Sur and Thereby Creating a New Legislative District From Such Reapportionment." President Gloria Macapagal-Arroyo signed it into law on the same date,[69] and it took effect 15 days later, or on October 31, 2009. On April 7, 2010, the Court promulgated the decision in *Aquino III*, upholding the law's constitutionality.

Before Republic Act No. 9716, the Province of Camarines Sur had four legislative districts distributed over a population of around 1.6 million people. To add a new legislative district and to bring the total number of legislative districts to five, the law reapportioned the two existing legislative districts (then First and Second Legislative Districts) by:

1. Taking five municipalities that formed part of the First Legislative District;

2. Taking two municipalities that formed part of the then-Second Legislative District;

3. Combining the five municipalities taken from the then-First Legislative District with the two municipalities taken from the then-Second Legislative District. The combined municipalities above was renamed to the new Second Legislative District; and

[69] Carmela Fonbuena, *Arroyo signs law on new CamSur district*, ABS-CBN NEWS, Oct. 16, 2009, *at* https://news.abs-cbn.com/nation/regions/10/16/09/arroyo-signs-law-new-camsur-district.

4. Renaming the then Second (with the reduced number of municipalities), Third, and Fourth Legislative Districts to the Third, Fourth, and Fifth Legislative Districts, respectively.[70]

The First District thus suffered a reduction in population when Republic Act No. 7916 was enacted and the five municipalities were transferred to the Second District. From an initial population of 417,304, it went down to 176,383.[71]

B. Arguments, Decision, and Dissent

Then Senator Benigno Aquino III, who went on to be president, and then Naga City Mayor Jesse Robredo were the petitioners in *Aquino III*. The two, like what the petitioners in *Tobias*, *Mariano*, and *Aldaba* had done, cited Article VI, Section 5(3) of the 1987 Constitution as basis for assailing the constitutionality of Republic Act No. 9716 and the consequent creation of the Second Legislative District of Camarines Sur. As the Court summarized:

> *The petitioners posit that the 250,000 figure appearing in [Article VI, Section 5(3) of the 1987 Constitution] is the minimum population requirement for the creation of a legislative district. The petitioners theorize that, save in the case of a newly created province, each legislative district created by Congress must be supported by a minimum population of at least 250,000 in order to be valid.* Under this view, existing legislative districts may be reapportioned and severed to form new districts, provided each resulting district will represent a population of at least 250,000. On the other hand, if the reapportionment would result in the creation of a legislative seat representing a populace of less than 250,000 inhabitants, the reapportionment must be stricken down as invalid for non-compliance with the minimum population requirement.[72]

In response, the respondents in *Aquino III*, while conceding the "existence of a 250,000 population condition," simply argued that "a plain and simple reading of the questioned provision will show that the same has *no application with respect to the creation of legislative districts in provinces.* Rather, the 250,000 minimum population is only a requirement for the creation of a legislative district in a *city.*"[73]

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[70] Rep. Act No. 9716 (2009), § 3.
[71] *Aquino,* 617 SCRA 623, 632.
[72] *Id.* at 634. (Emphasis supplied.)
[73] *Id.* at 636. (Emphasis supplied, citation omitted.)

The petitioners insisted that the minimum population requirement of 250,000 *should* still apply to a province, even if Article VI, Section 5 ostensibly applied only to a city, while the case involved a reapportionment of legislative districts in a province. They anchored this insistence on the argument that "Republic Act [No.] 9716 *violates the principle of proportional representation* as provided in Article VI, Section 5 paragraphs (1), (3) and (4) of the Constitution."[74]

The Supreme Court in *Aquino III* ruled in favor of the respondents.

First, the Court held that "[t]here is no specific provision in the Constitution that fixes a 250,000 minimum population that must compose a legislative district."[75]

Second, the Court held that a plain reading Article VI, Section 5(3) of the Constitution, on which the petitioners relied, "point[s] to no other conclusion than that the 250,000 minimum population is only required for a city, but not for a province."[76] In so holding, the Court applied the doctrine in *Mariano* which, as previously discussed, held that a new legislative district created through indirect creation needs no minimum population requirement, so long as what is involved is a legislative district created out of a city that has already met the 250,000-population requirement.[77] Notably, the Court reached this conclusion despite the material difference between *Mariano* (reapportionment of legislative districts in an *existing city*) and *Aquino III* (reapportionment of legislative districts in a *province*).

Finally, the Court held that there was an "utter absence of abuse of discretion, much less grave abuse of discretion, that would warrant the invalidation of Republic Act No. 9716."[78] Said the Court:

> Translated in the terms of the present case:
>
> 1. The Province of Camarines Sur, with an estimated population of 1,693,821 in 2007 is—*based on the formula and constant number of 250,000* used by the Constitutional Commission in nationally apportioning legislative districts among provinces and cities—entitled to two (2) districts in addition to the four (4) that it was given in the 1986 apportionment.

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[74] *Id.* at 635. (Emphasis supplied, citation omitted.)
[75] *Id.* at 640.
[76] *Id.* (Citation omitted.)
[77] *Id.* at 640–42.
[78] *Id.* at 651. (Citation omitted.)

* * *

> 3. The factors mentioned during the deliberations on House Bill No. 4264, were:
>
> (a) the *dialects spoken* in the grouped municipalities;
> (b) the *size of the original groupings* compared to that of the regrouped municipalities;
> (c) the *natural division* separating the municipality subject of the discussion from the reconfigured District One; and
> (d) the *balancing of the areas* of the three districts resulting from the redistricting of Districts One and Two.
>
> *Each of such factors and in relation to the others considered together, with the increased population* of the erstwhile Districts One and Two, point to the *utter absence of abuse of discretion, much less grave abuse of discretion*, that would warrant the invalidation of Republic Act No. 9716.[79]

1. Addressing the "proportional representation" argument of the Aquino III *petitioners*

Three points militate against the petitioners' argument that the law violates the principle of proportional representation,[80] based on *Macias, Imbong*, and *Bagabuyo*.

First, there was no *Macias*-like "disproportion of representation" when Republic Act No. 9716 was enacted and implemented because only one province was involved in *Aquino III*. The "disproportion of representation" doctrine espoused in *Macias* exists only when the disproportion occurs *between or among multiple provinces*, some receiving fewer legislative districts when they should have received more due to the higher number of their inhabitants, and vice versa. In contrast, Camarines Sur itself did not suffer any "disproportion of representation" vis-à-vis other provinces because Republic Act No. 9716 simply afforded it an additional legislative district, without affecting legislative districts of other provinces.

Second, the petitioners did not even raise whether the First Legislative District's reduced population of 176,833 was disproportional to the other legislative districts within Camarines Sur. Therefore, there would have been

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[79] *Id.* at 649–51. (Emphasis supplied, citations omitted.)
[80] *Id.*

no basis for the Court to invalidate Republic Act No. 9716 for supposedly resulting in a disproportion of representation.

Third, and the most important, even if there were a population disparity between and among the legislative districts of Camarines Sur, applying *Imbong* and *Bagabuyo*, the resulting apportionment brought about by Republic Act No. 9716 still attained a *proportional and quality* representation among the legislative districts and sufficiently complied with the mandate of Article VI, Section 5 of the Constitution. This was what the Court in *Aquino III* implicitly did when it ruled that, as previously discussed, there was an "utter absence of abuse of discretion, much less grave abuse of discretion, that would warrant the invalidation of Republic Act No. 9716."[81]

As discussed above, the Court in *Aquino III* considered the factors raised during the deliberations on the bill that eventually became Republic Act No. 9716. These factors may be considered analogous to the "community of interests" and "ease of access" factors that constitute *quality* representation. In effect, the Court in *Aquino III* may have implicitly ruled that the resulting disparity of population among the legislative districts was not sufficient to invalidate the law since there was still *proportional and quality* representation. This was shown by congressional deliberations of lawmakers who, to the *ponencia*, did not act with grave abuse of discretion.

In addition, by framing the issue of the validity of a reapportionment law as a question of whether it was made with grave abuse of discretion, the Court conceded that, at the very least, reapportionment involves some form of political discretion. This approach is not without precedent. In *Bagabuyo*, the petitioners argued that the redistricting under Republic Act No. 9371 resulted in an "inequality in the division of Cagayan de Oro City" because "the *barangays* in the first district are mostly rural *barangays* while the second district is mostly urban."[82] The Court disagreed, holding:

> But even if backed up by proper proof, we cannot question the division on the basis of the difference in the *barangays*' levels of development or developmental focus as these are not part of the constitutional standards for legislative apportionment or reapportionment. *What the components of the two districts of Cagayan de Oro would be is a matter for the lawmakers to determine as a matter of policy. In the absence of any grave abuse of discretion or violation of the established legal parameters, this Court cannot intrude into the wisdom of these policies.*[83]

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[81] *Id.* at 651. (Citation omitted.)
[82] *Bagabuyo*, 573 SCRA 290, 310. (Emphasis in the original.)
[83] *Id.* at 310–11.

2. Addressing the Court's Ruling in Aquino III

However, *Aquino III* did not directly answer whether Republic Act No. 9716 violated the principle of proportional representation. Its reasoning appears to have been non-responsive to the petitioners' core argument and relied on cases that do not appear to be on all fours with the case.

i. Putting Context

In *Aquino III*, the apportionment involved the second method of *direct creation* of legislative districts through the process of apportionment within an *existing province*. Republic Act No. 9716 did not create a new province, but merely reapportioned districts within the existing province.

Thus, it is Article VI, Section 5 of the 1987 Constitution, along with *Felwa* (interpreting then Article VI, Section 5 of the 1935 Constitution, which is similarly worded with the present counterpart), that should govern the Court's disposition on the constitutionality of Republic Act No. 9716.

To be clear, *Mariano* should not govern at all because its factual milieu differed from *Aquino III*. *Mariano* involved the creation of a legislative district out of a newly created city, while *Aquino III* involved the creation of a legislative district in an existing *province*. Thus, *Mariano* is not, and should not, constitute as *stare decisis* to the controversy involved in *Aquino III*. Yet, the apparent lack of substantially equivalent facts[84] between the cases did not prevent the Court from citing *Mariano* to justify its ruling in *Aquino III*.

To reiterate, the entitlement to at least one representative of cities with a population of at least 250,000 is an innovation under the 1987 Constitution. However, neither it nor its 1935 counterpart provides the exact number of "respective inhabitants" with respect to reapportionment made in provinces. The 1987 Constitution provides an exact number of inhabitants for a city, but none for a province such as Camarines Sur.

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[84] "Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike." Lazatin v. Desierto, G.R. No. 147097, 588 SCRA 285, 294, June 5, 2009 *citing* Chinese Young Men's Christian Ass'n of the Phil. Islands v. Steel Corp., G.R. No. 159422, 550 SCRA 180, 197, Mar. 28, 2008. (Emphasis omitted.)

But the petitioners in *Aquino III* appear to be well aware of this conundrum. Had they simply argued that the creation of the Second Legislative District was unconstitutional because the apportionment of the legislative districts was not done "in accordance with the number of their respective inhabitants" *without them citing what that exact number should be*, the Court would have likely only applied *Macias* and determined whether there existed such "disproportion of representation" with Republic Act No. 9716. As previously discussed, no *Macias*-like "disproportion of representation" transpired in *Aquino III*, as there was only one province.

Therefore, for the petition in *Aquino III* to raise a novel issue, the petitioners had to show that when Article VI, Section 5 of the 1987 Constitution requires that the apportionment be made "in accordance with the number of their respective inhabitants," it means that *that number* is equal to 250,000. But since their assertion (i.e., that that number is 250,000) is not supported by the text, the petitioners had to point to the supposed intent of the constitutional framers:

> The petitioners argue[d] that when the Constitutional Commission fixed the original number of district seats in the House of Representatives to two hundred (200), they took into account the projected national population of fifty five million (55,000,000) for the year 1986. *According to the petitioners, 55 million people represented by 200 district representatives translates to roughly 250,000 people for every one (1) representative.* Thus, the 250,000 population requirement found in Section 5(3), Article VI of the 1987 Constitution is actually based on the population constant used by the Constitutional Commission in distributing the initial 200 legislative seats.[85]

ii. *Mariano* as a Jurisprudential Axe to Cut Down the Petitioners' Novel Claim

The Court in *Aquino III* appears to be well aware of *Mariano's* divergent factual milieu, as it had to justify *Mariano's* application merely by analogy:

> The *Mariano case* limited the application of the 250,000 minimum population requirement for cities only to its *initial* legislative district. *In other words, while Section 5(3), Article VI of the Constitution requires a city to have a minimum population of 250,000 to be entitled to a representative, it does not have to increase its population by another 250,000 to be entitled to an additional district.*

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[85] *Aquino,* 617 SCRA 623, 634–35. (Emphasis supplied.)

> There is no reason why the *Mariano case*, which involves the creation of an *additional* district within a city, should not be applied to additional districts in provinces. *Indeed, if an additional legislative district created within a city is not required to represent a population of at least 250,000 in order to be valid, neither should such be needed for an additional district in a province*, considering moreover that a province is entitled to an initial seat by the mere fact of its creation and regardless of its population.[86]

Therefore, while *Mariano* did not act as binding precedent to *Aquino III*, it nonetheless afforded the Court a way to formulate a doctrine via the following logic: *If a certain Rule X which ostensibly applies solely to a certain Situation A is interpreted liberally, such liberal interpretation must also extend to a certain Situation B even if Rule X does not ostensibly apply to Situation B, because Situation B contains certain unique features that Situation A does not have but still justify the liberal interpretation.*

The Court's logic in applying *Mariano* to *Aquino III*'s factual milieu can be broken down, as follows:

1. The 250,000-population requirement under Article VI, Section 5(3) of the 1987 Constitution (Rule X), which ostensibly applies only to cities (Situation A), has been liberally interpreted to mean that it only applies to the initial legislative district and not to an additional district;

2. The creation of a legislative district in a province (Situation B) is distinct from that in a city because in the former, it is entitled to "an initial [legislative district] by the mere fact of its creation and regardless of its population"[87] (unique feature of Situation B);

3. Since a province (Situation B) is entitled to "an initial [legislative district] by the mere fact of its creation and regardless of its population"[88] (unique feature of Situation B), then the liberal interpretation in *Mariano* should also apply to a province, in that an additional legislative district in a province need not meet the 250,000-population requirement.

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[86] *Id.* at 641–42. (Emphasis supplied.)
[87] *Id.* at 642.
[88] *Id.*

Presented in this manner, it is clear how illogical the Court's application of *Mariano* in *Aquino III* was. If the subject of interpretation in *Mariano* is a constitutional rule which the Court itself declared did not apply to the facts in *Aquino III*, then how does the *Mariano* interpretation of the said rule (which becomes part and parcel of that rule) also apply to the same set of facts?

Moreover, that a province is entitled to an initial legislative district by virtue of its mere creation is *non sequitur* to the question of whether a population requirement is needed for an additional legislative district within the same newly created province. As discussed previously, Article VI, Section 5(3) of the 1987 Constitution appears to merely secure a guarantee, in favor of all provinces, that their number of legislative districts shall not be less than one. However, it does not guarantee that all provinces shall be entitled to more than one legislative district.

What, then, may have been the Court's intention for citing *Mariano*? In the Court's own words: "*Mariano*, it would turn out, is but a reflection of the pertinent ideas that ran through the deliberations on the words and meaning of Section 5 of Article VI."[89]

Therefore, the Court used *Mariano* as a pretext to introduce the position that based on the constitutional deliberations on Article VI, Section 5(3), population is not the sole or absolute minimum factor in determining how many legislative districts to which a province is entitled. Thus, instead of directly refuting the petitioners' claim that the minimum population requirement for the creation of new legislative districts is 250,000 (whether in a province or a city), *Aquino III* veered away from that question. The Court provided:

> Simply discernible too is the fact that, for the purpose, population had to be the determinant. Even then, the requirement of 250,000 inhabitants was not taken as an absolute minimum for one legislative district. *And, closer to the point herein at issue, in the determination of the precise district within the province to which, through the use of the population benchmark, so many districts have been apportioned, population as a factor was not the sole, though it was among, several determinants.*[90]

In so concluding, the Court made a two-level analysis of what the framers' intent was behind Article VI, Section 5(3) of the 1987 Constitution.

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[89] *Id.*

[90] *Id.* at 642. (Emphasis supplied.)

First, it determined how the framers computed the number of legislative districts among each province and city. Second, it analyzed how the framers decided the composition of legislative districts within a particular province.

The first level of analysis involved the computation of the number of legislative districts *among each province, city, and the Metropolitan Manila area.* At this level, the Court, citing part of Commissioner Hilario Davide, Jr.'s sponsorship speech on the Ordinance appended to the Constitution, ostensibly adopted one premise as echoed by the *Aquino III* petitioners: that "55 million people represented by 200 district representatives translates to roughly 250,000 people for every one (1) representative."[91]

But unlike the petitioners, who wanted to prove that the 250,000-population requirement was needed in creating additional legislative districts, the Court used the premise merely to point out that the figure was used as reference for the *first round* of distribution of the 200 seats to 73 provinces and 10 cities "with a population of at least 250,000."[92] Thus, for the *second round* of distribution of what remained of the 200 seats, the 250,000 figure was no longer relevant. Instead, the basis for the distribution was the "*in accordance with the number of their inhabitants on the basis of a uniform and progressive ratio*" standard.[93]

The second level of analysis came in after the 200 seats had been distributed. The Court explained that "the determination of the districts *within the provinces* had to consider 'all protests and complaints formally received' which, the records show, dealt with determinants other than population."[94]

This "determination" is no longer a question of how many districts a certain province must have (i.e., the *number* of legislative districts); rather, it became a question of determining which districts must certain towns, cities, or municipalities belong to (i.e., the *composition* of legislative districts).

Hence, if Province XYZ was already allocated two legislative districts at the first level of analysis, the second level of analysis no longer accounted for whether each of the legislative districts met the 250,000-population requirement, but as what the Court attempted to show by citing the pertinent deliberations, factors other than population were accounted for.

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[91] *Id.* at 634–35. (Emphasis omitted.)

[92] *Id.* at 643.

[93] *Id. citing* 5 RECORD CONST. COMM'N, 107, 949 (Oct. 13, 1986).

[94] *Id.* at 644. (Emphasis supplied.)

To summarize:

Province involved	**Issue of *legislative district composition* involved**	**Application of the "250,000" population requirement**	**How the issue was decided**	**Factors used by the framers to decide the issue, per the Court**
Palawan	As to whether the City of Puerto Princesa should be included in the First District or in the Second District	If Puerto Princesa is included in the First District, it will have a population of 265,358 while the Second District will only have 186,733. Otherwise, the First District will have a population of 190,000 while the Second District will now have 262,213.	Puerto Princesa was included in the Second District	"[T]he importance of the towns and the city that eventually composed the districts."[95]
Benguet	Whether Baguio City, on its own, should be a lone district or whether it should be merged with another town in Benguet to form a single district	If Baguio City were made a lone district, it will only have a population of 141,149.	Baguio City was made a lone district	"[A]s a special consideration for Baguio because it is the summer capital of the Philippines[.]"[96]

Hence, the Court concluded that the framers explicitly disregarded the 250,000-population figure by removing population as a factor.

iii. *Aquino III* Misinterpreted the Framers' Intent on the 250,000-Population Benchmark

But what the Court failed to account for was that the framers did not really abandon the 250,000-population benchmark. Palawan and Benguet were unique because they were the only provinces that actually led to certain

[95] *Id.* at 646.
[96] *Id.*

districts going below the 250,000-population requirement. In the other provinces where the framers resorted to other factors aside from population in determining the proper district composition, all the respective districts met the 250,000-population requirement. Therefore, the framers were no longer left to grapple with whether the population factor must prevail over such other factors, and vice versa. To summarize:

Province involved	**Issue of legislative district composition involved**	**Population per District after resolving the issue**	**Factors used by the framers to decide the issue, per the Court**
Cavite	As to which specific towns must compose the First, Second, and Third Districts	First District – 322,862 Second District – 337,659 Third District – 286,470	"[O]ne district [was] supposed to be a fishing area; the other was a vegetable and fruit area, and the other was a rice growing area."[97]
Cebu	As to which specific towns must compose the First, Second, Third, Fourth, Fifth and Sixth Districts	Second District – 298,937 Third District – 331, 204 Fourth District – 291,444 Fifth District – 283,052 First and Sixth District – not indicated but probably also more than 250,000 since it was noted that "the biggest district would be the Third, the second biggest — the Sixth, the third biggest — the First."	"[I]n order to balance the area and population."[98]
Maguindanao	As to which specific towns must compose the First and Second Districts	First District – 340,299 Second District – 252,370	"Based on geographical, historical, traditional[,] and cultural reasons[,] the resulting districting would "promote unity, peace and order in the region"; that one municipality "is

[97] 5 RECORD CONST. COMM'N 107, 985 (Oct. 13, 1986).
[98] *Id.*

			contiguous with its former mother municipality."[99]

Therefore, contrary to what the Court seemed to imply in *Aquino III*, the framers did not disregard the 250,000-population benchmark. A more accurate reading of the framers' intent is that population must at least be the *first* consideration in districting, but if applying this benchmark conflicts with other factors (as in the cases of Palawan and Benguet), then such factors may be considered secondarily—and, if found more compelling, may override the population benchmark altogether.

This reading of the 250,000-population benchmark was implicitly recognized by the *Aquino III* petitioners' argument. They did not argue whether population should be the sole factor for creating additional legislative districts; rather, that even if population was not the sole factor, it must still be pegged at the 250,000-figure per Article VI, Section 5(3) of the 1987 Constitution. Therefore, the petitioners were essentially asking the Court to declare whether 250,000 was the minimum population requirement to be considered in creating an *additional* legislative district in a province. The same reading was also emphasized by Justice Conchita Carpio-Morales in her concurring and dissenting opinion, where she stated:

> The *ponencia* sweepingly declares that "population was explicitly removed as a factor." *Far from it. Population remains the controlling factor.* From the discussions in the initial apportionment and districting of Puerto Princesa, Baguio, Cavite, Laguna, Maguindanao and Cebu in 1986, it is clear that population and contiguity were the primary considerations, and the extraneous factors considered were circumspectly subsumed thereto.[100]

3. Addressing the Dissent in Aquino III

[99] *Id.* at 988. As for Laguna, no population figures were stated, and neither was there an issue with population to be gleaned from the Journals of the Constitutional Commission.

[100] *Aquino*, 617 SCRA 623, 677 (Carpio-Morales, *J.*, *concurring and dissenting*). (Emphasis in the original.)

Justice Antonio Carpio,[101] along with Justice Carpio-Morales,[102] argued that a minimum population of at least 250,000 per legislative district is required under Article VI, Section 5 of the Constitution. Justice Carpio mainly anchored his argument on the "uniform and progressive ratio" standard under Section 5(1), saying:

> The phrase "progressive ratio" means that the *number of legislative districts shall increase as the number of the population increases, whether in provinces, cities or the Metropolitan Manila area. Thus, a province shall have one legislative district if it has a population of 250,000, and two legislative districts if it has 500,000*. This ensures that proportional representation is maintained if there are increases in the population of a province, city, or the Metropolitan Manila area. This is what is meant by a "progressive ratio" in the apportionment of legislative districts, a ratio that must also be uniformly applied.
>
> * * *
>
> The minimum population of 250,000 per legislative district admits of no variance and must be complied with to the last digit. *The Constitution mandates a population of "at least two hundred fifty thousand" for a legislative district in a city, and under the principle of "uniform and progressive ratio" for every legislative district in provinces and in the Metropolitan Manila area.*[103]

Justice Carpio argued that the 250,000-minimum population requirement, while textually pertaining only to legislative districts in cities, is also applicable to legislative districts within provinces because of the "uniform and progressive ratio" standard. He used the "uniform and progressive ratio" standard as basis to argue that within the realm of legislative district creation and reapportionment, cities and provinces stand on an equal footing.

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[101] *Id.* at 666–67 (Carpio, *J.*, *dissenting*). "Equally important, RA 9716 violates the minimum population requirement of 250,000 in creating the proposed First District, which will have a population of only 176,383. The minimum population of 250,000 per legislative district admits of no variance and must be complied with to the last digit."

[102] *Id.* at 676 (Carpio-Morales, *J.*, *concurring and dissenting*). "Following the constitutional mandate, the population requirement cannot fall below 250,000. This is the average 'uniform and progressive ratio' that should prevail. Thus, using the present population figure, the benchmark should be anywhere between 250,000–450,000 persons per district. Using anything less than 250,000 is illogical, for it would operate to allow more than 360 representatives of legislative districts alone on some capricious basis other than the variable of population."

[103] *Id.* at 658–67 (Carpio, *J.*, *dissenting*). (Emphasis supplied.)

Artiaga and Garcia argue similarly, relying on the well-established legal precept that "provisions of the Constitution must be interpreted and reconciled together."[104] In their own words:

> Applying this rule of statutory construction to the problem in *Aquino*, the Supreme Court should have interpreted the provision on the uniform and progressive ratio standard alongside the provision on the 250,000 population requirement. The framers of the Constitution could not have intended to impose the uniform and progressive ratio standard if its actual application would be impossible. Thus, the interpretation that would give life to the constitutional rules on apportionment is to consider 250,000 as the minimum population required for every legislative district, whether the legislative district is in a city or province.[105]

However, the constitutional framers' deliberations reveal that provinces and cities were not treated equally in terms of legislative districting. The framers made special considerations as to the peculiarities and features of cities and provinces, which eventually led to the adoption of the current wording of Article VI, Section 5(3) of the 1987 Constitution.

In the deliberations, the initial wording of Article VI, Section 5(3) of the Constitution was that "*each city or province* with a minimum population of two hundred thousand, shall have at least one representative." However, Commissioner Cirilo A. Rigos proposed that this wording be amended to how it is now written under the 1987 Constitution (save for the phrase "two hundred thousand" which was amended to "two hundred fifty thousand" in a later amendment).[106]

In support of this proposal, Commissioner Francisco A. Rodrigo explained that if the "two hundred thousand" population requirement were applied to a province, Batanes would be deprived of a legislative district because it only had a population of less than 50,000 at the time.[107]

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[104] Artiaga & Garcia, *supra* note 53 at 837.

[105] *Id.* at 837–38.

[106] 2 RECORD CONST. COMM'N, 37, 136 (July 23, 1986).

[107] *Id.* "MR. RODRIGO: In one of the committee meetings, I called attention to the fact that if we adopt a minimum population for provinces, we will be depriving a province that now exists of its one representative, and that is Batanes. Under the present provision of the Constitution, every province, regardless of the population, is entitled to at least one representative. And so Batanes, although its population is less than even 50,000, has one representative. So if we apply the minimum of 200,000 population, both in cities and provinces, we will be depriving Batanes of a representative."

Opposing Commissioner Rigos's proposal, Commissioner Regalado E. Maambong argued as to the inherent unfairness of the proposal toward cities. He explained, as an example, that a province with a population of only 25,000 would, under the proposal, get a legislative district "just because it [wa]s a province," while a city with a greater population of 195,000 would not get a single legislative district because it was 5,000 short of the then 200,000-population requirement. He proposed that for those provinces that did not meet the population requirement, they should instead be tacked into another existing legislative district so as to ensure that that province will still secure legislative representation.[108]

Commissioner Felicitas S. Aquino responded to Commissioner Maambong by showing why the population requirement was not intended to be applied strictly to provinces:

> MS. AQUINO: I shall attempt to answer in behalf of the Committee. The provisions of Section 5 proceed from the general principle that representation is based on population not territory such that a constitutional provision which would *grant a province one representative regardless of population requirement is a mere exception to the general rule of apportionment.* Otherwise, we might be facing problems such as fractional representation.
>
> MR. MAAMBONG: That is precisely the point. If the main basis of giving representation to an identified area of this country is population, a representative is supposed to represent at least 200,000 inhabitants. But this exception, which I think is the intention of the Committee, is preposterous. Twenty-five thousand people to be represented by one representative?

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[108] *Id.* at 137–38. "MR. MAAMBONG: Has the Committee considered the logic of this requirement? Let us take the case of Batanes. Batanes has seven municipalities with something like 25,000 to 30,000 inhabitants. In our allocation of seats, we are guided by two things: contiguous territory grouped together and the minimum number of inhabitants which is 200,000. Another case is Siquijor which has only around 50,000 to 60,000 inhabitants. I wonder if the Committee has taken this matter into consideration, because if we are saying that we cannot tack a province onto an existing legislative district, I think this can be resolved quite easily. An example is Siquijor which had always been a part of Negros Oriental before, but which all of a sudden became a province. What I am trying to say is that if we have a city which is not a component city with something like 195,000 population, we cannot even allow it to have its own legislative district, in spite of the fact that it is only 5,000 less than the minimum requirement of 200,000. But we have a province with only 25,000 voters and just because it is a province, we give it legislative representation. Can the Committee not consider tacking this onto a bigger government unit?"

> I have nothing against these provinces. As a matter of fact I have no relations whatsoever with them but I am trying to visualize the situation where we have to be logical in our basis of representation. I am trying to discuss this problem on the basis of logic and nothing more. I was wondering if the Committee has considered this thoroughly. If the Committee says so then that would be perfectly all right with me. I will not go further so that we will not waste our time.
>
> MS. AQUINO: We have considered this thoroughly. *The absurd situation is that if we apply the rule of apportionment on the basis of population absolutely and unqualifiedly, then provinces with small populations will have fractional representation. That would even do more injustice than justice.*[109]

Eventually, Commissioner Rigos's proposal was submitted to a vote, and there being no objection, was approved by the framers.[110]

The deliberations reveal not only the intent for the 250,000-population requirement to not apply to provinces, but also the underlying rationale behind such intent: provinces, especially those isolated or not part of the mainland, may be deprived of representation if the 250,000-population requirement was applied. The deliberations strongly militate against Justice Carpio's argument that the 250,000-population requirement for cities must also apply to provinces.

4. Putting a Value on the Population Factor

To reiterate, the Court in *Aquino III* decided that "if an *additional* legislative district created within a city is not required to represent a population of at least 250,000 in order to be valid, neither should such be needed for an additional district in a province."[111] The obvious follow-up question is: *What, then, is the minimum population requirement*?

Even if the Court declared that population was not the only factor, it still begs the question: what value must be assigned to the population factor when it is considered in determining the validity of the creation of an additional legislative district. At the very least, the question of what guidelines or standards should be applied to arrive at that value must be answered. This

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[109] *Id.* at 138. (Emphasis supplied.)
[110] *Id.* at 138–39.
[111] *Aquino*, 617 SCRA 623, 642. (Emphasis in the original.)

is a crucial question that the Court failed to address, at least in the majority opinion.

Justice Carpio-Morales rightfully called this silence out in her dissent:

> The framers of the Constitution intended to apply the minimum population requirement of 250,000 to both cities and provinces in the initial apportionment, in proportion to the country's total population at that time (56 million).
>
> Yet the *ponencia* asserts that the 250,000 benchmark was used only for the purpose of the 1986 initial apportionment of the legislative districts, and now disregards the benchmark's application in the present petition. *It is eerily silent, however, on what the present population yardstick is.*[112]

Justice Carpio's dissent also emphasized this particular conundrum:

> Under the majority's ruling, Congress can create legislative districts in provinces without regard to any minimum population. Such legislative districts can have a population of 150,000, 100,000, 50,000 or even 100, thus throwing out of the window the constitutional standards of proportional representation and uniformity in the creation of legislative districts. To disregard the minimum population requirement of 250,000 in provincial legislative districts while maintaining it in city legislative districts is to disregard, as a necessary consequence, the constitutional standards of proportional representation and uniformity in the creation of legislative districts in "provinces, cities, and the Metropolitan Manila area." *This means that legislative districts in provinces can have a minimum population of anywhere from 100 (or even less) to 250,000, while legislative districts in cities will always have a minimum population of 250,000.* This will spell the end of our democratic and republican system of government as we know it and as envisioned in the 1987 Constitution.[113]

While Justice Carpio's *reductio ad absurdum* argument has merit, the same need not result in an outright disregard of the merits of the *Aquino III* decision. Should legislators in the future prove unscrupulous enough to attempt passing redistricting laws that create additional legislative districts based on a population of "anywhere from 100 (or even less)" or "50,000 or even 100," surely the Court will not think twice to strike down these laws,

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[112] *Id.* at 676 (Carpio-Morales, *J.*, *concurring and dissenting*). (Emphasis in the original.)
[113] *Id.* at 659 (Carpio, *J.*, *dissenting*). (Emphasis supplied.)

which would obviously result in a "disproportion of representation," one that may even be blatantly worse than what transpired in the case of *Macias*.

Nonetheless, both the *Aquino III* petitioners and the dissenting opinions raised the important question of what the minimum population requirement must be or what standard must be attributed to population as one of the factors in creating an additional legislative district. The majority decision in *Aquino III* was unfortunately non-responsive to this issue.

IV. RECONTEXTUALIZING *AQUINO III*

As previously discussed, Article VI, Section 5 of the Constitution and the string of precedents from *Macias*, to *Imbong*, and to *Bagabuyo* reveal that the Constitution does not mandate absolutely equal representation, but only *proportional* and *quality* representation. *Aquino III* appears consistent with this view as it upheld the creation of the new legislative district in Camarines Sur, notwithstanding the apparent population disparity among all the legislative districts in the province. In finding that the factors, considered together,[114] reveal no grave abuse of discretion in enacting Republic Act No. 7916, it is clear that absolutely equal representation was far from the Court's mind in deciding *Aquino III*.

Moreover, the 250,000-population requirement under Article VI, Section 5(3) of the Constitution does not apply to both an initial legislative district in a province, as affirmed in *Felwa*, and an additional legislative district in a province, as declared in *Aquino III*. The Court cited the framers' deliberations to show that in some provinces, but not all, the framers relied on non-population factors in apportioning legislative districts. Contrary to what the petitioners and the dissenting justices said, the framers' deliberations also showed that the 250,000-population requirement was never meant to apply to a province due to its peculiar features vis-à-vis a city, as was the driving force behind Commissioner Rigos's amendment that led to the adoption of the wording: "Each city with a population of at least two hundred fifty thousand, *or each province*, shall have at least one representative."[115] Curiously, the Court in *Aquino III* did not cite the particular portion of the deliberations, but at least the result of the *Aquino III* decision is consistent with the framers' intent.

But this is not to say that the *Aquino III* decision is free from error.

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[114] *Id.* at 651.

[115] CONST. art. VI, § 5(3). (Emphasis supplied.)

First, *Aquino III* commits an inaccuracy when it declared that in applying Article VI, Section 5(3) of the Constitution to reapportionments in provinces, the framers explicitly disregarded the 250,000-population figure by removing population as a factor. While the framers have intended the population figure to be inapplicable to a province during the amendment deliberations initiated by Commissioner Rigos, in the other deliberations concerning the initial apportionment of districts in a number of provinces, the 250,000 figure was applied as a form of litmus test to determine whether other non-population factors must be considered in the apportionment, depending on whether the proposed apportionment led to districts having a population of more than, or less than, 250,000.

Second, granting that population is not the sole factor in reapportionment, *Aquino III* nevertheless failed to provide sufficient standards or criteria in determining what appropriate number of population must be attained in each particular case of reapportionment that will spring out in the future.

How then should the Court in future controversies concerning reapportionment of legislative districts in a province properly use and apply *Aquino III*? What possible doctrinal improvements or modifications may be introduced in future jurisprudence that will build on *Aquino III* without overturning or disregarding it altogether?

A. *Aquino III* as a Base Case to Check for Grave Abuse of Discretion in Future Reapportionments that Comply with the 250,000-Population Benchmark

In *Aquino III*, the Court cited the following factors, taken together, as basis to rule that the reapportionment of legislative districts under Republic Act No. 9716 was not attended with grave abuse of discretion:

1. The total population of Camarines Sur at the time of the reapportionment is 1,693,821, and the fact that 1,693,821 divided by 250,000[116] results in two more districts in addition to the four that were given to Camarines Sur in the 1986 apportionment, for a total of six districts; and

2. The non-population factors, namely:
    a. the dialects spoken in the grouped municipalities;

[116] The resulting quotient is 6.775284.

b. the size of the original groupings compared to that of the regrouped municipalities;
c. the natural division separating the municipality subject of the discussion from the reconfigured First District; and
d. the balancing of the areas of the three districts resulting from the redistricting of the First and Second Districts.

Thus, *Aquino III* provides this test: to rule that there is *no* grave abuse of discretion in future reapportionment of legislative districts in a province, the following must concur:

1. An *increase* in the population within a province;

2. The *increased population*, divided by 250,000, results in a number greater than that of the existing number of legislative districts within that province, meriting the creation of *additional* legislative districts depending on how much the former number exceeds the latter;

3. The *additional* legislative district/s, if not meeting the 250,000-population benchmark, was/were so apportioned based on other *factors considered together with the increased population*;

4. These factors are at least mentioned in the congressional deliberations on the bills that eventually became the reapportionment laws.

Two things stand out:

First, while *Aquino III* categorically holds that a population of at least 250,000 is not required to create an additional district in a province, that the reapportionment law did consider the 250,000-figure in determining how many additional districts may be created in a province stamps that law with a badge of *lack of grave abuse of discretion.* Thus, if future legislation creating additional legislative districts in a province are being assailed for having been enacted with grave abuse of discretion, but these laws considered the 250,000-population benchmark, then courts may rely on *Aquino III* as basis to uphold the legislation.

Second, while *Aquino III* also categorically holds that population "is just one of several other factors in the composition of the additional

district[,]"[117] such other factors considered in the law must, as a minimum, be coupled with the fact of an actual population increase. Hence, if future legislations creating additional legislative districts in a province merely cited "other factors" as their rationale, when the population did not increase to begin with, courts may rely on *Aquino III* as basis to rule that such legislations are marred with grave abuse of discretion.

Applying *Aquino III* through this two-fold framework to future controversies on reapportionment within provinces will hopefully correct the wrong notion that the 250,000-population figure should be disregarded altogether. This framework will breathe life to the framers' intent that the 250,000-figure must at least be the primary criteria that must be attributed to the population factor; and only when other non-population factors are found more compelling should the 250,000-population requirement be relaxed or overridden.

B. *Aquino III* Not of Canonical Application in Future Reapportionments That *Do Not* Comply with the 250,000-Population Benchmark

Nevertheless, *Aquino III* must not be viewed as a one-size-fits-all precedent that will warrant unfettered judicial deference to lawmakers. Lawmakers, in turn, may not use the facts and circumstances in *Aquino III* to draft and deliberate on future reapportionment bills that will fit the *Aquino III* factual milieu but are attendant with bad faith. While good faith is not an explicit standard for reapportionment in the Constitution, it must at least be considered by the courts because of the underlying political implications that reapportionment laws carry.

Justice Carpio, in his dissenting opinion, touched on the role of good faith in reapportionment, stating:

> Proportional representation in redistricting does not mean exact numbers of population, to the last digit, for every legislative district. However, under the assailed RA 9716, the variances swing from negative 47.9% to positive 29.6%. Under any redistricting yardstick, such variances are grossly anomalous and destructive of the concept of proportional representation. *In the United States, the Supreme Court there ruled that a variance of even less than 1% is unconstitutional in the absence of proof of a good faith effort to achieve a mathematically exact apportionment.*

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[117] *Aquino*, 617 SCRA 623, 651.

> Significantly, petitioner Senator Aquino's attempt to redraw districting lines to make all five proposed districts compliant with the minimum population requirement (and thus lessen the wide variances in population among the districts) was thwarted chiefly for political expediency: his colleagues in the Senate deemed the existing districts in Camarines Sur "untouchable" because "[a Congressman] is king [in his district]." *This shows a stark absence of a good faith effort to achieve a more precise proportional representation in the redistricting under the assailed RA 9716*. Clearly, RA 9716 tinkers with vote valuation, and consequently with the constitutional standard of proportional representation, based solely on the whims of incumbent Congressmen, an invalid standard for redistricting under Section 5 of Article VI.[118]

Justice Carpio's insistence on a reapportionment coupled with a "good faith effort" is anchored on his core argument that the goal of reapportionment is strict equality of representation, and not just proportional and quality representation. For Justice Carpio, the principle of "one person, one vote" should prevail within our jurisdiction. At the end of his dissenting opinion, Justice Carpio lamented:

> *The ruling of the majority today could sound the death knell for the principle of "one person, one vote" that insures equality in voting power. All votes are equal, and there is no vote more equal than others.* This equality in voting power is the essence of our democracy. This Court is supposed to be the last bulwark of our democracy. Sadly, here the Court, in ruling that there are some votes more equal than others, has failed in its primordial constitutional duty to protect the essence of our democracy.[119]

However, the Supreme Court has never explicitly adopted the "one person, one vote" principle as the underlying rationale behind reapportionment. From *Macias*, to *Imbong*, and culminating in *Bagabuyo*, reapportionment Philippine-style does not require strict mathematical equality of representation, but merely *proportional* and *quality* representation. Both Justice Carpio and Justice Carpio-Morales argued in favor of "one person, one vote" by citing American jurisprudence, most notably *Wesberry v. Sanders*[120] and *Reynold v. Sims*.[121] Justice Carpio specifically cited *Wesberry* to advance the argument that proportional representation, "in terms of legislative

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[118] *Id.* at 663–66 (Carpio, J., *dissenting*.) (Emphasis supplied, citations omitted.)
[119] *Id.* at 671.
[120] [Hereinafter "*Wesberry*"], 376 U.S. 1 (1964).
[121] 377 U.S. 533 (1964).

redistricting, [...] means *equal representation for equal numbers of people* or equal voting weight per legislative district."[122]

However, as Stephen Schar[123] explains, both *Wesberry* and *Reynolds* did not, in fact, argue for strict equality. Schar noted that the US Supreme Court in *Wesberry* (which preceded *Reynolds*) "established the proposition that 'one man-one vote' requires the congressional districts within a state to be of equal population 'as nearly as practicable.'"[124] But as Schar further explains, *Wesberry* failed to set precise standards as to how the "as nearly as practicable" standard will be determined. It was in *Reynolds* that the US Supreme Court, for the first time, attempted to establish guidelines defining the "as nearly as practicable" standard. Schar writes:

> Chief Justice Warren, writing for the majority, stated: "We determined [in *Wesberry*] that the constitutional test for the validity of congressional districting schemes was one of substantial equality of population among the various districts." Moreover, the Court recognized that some minor population deviations among intra-state voting districts were permissible so long as they resulted from the use of political subdivision lines, or other logical division lines, in the drawing of coherent districts. *The constitutional wisdom in permitting deviations from the mathematical ideal, if such lines were used in creating districts, was stated as follows: "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."* Hence, under the *Wesberry-Reynolds* formulation, *the phrase "as nearly as practicable" meant that congressional districts within a state were to be substantially equal in population; minor population variances among districts were acceptable if they resulted from the use of political subdivision, natural, or historical boundary lines.*[125]

Thus, *Wesberry* and *Reynolds* do not serve as American jurisprudence of persuasive effect that will warrant a strict application of the "one person, one vote" principle in the Philippines. Quite the contrary, both cases support the notion that reapportionment, if made "as nearly as practicable" (which is similar to the "as nearly as may be" standard espoused in *Macias* and carried over to *Bagabuyo*), only means that substantially equal populations among districts will suffice, so long as population disparities among the districts are

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[122] *Aquino*, 617 SCRA 623, 656 *citing Wesberry*, 376 U.S. 1, 11 (1964).

[123] Stephen L. Schar, *Constitutional Law - Congressional Districting - "One Man-One Vote" Demands Near Mathematical Precision - Kirkpatrick v. Preisler, 394 U.S. 526 (1969)*, 19 DEPAUL L. REV. 152 (1969).

[124] *Id.* at 155.

[125] *Id.* at 156. (Emphasis supplied, citations omitted.)

both, as Schar says: (1) merely "minor"; and (2) a result of the use of non-population factors, such as "political subdivision, natural, or historical boundary lines."

Therefore, *Aquino III* must not be treated as a canonical decision that will unavoidably grant *carte blanche* to lawmakers to pursue reapportionment so long as they are not made with grave abuse of discretion. Instead, *Aquino III* must be viewed in its proper context: it was decided under a factual milieu showing that the province's total population is equal to or more than the number of legislative districts multiplied by 250,000, indicating that the 250,000-population benchmark was considered in the final analysis.

Thus, *Aquino III* must not be liberally applied in future reapportionments within a province that are: (1) not accompanied by a population increase within that province; or (2) even if accompanied by a population increase, the total population, if divided by 250,000, does not result in a number greater than that of the existing number of legislative districts within that province. Instead, courts must employ a stricter standard in determining if the reapportionment is accompanied by good faith, in compliance with the "*as nearly as may be*" standard. This, in turn, is concretely met when any resulting population disparity between or among the legislative districts resulting from the apportionment is: (1) merely minor; and (2) a result of the use of acceptable non-population factors, such as "political subdivision, natural, or historical boundary lines."

As to the "merely minor" standard, it is reasonable for the courts to apply this standard on a case-to-case basis, where the totality of the circumstances will be considered as to whether a particular disparity can be considered "minor" under the facts.

Lastly, as to the "use of acceptable non-population factors," this standard is met if the reapportionment results in, "as far as practicable, contiguous, compact, and adjacent territory"—an existing standard under Article VI, Section 5(3) of the 1987 Constitution, and which already subsumes the "commonality of interests" and "ease of access" tests espoused in *Bagabuyo*. However, since stricter scrutiny is required under the scenario contemplated (i.e., in future reapportionments that *do not* comply with the 250,000-population benchmark), it is not sufficient that the non-population factors considered in the reapportionment are at least mentioned in the congressional deliberations on the reapportionment bills that eventually become reapportionment laws. Courts must have the opportunity to test the veracity of these factors, which must be subjected to the applicable rules on evidence.

V. CONCLUSION

Aquino III will have a lasting legacy on future cases where political boundaries and the people's representation in Congress are subjected to further changes through reapportionment laws. This Note attempted to dissect *Aquino III*, to distill its essential doctrine, to identify its merits, and to call out its shortcomings, so as to put *Aquino III* in the proper context and to prevent blind adherence to its supposed doctrinal teachings when future reapportionment laws are again constitutionally challenged in courts.

In some ways, *Aquino III* paved the way for recognizing the principle of *proportional* and *quality* representation in reapportionment of legislative districts, and rightly so, for the constitutional text and intent on reapportionment, as well as its accompanying jurisprudential track record, show that the Philippine legal system has never adopted the "one person, one vote" principle.

But *Aquino III* decision may as well be, to borrow Justice Carpio's words in his dissenting opinion, a harbinger for a wave of malapportionments.[126] This would be true if its doctrine is misapplied by legislators emboldened to pursue future reapportionments without due regard to the population and territory requirements under the Constitution—requirements which *Aquino III* appears to have sloppily set aside instead of subjecting to a more nuanced discussion, which would have given more clarity to the already convoluted province of legislative apportionment.

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[126] *Aquino*, 617 SCRA 623, 670 (Carpio, *J.*, dissenting).