EN BANC

G.R. No. 257610 ***(Glen Quintos Albano, petitioner vs. Commission on Elections, respondent).***

UDK 17230 ***(Catalina G. Leonen-Pizarro, petitioner vs. Commission on Elections, respondent).***

Promulgated: January 24, 2023

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CONCURRING OPINION

GESMUNDO, *C.J.*:

I concur with the *ponencia* in granting the petitions and declaring unconstitutional the phrase "*person who has lost his bid for elective office in the immediately preceding election*" in Section 8 of the Party-List System Act or Republic Act (*R.A.*) No. 7941,[1] and its counterpart phrases in COMELEC Resolution No. 10717.

I share my ruminations to: (*a*) deepen the discussion as regards the **constitutionally enshrined qualifications** for congressional positions; and (*b*) stress that the **rational basis test** is the proper test to examine the constitutionality of the assailed provisions.

For context, the assailed provision under R.A. No. 7941 prohibits *"a person who has lost his bid for an elective office in the immediately preceding election"* from becoming a party-list nominee, *viz.*:

> **Section 8.** *Nomination of Party-List Representatives.* Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.
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> A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall **not include any candidate for any elective office or a person who has lost**

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[1] Entitled "AN ACT PROVIDING FOR THE ELECTION OF PARTY-LIST REPRESENTATIVES THROUGH THE PARTY-LIST SYSTEM, AND APPROPRIATING FUNDS THEREFOR." Approved: March 3, 1995.

> **his bid for an elective office in the immediately preceding election.** No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned. (Emphasis supplied)

In affirming the legislative power to provide additional qualifications for party-list representatives, the *ponencia* cites as authority Article VI, Section 5 of the 1987 Constitution, which pertinently provides thus: "those who, ***as provided by law***, shall be elected through a party-list system[.]" The *ponencia* concludes that Congress was explicitly delegated by the Constitution to determine the mechanics of the party-list system, and with it, the qualification of party-list representatives and the conduct for their nominations.[2] The *ponencia* likewise distinguishes between the ruling in the instant case and that in *Social Justice Society v. Dangerous Drugs Board*[3] (*Social Justice Society*), *viz.*:

> Markedly, the core issue in *Social Justice Society* pertained to the addition of constitutional qualifications, which all senatorial candidates must comply. In contrast, the issue in the instant case revolves around who shall be nominated as *party-list representatives*, to which Congress may expressly provide for via legislation. x x x
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> It again bears emphasis that the phrase "as provided by law" under Section 5(1), Article VI of the 1987 Constitution enables Congress to develop legislation on how party-list representatives are elected.[4]

Nevertheless, I want to expound on the discussion regarding the constitutionally enshrined qualifications for congressional positions.

Philosophical underpinnings of the exclusivity of constitutionally-prescribed qualifications under U.S. Law

In the 2008 case of *Social Justice Society*, the Court declared as unconstitutional the statutory provision requiring candidates for public office to undergo mandatory drug-testing, briefly stating that, as regards Senators, the provision "enlarges the qualification requirements enumerated" in the

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2 *Ponencia*, pp. 8-9.
3 591 Phil. 393 (2008) [Per J. Velasco, Jr., En Banc].
4 *Ponencia*, p. 11.

Constitution.[5] It found well-taken Senator Pimentel's argument that "Congress cannot validly amend or otherwise modify [the] qualification standards" for Senators under Article VI, Section 3 of the Constitution. The Court effectively held therein that the qualifications under the Constitution are exclusive.

This runs parallel with the school of thought followed in the United States, from which our constitutional system is patterned.[6] In the 1995 case of *U.S. Term Limits, Inc. v. Thornton*,[7] the U.S. Supreme Court held that "the constitutional qualifications for congressional service are 'fixed,' at least in the sense that they may not be supplemented by Congress." It added that "the Framers intended the Constitution to be the exclusive source of qualifications for Members of Congress, and that the Framers thereby 'divested' States of any power to add qualifications."[8]

Indeed, Alexander Hamilton wrote in the *Federalist Papers* that the "qualifications of the persons who may choose or be chosen" "are defined and fixed in the Constitution, and are unalterable by the legislature."[9] James Madison similarly argued for very minimal qualifications for Congress.[10] He stated that the "qualifications of electors and elected are fundamental articles" in a republican government and should be "fixed in the Constitution" to prevent infringement of the free choice of people to select who will represent them.[11] In *Powell v. McCormark*,[12] the U.S. Supreme Court concluded, after examining the historical context (*i.e.*, pre-convention or English and colonial precedents, as well as the convention debates), thus: "the Constitution leaves the House **without authority** to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly

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5 *Social Justice Society v. Dangerous Drugs Board*, supra, at 406-407.

6 See *Arnault v. Nazareno*, 87 Phil. 29 (1950) [Per J. Ozaeta].

7 514 U.S. 779 (1995).

8 Id.

9 *Alexander Hamilton*, The Federalist Papers No. 60 (*Concerning the Power of Congress to Regulate the Election of Members*), February 26, 1988.

10 *See* Congressional Research Service, Qualifications of Members of Congress, January 15, 2015.

11 *See* 2 Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, available at <https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-2>:
"Mr 〈Madison〉 was opposed to the Section as vesting an improper & dangerous power in the Legislature. **The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution.** If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorised to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction."

12 395 U.S. 486 (1969).

prescribed in the Constitution."[13] To be clear, these foreign cases and principles are "not relied upon as precedents, but as guides of interpretation."[14]

Consistent with the above-discussed school of thought embodied in U.S. jurisprudence, the Court in *Social Justice Society* struck down, for being unconstitutional, a statutory provision that seemingly added a qualification for one to run as senator. It was concluded, thus:

> It ought to be made abundantly clear ... that the unconstitutionality of Sec. 36(g) of RA 9165 is rooted on its having infringed the constitutional provision defining the qualification or eligibility requirements for one aspiring to run for and serve as senator.[15]

It bears acknowledging, however, that Philippine law may not have completely subscribed to this school of thought.

Qualifications under the Philippine context

In the Philippine context, the 1987 Constitution specifies the qualifications for national elective officials as well as members of constitutional commissions and offices. As regards the members of the House of Representatives, Article VI, Section 6[16] of the Constitution enumerates the eligibility requirements that apply to both types of its members - *district* and *party-list* representatives. On top of these eligibility requirements (*i.e.*, age, residence, literacy, etc.), the Constitution in its various provisions also specifies disqualifications (or negative qualifications), such as term limits, and disqualification due to impeachment, among others.

However, in contrast to the American constitutional framework, and as the *ponencia* correctly observed, Article VI, Section 5 of the 1987 Constitution authorizes the legislature to add to the constitutionally prescribed qualifications as regards party-list representatives, which it refers to as "those who, **as provided by law**, shall be elected through a party-list system[.]" Such language means that, in the *ponencia*'s words, "much room is accorded to

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13 Id.

14 *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485, 519-520 (2005) [Per J. Tinga, En Banc].

15 *Social Justice Society v. Dangerous Drugs Board*, supra note 3, at 408.

16 The provision states that "SECTION 6. No person shall be a Member of the House of Representatives unless he is ***[a]*** a natural-born citizen of the Philippines and, ***[b]*** on the day of the election, is at least twenty-five years of age, ***[c]*** able to read and write, and, ***[d]*** except the party-list representatives, a registered voter in the district in which he shall be elected, and ***[e]*** a resident thereof for a period of not less than one year immediately preceding the day of the election." (Underscoring supplied)

Congress in determining *who* shall be elected as party-list representatives."[17] Moreover, even under the previous regime, the 1973 Constitution allowed other qualifications of the then sectoral representatives to be "provided by law."[18]

On the statutory plane, additional qualifications for national elective positions have been implemented. For one, the Omnibus Election Code (*OEC*) provides disqualifications for all candidates under Sections 12 and 68,[19] as shown below:

> Section 12. *Disqualifications.* – Any person who has been declared by competent authority **insane or incompetent**, or has been **sentenced by final judgment** for **subversion, insurrection, rebellion** or for **any offense for which he has been sentenced to a penalty of more than eighteen months** or for a **crime involving moral turpitude**, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty[.]
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> Section 68. *Disqualifications.* – Any candidate who, in an action or protest in which he is a party is **declared by final decision of a competent court guilty of**, or **found by the Commission** of having (*a*) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (*b*) committed acts of terrorism to enhance his candidacy; (*c*) spent in his election campaign an amount in excess of that allowed by this Code; (*d*) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (*e*) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a **permanent resident of or an immigrant to a foreign country** shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws. (Emphases and underscoring supplied)

Moreover, the assailed provision in this case, Section 8 of R.A. No. 7941, also adds a statutory disqualification specific to party-list representatives (*i.e.,* lost the bid for an elective post in the last election).

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17 *Ponencia*, p. 11.

18 Article VIII, Section 4, 2nd paragraph of the 1973 Constitution states that "a sectoral representative shall be a natural-born citizen, able to read and write, and shall have such other qualifications as may be provided by law." (Underscoring supplied)

19 Note, however, in *Javier v. COMELEC*, 777 Phil. 700, 727 (2016) [Per J. Brion, En Banc], it was held that "R.A. No. 7890 expressly repealed Section 261 d(1) and (2) of Batas Pambansa Blg. 881, rendering these provisions inoperative. The effect of this repeal is to remove Section 261(d) from among those listed as ground for disqualification under Section 68 of the Omnibus Election Code."

Section 57(a) of the Revised Rules on Administrative Cases in the Civil Service provides that the penalty of dismissal from service for serious administrative charges carries with it "***perpetual disqualification from holding public office.***"[20] Previously, Philippine case law subscribed to the condonation doctrine, which was sourced from U.S. law, such that an elective official cannot be removed from office for a misconduct committed during a prior term. Recently, the Court categorically abandoned[21] such doctrine not only for lack of legal basis but also for being rendered obsolete by the public accountability standard under the prevailing framework of the 1987 Constitution. Hence, being found guilty of a serious administrative offense committed during a prior term also gives rise to one's disqualification from being elected.

Based on the foregoing, the legal framework in the Philippines does not seem to strictly adhere to the philosophy of exclusive constitutional qualifications, as espoused by the framers of the U.S. Constitution and established in U.S. jurisprudence. Indeed, our framework has long departed from its foreign counterpart.

Guideline as regards constitutionality of additional qualifications under statutes

In my humble view, there is considerable value in retaining the exclusivity of the constitutionally prescribed qualifications. Indeed, limiting the qualifications of candidates running for congressional posts to those explicitly provided under the Constitution is a way of preventing, in the words of James Madison, a republic from being converted into "an aristocracy or oligarchy" "by limiting the number [of persons] capable of being elected."[22]

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[20] The relevant portions of the provision read: "Section 57. *Administrative Disabilities Inherent in Certain Penalties.* The following rules shall govern the imposition of accessory penalties: (*a*) The penalty of dismissal shall carry with it x x x perpetual disqualification from holding public office[.]" The Revised Rules was promulgated pursuant to the constitutional power of the Civil Service Commission.

[21] *Ombudsman Carpio Morales v. Court of Appeals*, 772 Phil. 672, 775 (2015) [Per J. Perlas-Bernabe, En Banc].

[22] *See* 2 Farrand, RECORDS OF THE FEDERAL CONVENTION OF 1787, available at <https://oll.libertyfund.org/title/farrand-the-records-of-the-federal-convention-of-1787-vol-2>:
"Mr 〈Madison〉 was opposed to the Section as vesting an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. In all cases where the representatives of the people will have a personal interest distinct from that of their Constituents, there was the same reason for being jealous of them, as there was for relying on them with full confidence, when they had a common interest. This was one of the former cases. It was as improper as to allow them to fix their own wages, or their own privileges. It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partizans of a weaker faction."

In line with the principles of a republican government, "no qualification of wealth, of birth, of religious faith, or of civil profession"[23] may be added by Congress to the list of constitutional qualifications.

Further, there are disqualifications provided under our statutes that correspond to the inability of a candidate to eventually fulfill his duties should such candidate be elected, such as those provided in Section 12 of the OEC (*i.e.*, insane or incompetent, or sentenced by final judgment for the listed crimes against public order, or for an offense penalized by more than eighteen months, or for a crime involving moral turpitude). There are also disqualifications that further strengthen the disciplinary and public accountability framework under the Article XI of the Constitution; particularly, disqualification from holding public office after being found administratively liable for serious misconduct that warrants dismissal from service.

On these scores, it is my view that **any additional qualification** for congressional posts must **find anchor on a constitutional principle, or** at the very least, **have bearing on the fitness of the candidate to serve the electorate**. This guiding principle will assist the Court in ascertaining the constitutionality of any prescribed qualification in addition to those already listed under the Constitution. Otherwise, if the additional qualification to be provided by law is completely irrelevant to the fitness of the candidate to discharge his/her function under the Constitution, then such additional qualification would be unconstitutional.

It is my hope that the disquisition above will guide the Court in resolving cases involving the validity of qualifications added by statute to those constitutionally prescribed for congressional positions.

Rational basis test; non-fundamental right

As regards the applicable test to determine the constitutionality of the assailed provision, the *ponencia* correctly applies the rational basis test because, as accurately pointed out by Justices Alfredo Benjamin S. Caguioa and Mario V. Lopez during the deliberations, there is no constitutionally

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[23] Federalist Papers No. 57, *The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation*, February 19, 1788, as cited in Congressional Research Service, Qualifications of Members of Congress, January 15, 2015.

protected right to seek public office.[24] In the words of the *ponencia,* there is "no fundamental right to run for public office."[25]

To expound, in the recent case of *Marquez v. COMELEC*,[26] the Court reiterated the jurisprudential pronouncement that "[w]hile Section 26, Article II of the 1987 Constitution provides that '[t]he State shall guarantee equal access to opportunities for public service,' it is equally **undisputed that there is no constitutional right to run for public office**. It is, rather, a privilege subject to limitations imposed by law."[27] The same ruling has been previously made in *Pamatong v. COMELEC*,[28] where the Court categorically rejected the claim that there is a constitutional right to run for or hold public office, by stating that "**[t]here is none.**" In its Resolution in *Quinto v. COMELEC*,[29] the Court overturned its previous finding that the right to run for public office is linked to the fundamental rights of expression and association, to wit:

> [O]ur assailed Decision's submission that the right to run for public office is "inextricably linked" with two fundamental freedoms — those of expression and association — lies on barren ground. American case law has in fact **never recognized a fundamental right to express one's political views through candidacy, as to invoke a rigorous standard of review.** *Bart v. Telford* pointedly stated that "[t]he First Amendment does not in terms confer a right to run for public office, and this court has held that it does not do so by implication either." Thus, one's interest in seeking office, **by itself,** is **not** entitled to constitutional protection. Moreover, one cannot bring one's action under the rubric of freedom of association, absent any allegation that, by running for an elective position, one is advancing the political ideas of a particular set of voters.[30] (Emphases in the original; citations omitted)

To emphasize, the Court in *Quinto* firmly pronounced that the supposed link between the right to run for public office, on one hand, and the fundamental rights of expression and association, on the other, "*lies on barren ground.*" A careful reading of the Resolution shows that the Court **explicitly**

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24 See Justice Caguioa's Concurring Opinion, p. 6.

25 *Ponencia*, p. 15.

26 861 Phil. 667 (2019) [Per J. Jardeleza, En Banc].

27 Id. at 686.

28 470 Phil. 711, 715-716 (2004) [Per J. Tinga, En Banc]. The Court held thus: "[i]mplicit in the petitioner's invocation of the constitutional provision ensuring "equal access to opportunities for public office" is the claim that there is a constitutional right to run for or hold public office and, particularly in his case, to seek the presidency. There is none. What is recognized is merely a privilege subject to limitations imposed by law. Section 26, Article II of the Constitution neither bestows such a right nor elevates the privilege to the level of an enforceable right. There is nothing in the plain language of the provision which suggests such a thrust or justifies an interpretation of the sort." (Underscoring supplied)

29 627 Phil. 193 (2010) [Per C.J. Puno, En Banc].

30 Id. at 253-254.

declared the non-fundamental character of the **right to seek elective office**, thus:

> Prescinding from these premises, it is crystal clear that the provisions challenged in the case at bar, are not violative of the equal protection clause. The deemed-resigned provisions substantially serve governmental interests (*i.e.*, (i) efficient civil service faithful to the government and the people rather than to party; (ii) avoidance of the appearance of "political justice" as to policy; (iii) avoidance of the danger of a powerful political machine; and (iv) ensuring that employees achieve advancement on their merits and that they be free from both coercion and the prospect of favor from political activity). These are interests that are important enough to outweigh the **non-fundamental right** of appointive officials and employees **to seek elective office**.[31] (Emphases supplied)

Indeed, while the right to run for public office has been recognized in this jurisdiction, such right does not rise to the level of a fundamental right as to trigger the application of the strict scrutiny test.

As Justice Caguioa aptly points out, there is no precise definition or enumeration of fundamental rights.[32] Indeed, while there is little debate that those guaranteed in the Bill of Rights, especially those mirrored in the Universal Declaration of Human Rights, are of fundamental nature,[33] other rights that are not enumerated in the Constitution have also been declared to be of such stature.[34] On this point, I echo Justice Francis Jardaleza's call for the Court to "endeavor to be deliberate and open about its choice of approach in fundamental rights cases."[35] To my mind, while there are no clear guidelines yet in Our jurisdiction on the methods of identifying implied fundamental rights, the Court should remain cautious and guard itself against loosely characterizing certain rights as fundamental in character. For this reason, I applaud the *ponencia* for making abundantly clear that there is no constitutional and fundamental right to run for public office.

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31 Id. at 254.

32 See Justice Caguioa's Concurring Opinion, p. 6.

33 See *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1106 (2017) [Per J. Perlas-Bernabe, En Banc]. ("The right to travel is recognized and guaranteed as a fundamental right under Section 6, Article III of the 1987 Constitution"); see also *Kwong v. Presidential Commission on Good Government*, 240 Phil. 219, 229 (1987) [Per J. Melencio-Herrera, En Banc]. ("The right to travel and to freedom of movement is a fundamental right guaranteed by the 1987 Constitution and the Universal Declaration of Human Right[.]"); see *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 406 (2014) [Per J. Abad, En Banc]. ("Affecting as it does our fundamental rights to expression, it therefore is clearly unconstitutional").

34 See Justice Francis Jardaleza's Separate Opinion in *Versoza v. People*, 861 Phil. 230 (2019) (Resolution), [Per Curiam, En Banc].

35 Id. at 355.

In light of the non-fundamental nature of the right to seek public office, it is my view that the *ponencia* correctly used the rational basis test in determining the constitutionality of the assailed provisions through the prism of the equal protection clause.

Applying the rational basis test; equal protection clause

Pertinently, the rational basis test requires only that there be a legitimate government interest and that there is a reasonable connection between it and the means employed to achieve it.[36]

The government's interest in enacting R.A. No. 7941[37] is discernible from its Declaration of Policy, to wit:

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

Unquestionably, there is a legitimate government interest in creating a party-list system that enables citizens from the "marginalized and underrepresented" to be legislators despite them not having "well-defined political constituencies." The party-list system is institutionalized precisely to benefit those who may not win in other elective posts due to their financial limitations and ostensibly marginal position in society, even though they are willing and well-equipped to contribute in the crafting of meaningful legislation. The noble purpose of the law is precisely to "enhance the chances" of these citizens to win legislative seats.

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[36] *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals*, G.R. No. 194461, January 7, 2020, 928 SCRA 110, 137 [Per J. Leonen, En Banc].

[37] Otherwise known as the Party-List System Act. Approved: March 3, 1995.

This brings us to the question whether there is a *reasonable connection* between the stated government purpose and the means employed to achieve it. In this case, the means employed is the statutorily-imposed disqualification of "a person who has lost his bid for an elective office in the immediately preceding election" from becoming a party-list nominee.[38]

In this case, the rationale given to justify the assailed prohibition is "to limit, discourage, and disallow the abuse of the party-list system as a fallback measure for traditional politicians to serve in an elective post."[39]

To my mind, no *reasonable connection* was established between the purpose of the statute and the disqualification imposed on those who lost in the last elections. The supposed "abuse of the party-list system" is not squarely addressed by prohibiting those who lost in the previous election from becoming a party-list nominee. If at all, it even puts them at a disadvantage and perpetuates the non-inclusivity sought to be avoided by the party-list system. Discriminating against those who lost in the immediately preceding elections *vis-à-vis* those who either (*a*) have not participated in any election or (*b*) have won in the previous elections for a party-list seat or for a different elective office,[40] does not serve to fulfill the stated legitimate government interest.

Contrary to the expressed purpose of the statute, the "chances" of those candidates who may not have the political machinery to win the elections but are competent to craft, scrutinize, and pass impactful legislation, are not "enhanced." Indeed, the exclusion of such persons from becoming nominees does not serve to advance the State's policy to give representation to the "marginalized and underrepresented" and "enhance their chances" to win a legislative seat.

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38 The provision reads thus:

Section 8. *Nomination of Party-List Representatives.* Each registered party, organization or coalition shall submit to the COMELEC not later than forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.

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

39 *Ponencia,* p. 18.

40 Id. at 19-20.

Bearing in mind the inclusivity principle as the rationale for the introduction of the party-list system in our government structure, I emphatically concur with the *ponencia* in finding no rational basis for the "classification treating losing candidates in the immediately preceding election differently from" candidates who either won or did not participate in such election.[41]

All told, I concur with the *ponencia* in declaring that the assailed provisions that disqualify "*a person who has lost his bid for an elective office in the immediately preceding election*" from becoming a party-list nominee, as constitutionally infirm.

WHEREFORE, I vote to **GRANT** the petitions.

ALEXANDER G. GESMUNDO
Chief Justice

[41] Id. at 19.