EN BANC

G.R. No. 257610 – GLEN QUINTOS ALBANO, Petitioner, **v. COMMISSION ON ELECTIONS** Respondent; and

UDK 17230 – CATALINA G. LEONEN-PIZARRO, Petitioner, **v. COMMISSION ON ELECTIONS,** Respondent.

Promulgated:

January 24, 2023

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DISSENTING OPINION

LEONEN, *J.*:

I dissent.

I vote to sustain the constitutionality of the phrase "a person who has lost his bid for elective office in the immediately preceding election" stated in Republic Act No. 7941, also known as the "Party-List System Act", Section 8, 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.
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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 his bid for 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)

Consequently, respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in providing for the same qualification when it issued Commission on Elections Resolution No. 10717, or the "Rules And Regulations Governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations participating under the Party-List System of Representation; and (3) Filing of

Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections", Sections 5(d) and 10, thus:

> **SECTION 5.** ***Contents and Form of the Certificate of Nomination.*** – The Certificate of Nomination of a PP, sectoral party, organization or Coalition shall contain the following:
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> a. Name of the PP, sectoral party, organization or Coalition;
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> b. Name of the Chairperson/President/Secretary-General of the nominating PP, sectoral party, organization or Coalition;
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> c. Name and Address of all the nominees;
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> d. A certification that the nominees have all the qualifications and none of the disqualifications provided by law and that *they are not candidates for any elective office or have lost in their bid for an elective office in the May 13, 2019 National and Local Elections;*
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> e. A documentary stamp in the amount of Thirty Pesos (Php30.00);
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> f. The signature and attestation under oath, either by the Chairperson, President, Secretary-General or any other duly authorized officer of the nominating PP, sectoral party, organization or coalition.
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> . . . .
>
> **SECTION 10.** ***Nomination of Party-List Representatives.*** – 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 May 13, 2019 National and Local Elections.* No change of names or alterations of the order of nominees shall be allowed after the same shall have been submitted to the Commission except in cases where the nominee dies, becomes incapacitated, or there is valid withdrawal and substitution of nominees as provided in the succeeding sections, in which case, the name of the substitute nominee shall be placed last in the list. (Emphasis supplied)

I

Article VIII, Section 5(1) of the Constitution states that this Court has "original jurisdiction over . . . petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*." Jurisdiction, however, must be distinguished from justiciability, and it is justiciability that will ultimately determine whether this Court ought to take cognizance of a case assailing the constitutionality of the statute, as explained in *Lagman* v. *Ochoa, Jr.*:[1]

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[1] 888 Phil. 434 (2020) [Per J. Leonen, *En Banc*].

Jurisdiction is a court's competence "to hear, try and decide a case." It is granted by law and requires courts to examine the remedies sought and issues raised by the parties, the subject matter of the controversy, and the processes employed by the parties in relation to laws granting competence. Once this Court determines that the procedural vehicle employed by the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it.

Jurisdiction alone will not require this Court to pass upon the constitutionality of a statute. As held in *Angara v. Electoral Commission*, the power of judicial review remains subject to this Court's discretion in resolving actual controversies:

> [W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an *actual controversy* the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. *Even then, this power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented.* Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation. (Emphasis supplied)

Thus, as a rule, this Court only passes upon the constitutionality of a statute if it is "directly and necessarily involved in [a] justiciable controversy and is essential to the protection of the rights of the parties concerned."

Courts decide the constitutionality of a law or executive act only when the following essential requisites are present: first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself. These requisites all relate to the justiciability of the issues raised by the parties. If no justiciable controversy is found, this Court may deny the petition as a matter of discretion.

This justiciability requirement is "intertwined with the principle of separation of powers." It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.

. . . .

Again, **jurisdiction in itself will not automatically merit a ruling on the constitutionality of the assailed provisions. Invocations of "transcendental importance" will not affect this Court's competence to decide the issues before it, and raising this Court's competence to decide issues of constitutionality will not necessarily require it to do so.**

> **Rather, this Court's exercise of its power of judicial review will depend on whether the requirements for invoking such power have been adequately met.**[2] (Emphasis supplied, citations omitted)

The requirement of justiciability is explicitly provided in the second paragraph of Article VIII, Section 1 of the Constitution:

> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

For a proper exercise of judicial review, the Court must find the following essential requisites of justiciability to be present: "first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself."[3]

An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic[.]"[4] A case ceases to present a justiciable controversy when it has become moot and academic due to supervening events:

> A case is moot and academic if it "ceases to present a justiciable controversy because of supervening events so that a declaration thereon would be of no practical use or value." When a case is moot and academic, this court generally declines jurisdiction over it.
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> There are recognized exceptions to this rule. This court has taken cognizance of moot and academic cases when:
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> > (1) there was a grave violation of the Constitution; (2) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case was capable of repetition yet evading review. (Citation omitted)
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> We may no longer act on petitioner's prayer that his name be included in the certified list of candidates and be printed on the ballots as a candidate for Member of the Sangguniang Panlungsod. Petitioner filed with this court his Petition for *Certiorari* on March 15, 2013, 39 days after respondent began printing the ballots on February 4, 2013. Also, the May

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2 *Id.* at 469–471, 472.

3 *Id.* at 470-471.

4 *Information Technology Foundation of the Phils. v. Commission on Elections*, 499 Phil. 281, 304 (2005) [Per J. Panganiban, *En Banc*].

> 13, 2013 elections had been concluded, with the winners already proclaimed.[5] (Citations omitted)

Furthermore, a party who impugns the constitutionality of a statute must have legal standing or *locus standi*:[6]

> Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
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> The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government." In addition, economic reasons justify the rule. Thus:
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> > A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.
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> Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[7] (Citations omitted)

A party will have no legal standing "[u]nless one's constitutional rights are affected by the operation of a statute or governmental act."[8]

Here, the petitioners directly filed before this Court consolidated petitions for *certiorari* and prohibition seeking to nullify the phrase "*a person who has lost his bid for elective office in the immediately preceding election*"

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5 *Timbol v. Commission on Elections*, 754 Phil. 578, 584–585 (2015) [Per J. Leonen, *En Banc*].

6 *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205 (2018) [Per J. Leonen, *En Banc*].

7 *Id.* at 249–250.

8 *Lagman* v. *Ochoa, Jr.*, 888 Phil. 434, 476 (2020) [Per J. Leonen, *En Banc*].

in Section 8 of Republic Act No. 7941 and Sections 5(d) and 10 of Commission on Elections Resolution No. 10717.

In G.R. No. 257610, petitioner Glenn Quintos Albano alleges to have previously ran and lost in his bid as city councilor of Taguig City in the May 13, 2019 election, and to being the second nominee of party-list Talino at Galing ng Pinoy for the May 9, 2022 elections.[9] He claims "actual threatened injury" on his right to be a nominee due to the qualification that a party-list nominee must not have lost in his or her bid for an elective office in the immediately preceding election.[10] In UDK 17230, petitioner Catalina G. Leonen-Pizarro also claims that her right to be nominated as party-list representative is threatened by the same provision, since she lost in her bid as mayor of Supiden, La Union in the May 13, 2019 elections, and she is the first party-list nominee of party-list Arts Business and Science Professionals.

There is no actual controversy here, as this case is now moot and academic. The questioned Commission on Elections Resolution No. 10717 pertains to the Rules and Regulations governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations Participating under The Party-List System of Representation; and (3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in connection with the May 9, 2022 National and Local Elections. Since the May 9, 2022 elections had been concluded, and the party-list winners and its nominees had been proclaimed, petitioners can no longer claim to be affected by the provision as nominees of their party-lists.

Besides, petitioners do not have legal standing to file the Petitions. They anchor their right to assail the constitutionality of the law on their "threatened" right to become nominees of their party-lists or the "actual threatened injury" they will sustain if they are not nominated. However, petitioners did not sufficiently establish the direct injury they sustained, or will sustain, when they were not nominated by their party-lists. Even if they became a party-list nominee, it does not mean that their party will win, and they will become party-list representatives. Their alleged right is therefore speculative or conditional. Moreso when there is no constitutional right to run for or hold public office.[11]

Furthermore, petitioners justify their direct resort to this Court and their legal standing on the allegation of "transcendental importance" on the issue involved.[12] However, mere invocation of "transcendental importance", without more, should not warrant consideration of the Court:

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9 *Rollo* (G.R. No. 257610), p. 9.
10 *Id.* at 10.
11 *Pamatong v. Commission on Elections,* 470 Phil. 711 (2004) [Per J. Tinga, *En Banc*].
12 *Rollo* (UDK 17230), p. 7.; *Rollo* (G. R. No. 257610), p. 8.

Petitioners try to justify its direct recourse to this court by arguing that the issues raised in their petitions are of "transcendental importance."

To determine if an issue is of transcendental importance, this court is guided by the parameters set forth in *Francisco v. House of Representatives*:

> There being no doctrinal definition of transcendental importance, the following instructive determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.

A mere allegation of transcendental importance will not suffice to convince this court to take cognizance of a case. Petitioner SJS, in its memorandum, point out that since this court had taken cognizance of G.R. No. 156052, there is no more need to present other arguments to convince this court that the matter at hand is of transcendental importance.

Petitioners are mistaken. **Whether an issue is of transcendental importance is a matter determined by this court on a case-to-case basis. An allegation of transcendental importance must be supported by the proper allegations.**

Petitioners, however, merely stated:

> This Honorable Court, again in the prequel case of *Social Justice Society, et al. v. Atienza,* G.R. No. 156052, 13 February 2008, made the following statements —
>
> The importance of settling this controversy as fully and as expeditiously as possible was emphasized, considering its impact on public interest. Thus, we will also dispose of this issue here. The parties were after all given ample opportunity to present and argue their respective positions. By so doing, we will do away with the delays concomitant with litigation and completely adjudicate an issue which will most likely reach us anyway as the final arbiter of all legal disputes.
>
> The foregoing was an undeniable recognition by this Honorable Court of the importance of this case as it mentioned "its impact on public interest" that justified its taking cognizance of the original petition because the issue would most likely reach it anyway "as the final arbiter of all legal disputes." Thus, petitioners need not stretch its argumentation to convince this Honorable Court about the transcendental importance of this case.

For this court to brush aside the rules of procedure in view of the "transcendental importance" of a case, petitioners must be able to show that "the imminence and clarity of the threat to fundamental

> **constitutional rights outweigh the necessity for prudence." This they failed to do.**[13] (Emphasis supplied, citations omitted)

Thus, in *Provincial Bus Operators Association of the Philippines:*

> This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.[14]

For failure to show that there still exists an actual controversy or that petitioners have legal standing, the present Petitions should have been dismissed outright.

However, even if we rule on the substantive arguments, the Petitions should still be denied.

II

The Constitution mandates that no person shall "be denied the equal protection of the laws." The right to equal protection of the laws enshrined in our Constitution requires that all persons, under similar circumstances and conditions, shall be treated alike:[15]

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exists for making a distinction between those who fall within such class and those who do not.[16] (Emphasis in the original)

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[13] J. Leonen, Concurring and Dissenting Opinion in *Social Justice Society Officers v. Lim*, 748 Phil. 25, 155–156 (2014) [Per J. Perez, *En Banc*].

[14] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 257 (2018) [Per J. Leonen, *En Banc*].

[15] *Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 113, (2020) [Per J. Leonen, *En Banc*] *citing Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, *En Banc*].

[16] *Ichong v. Hernandez*, 101 Phil. 1155, 1164 (1957) [Per J. Labrador, *En Banc*].

The equal protection of the laws, however, do not prohibit legal classification, provided there is reasonable classification: (1) based on substantial distinctions which make for real differences; (2) germane to the purpose of the law; (3) not limited to existing conditions only; and (4) applicable equally to each member of the same class, thus:

> The guaranty of equal protection of the laws is not a guaranty of equality in the application of the laws upon all citizens of the state. It is not, therefore, a requirement, in order to avoid the constitutional prohibition against inequality, that every man, woman and child should be affected alike by a statute. Equality of operation of statutes does not mean indiscriminate operation on persons merely as such, but on persons according to the circumstances surrounding them. It guarantees equality, not identity of rights. The Constitution does not require that things which are different in fact be treated in law as though they were the same. The equal protection clause does not forbid discrimination as to things that are different. It does not prohibit legislation which is limited either in the object to which it is directed or by the territory within which it is to operate.
>
> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. **All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.**
>
> In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. **Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.**[17] (Emphasis supplied, citations omitted)

The legislature is granted wide leeway in providing classification, as long as it is not unreasonable and unfounded:

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[17] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 86–88 (1974) [Per J. Zaldivar, *En Banc*].

> **Some may disagree with the wisdom of the legislature's classification. To this we answer, that this is the prerogative of the law-making power.** Since the Court finds that the classification is actual, real and reasonable, and all persons of one class are treated alike, and as it cannot be said that the classification is patently unreasonable and unfounded, it is in duty bound to declare that the legislature acted within its legitimate prerogative and it cannot declare that the act transcends the limit of equal protection established by the Constitution.
>
> **Broadly speaking, the power of the legislature to make distinctions and classifications among persons is not curtailed or denied by the equal protection of the laws clause. The legislative power admits of a wide scope of discretion,** and a law can be violative of the constitutional limitation only when the classification is without reasonable basis.[18] (Emphases supplied)

In *Dumlao v. Commission on Elections*,[19] this Court found as not violative of the equal protection clause the provision in the law disqualifying a 65-year old elective local official, who retired from a provincial, city or municipal office, from running for the *same* office from which he had retired, thus:

> [I]n the case of a 65-year old elective local official, who has retired from a provincial, city or municipal office, there is reason to disqualify him from running for the *same* office from which he had retired, as provided for in the challenged provision. The need for new blood assumes relevance. The tiredness of the retiree for government work is present, and what is emphatically significant is that the retired employee has already declared himself tired and unavailable for the same government work, but, which, by virtue of a change of mind, he would like to assume again. It is for the very reason that inequality will neither result from the application of the challenged provision. Just as that provision does not deny equal protection, neither does it permit such denial. Persons similarly situated are similarly treated.
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> In fine, it bears reiteration that the equal protection clause does not forbid all legal classification. What it proscribes is a classification which is arbitrary and unreasonable. That constitutional guarantee is not violated by a reasonable classification based upon substantial distinctions, where the classification is germane to the purpose of the law and applies to all those belonging to the same class. The purpose of the law is to allow the emergence of younger blood in local governments. **The classification in question being pursuant to that purpose, it cannot be considered invalid "even if at times, it may be susceptible to the objection that it is marred by theoretical inconsistencies.**[20] (Emphasis supplied, citations omitted)

In *Fariñas v. Executive Secretary*,[21] this Court held that there was no violation of the equal protection clause in Congress' repeal of a provision of

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18 *Ichong v. Hernandez*, 101 Phil. 1155, 1176–1177 (1957) [Per J. Labrador, *En Banc*].

19 184 Phil. 369 (1980) [Per J. Melencio-Herrera, *En Banc*].

20 *Id.* at 381–382.

21 463 Phil. 179 (2003) [Per J. Callejo, Sr., *En Banc*].

a law pertaining to elective officials only, because substantial distinctions exist between elective officials and appointive officials:

> Substantial distinctions clearly exist between elective officials and appointive officials. The former occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. On the other hand, appointive officials hold their office by virtue of their designation thereto by an appointing authority. Some appointive officials hold their office in a permanent capacity and are entitled to security of tenure while others serve at the pleasure of the appointing authority.
>
> Another substantial distinction between the two sets of officials is that under Section 55, Chapter 8, Title I, Subsection A. Civil Service Commission, Book V of the Administrative Code of 1987 (Executive Order No. 292), appointive officials, as officers and employees in the civil service, are strictly prohibited from engaging in any partisan political activity or take part in any election except to vote. Under the same provision, elective officials, or officers or employees holding political offices, are obviously expressly allowed to take part in political and electoral activities.
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> By repealing Section 67 but retaining Section 66 of the Omnibus Election Code, the legislators deemed it proper to treat these two classes of officials differently with respect to the effect on their tenure in the office of the filing of the certificates of candidacy for any position other than those occupied by them. **Again, it is not within the power of the Court to pass upon or look into the wisdom of this classification.**
>
> Since the classification justifying Section 14 of Rep. Act No. 9006, *i.e.*, elected officials *vis-a-vis* appointive officials, is anchored upon material and significant distinctions and all the persons belonging under the same classification are similarly treated, the equal protection clause of the Constitution is, thus, not infringed.[22] (Emphasis supplied)

Over time, three tests of judicial scrutiny were developed to determine reasonableness of classification:

> Philippine jurisprudence has developed three (3) tests of judicial scrutiny to determine the reasonableness of classifications. The **strict scrutiny test** applies when a classification either *(i)* interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or *(ii)* burdens suspect classes. The **intermediate scrutiny test** applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the **rational basis test** applies to all other subjects not covered by the first two tests.[23] (Emphasis in original, citations omitted)

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22 *Id.* at 206–208.

23 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113–1114 (2017) [Per J. Perlas-Bernabe, *En Banc*].

I have expounded on these tests in my Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*:

> 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.
>
> Intermediate review requires an important government interest. Here, it would suffice if government is able to demonstrate substantial connection between its interest and the means it employs. In accordance with *White Light*, "the availability of less restrictive measures [must have been] considered." This demands a conscientious effort at devising the least restrictive means for attaining its avowed interest. It is enough that the means employed is conceptually the least restrictive mechanism that the government may apply.
>
> Strict scrutiny applies when what is at stake are fundamental freedoms or what is involved are suspect classifications. It requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored, actually — not only conceptually — being the least restrictive means for effecting the invoked interest. Here, it does not suffice that the government contemplated on the means available to it. Rather, it must show an active effort at demonstrating the inefficacy of all possible alternatives. Here, it is required to not only explore all possible avenues but to even debunk the viability of alternatives so as to ensure that its chosen course of action is the sole effective means. To the extent practicable, this must be supported by sound data gathering mechanisms.
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> . . . .
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> The governmental interests to be protected must not only be reasonable. They must be *compelling*.[24]

In *People v. Jalosjos*,[25] this Court, applying strict scrutiny, found that election to the position of congressman is not a reasonable classification in criminal law enforcement:

> The performance of legitimate and even essential duties by public officers has never been an excuse to free a person validly in prison. The duties imposed by the "mandate of the people" are multifarious. The accused-appellant asserts that the duty to legislate ranks highest in the hierarchy of government. The accused-appellant is only one of 250 members of the House of Representatives, not to mention the 24 members of the Senate, charged with the duties of legislation. Congress continues to function well in the physical absence of one or a few of its members. Depending on the exigency of Government that has to be addressed, the President or the Supreme Court can also be deemed the highest for that particular duty. The importance of a function depends on the need for its exercise. The duty of a mother to nurse her infant is most compelling under the law of nature. A doctor with unique skills has the duty to save the lives

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[24] J. Leonen, Separate Opinion in *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1147–1148, 1159 (2017) [Per J. Perlas-Bernabe, *En Banc*].

[25] 381 Phil. 690 (2000) [Per J. Ynares-Santiago, *En Banc*].

> of those with a particular affliction. An elective governor has to serve provincial constituents. A police officer must maintain peace and order. Never has the call of a particular duty lifted a prisoner into a different classification from those others who are validly restrained by law.
>
> **A strict scrutiny of classifications is essential lest wittingly or otherwise, insidious discriminations are made in favor of or against groups or types of individuals.**
>
> The Court cannot validate badges of inequality. The necessities imposed by public welfare may justify exercise of government authority to regulate even if thereby certain groups may plausibly assert that their interests are disregarded.
>
> We, therefore, find that election to the position of Congressman is not a reasonable classification in criminal law enforcement. The functions and duties of the office are not substantial distinctions which lift him from the class of prisoners interrupted in their freedom and restricted in liberty of movement. Lawful arrest and confinement are germane to the purposes of the law and apply to all those belonging to the same class.[26] (Emphasis supplied, citations omitted)

In *Kabataan Party-List v. Commission on Elections*,[27] this Court applied the strict scrutiny test since the biometrics validation requirement in the law affects the right of suffrage, and held that the regulation passed the strict scrutiny test:

> Contrary to petitioners' assertion, the regulation passes the strict scrutiny test.
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> In terms of judicial review of statutes or ordinances, strict scrutiny refers to the standard for determining the quality and the amount of governmental interest brought to justify the regulation of fundamental freedoms. **Strict scrutiny is used today to test the validity of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.** As pointed out by petitioners, the United States Supreme Court has expanded the scope of strict scrutiny to protect **fundamental rights such as suffrage, judicial access, and interstate travel.**
>
> Applying strict scrutiny, the focus is **on the presence of compelling, rather than substantial, governmental interest** and **on the absence of less restrictive means for achieving that interest**, and the burden befalls upon the State to prove the same.
>
> In this case, respondents have shown that the biometrics validation requirement under RA 10367 advances a compelling state interest. It was precisely designed to facilitate the conduct of orderly, honest, and credible elections by containing — if not eliminating, the perennial problem of having flying voters, as well as dead and multiple registrants. According to the sponsorship speech of Senator Aquilino L. Pimentel III, the objective of the law was to cleanse the national voter registry so as to eliminate electoral

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26 *Id.* at 707–708.

27 775 Phil. 523 (2015) [Per J. Perlas-Bernabe, *En Banc*].

> fraud and ensure that the results of the elections were truly reflective of the genuine will of the people. The foregoing consideration is unquestionably a compelling state interest.
>
> Also, it was shown that the regulation is the least restrictive means for achieving the above-said interest. Section 6 of Resolution No. 9721 sets the procedure for biometrics validation, whereby the registered voter is only required to: (*a*) personally appear before the Office of the Election Officer; (*b*) present a competent evidence of identity; and (*c*) have his photo, signature, and fingerprints recorded. It is, in effect, a manner of updating one's registration for those already registered under RA 8189, or a first-time registration for new registrants. The re-registration process is amply justified by the fact that the government is adopting a novel technology like biometrics in order to address the bane of electoral fraud that has enduringly plagued the electoral exercises in this country. While registrants may be inconvenienced by waiting in long lines or by not being accommodated on certain days due to heavy volume of work, these are typical burdens of voting that are remedied by bureaucratic improvements to be implemented by the COMELEC as an administrative institution. By and large, the COMELEC has not turned a blind eye to these realities. It has tried to account for the exigencies by holding continuous registration as early as May 6, 2014 until October 31, 2015, or for over a period of 18 months. To make the validation process as convenient as possible, the COMELEC even went to the extent of setting up off-site and satellite biometrics registration in shopping malls and conducted the same on Sundays. Moreover, it deserves mentioning that RA 10367 and Resolution No. 9721 did not mandate registered voters to submit themselves to validation every time there is an election. In fact, it only required the voter to undergo the validation process one (1) time, which shall remain effective in succeeding elections, provided that he remains an active voter. To add, the failure to validate did not preclude deactivated voters from exercising their right to vote in the succeeding elections. To rectify such status, they could still apply for reactivation following the procedure laid down in Section 28 of RA 8189.
>
> That being said, the assailed regulation on the right to suffrage was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a clean, complete, permanent and updated list of voters, and was demonstrably the least restrictive means in promoting that interest.[28] (Emphasis supplied)

The strict scrutiny test has also been used when the regulation involves a "suspect class" defined as "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[29]

In *Central Bank v. Bangko Sentral ng Pilipinas*,[30] this Court applied the strict scrutiny test upon finding that the Bangko Sentral ng Pilipinas rank-and-file employees represent the politically powerless, and held that continued

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28 *Id.* at 551–555.

29 *Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals,* 868 Phil. 93, 115, (2020) [Per J. Leonen, *En Banc*].

30 487 Phil. 531 (2004) [Per J. Puno, *En Banc*].

operation and implementation of the last proviso of Article II, Section 15(c) of Republic Act No. 7653 discriminated against the said employees warranting its declaration of unconstitutionality:

> Under most circumstances, the Court will exercise judicial restraint in deciding questions of constitutionality, recognizing the broad discretion given to Congress in exercising its legislative power. Judicial scrutiny would be based on the "rational basis" test, and the legislative discretion would be given deferential treatment.
>
> *But if the challenge to the statute is premised on the denial of a fundamental right, or the perpetuation of prejudice against persons favored by the Constitution with special protection, judicial scrutiny ought to be more strict.* A weak and watered down view would call for the abdication of this Court's solemn duty to strike down any law repugnant to the Constitution and the rights it enshrines. This is true whether the actor committing the unconstitutional act is a private person or the government itself or one of its instrumentalities. Oppressive acts will be struck down regardless of the character or nature of the actor.
>
> . . . .
>
> In the case at bar, the challenged proviso operates on the basis of the salary grade or officer-employee status. *It is akin to a distinction based on economic class and status*, with the higher grades as recipients of a benefit specifically withheld from the lower grades. Officers of the BSP now receive higher compensation packages that are competitive with the industry, while the poorer, low-salaried employees are limited to the rates prescribed by the SSL. The implications are quite disturbing: BSP rank-and-file employees are paid the strictly regimented rates of the SSL while employees higher in rank — possessing higher and better education and opportunities for career advancement — are given higher compensation packages to entice them to stay. *Considering that majority, if not all, the rank-and-file employees consist of people whose status and rank in life are less and limited, especially in terms of job marketability, it is they — and not the officers — who have the real economic and financial need for the adjustment.* This is in accord with the policy of the Constitution "to free the people from poverty, provide adequate social services, extend to them a decent standard of living, and improve the quality of life for all." *Any act of Congress that runs counter to this constitutional desideratum deserves strict scrutiny by this Court before it can pass muster.*
>
> To be sure, the *BSP rank-and-file employees merit greater concern from this Court.* They represent the more impotent rank-and-file government employees who, unlike employees in the private sector, have no specific right to organize as a collective bargaining unit and negotiate for better terms and conditions of employment, nor the power to hold a strike to protest unfair labor practices. Not only are they impotent as a labor unit, but their efficacy to lobby in Congress is almost nil as R.A. No. 7653 effectively isolated them from the other GFI rank-and-file in compensation. *These BSP rank-and-file employees represent the politically powerless and they should not be compelled to seek a political solution to their unequal and iniquitous treatment.* Indeed, they have waited for many years for the legislature to act. They cannot be asked to wait some more for discrimination cannot be given any waiting time. Unless the equal

> protection clause of the Constitution is a mere platitude, it is the Court's duty to save them from reasonless discrimination.[31] (Emphasis in the original)

In *Sameer Overseas Placement Agency, Inc. v. Cabiles*,[32] this Court also applied the standard of strict scrutiny test "for it perceive[d] in the subject clause a suspect classification prejudicial to OFWs" and the Constitution gives special protection to labor.

I submit that the strict scrutiny test should be used to determine whether there is reasonable classification in the Legislature's passage of the Party-List System Act, more particularly the assailed portion of Section 8, that is "*[t]he list shall not include . . . a person who has lost his bid for elective office in the immediately preceding election.*"

A democratic and republican state is founded on an election, which reflects and expresses the sovereign and genuine will of the people.[33] Thus, the opportunity to run for public office, and the rights and privileges arising from being elected, is governed and regulated by law.[34] Still, the opportunity to run and be elected for public office touches on two fundamental freedoms, those of expression and of association:

> It is noteworthy to point out that the right to run for public office touches on two fundamental freedoms, those of expression and of association. This premise is best explained in *Mancuso v. Taft, viz.*:
>
> > Freedom of expression guarantees to the individual the opportunity to write a letter to the local newspaper, speak out in a public park, distribute handbills advocating radical reform, or picket an official building to seek redress of grievances. All of these activities are protected by the First Amendment if done in a manner consistent with a narrowly defined concept of public order and safety. The choice of means will likely depend on the amount of time and energy the individual wishes to expend and on his perception as to the most effective method of projecting his message to the public. But interest and commitment are evolving phenomena. What is an effective means for protest at one point in time may not seem so effective at a later date. The dilettante who participates in a picket line may decide to devote additional time and resources to his expressive activity. As his commitment increases, the means of effective expression changes, but the expressive quality remains constant. He may decide to lead the picket line, or to publish the newspaper. At one point in time he may decide that the most effective way to give expression to his

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31 *Id.* at 599–602.

32 740 Phil. 403 (2014) [Per J. Leonen, *En Banc*].

33 J. Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 738 (2013) [Per J. Carpio, *En Banc*].

34 *Pamatong v. Commission on Elections*, 470 Phil. 711, 715–716 (2004) [Per J. Tinga, *En Banc*]; *People v. Jalosjos*, 381 Phil. 690 (2000) [Per J. Ynares-Santiago, *En Banc*].

views and to get the attention of an appropriate audience is to become a candidate for public office-means generally considered among the most appropriate for those desiring to effect change in our governmental systems. He may seek to become a candidate by filing in a general election as an independent or by seeking the nomination of a political party. And in the latter instance, the individual's expressive activity has two dimensions: besides urging that his views be the views of the elected public official, he is also attempting to become a spokesman for a political party whose substantive program extends beyond the particular office in question. But Cranston has said that a certain type of its citizenry, the public employee, may not become a candidate and may not engage in any campaign activity that promotes himself as a candidate for public office. Thus the city has stifled what may be the most important expression an individual can summon, namely that which he would be willing to effectuate, by means of concrete public action, were he to be selected by the voters.

It is impossible to ignore the additional fact that the right to run for office also affects the freedom to associate. In *Williams v. Rhodes, supra,* the Court used strict review to invalidate an Ohio election system that made it virtually impossible for third parties to secure a place on the ballot. The Court found that the First Amendment protected the freedom to associate by forming and promoting a political party and that that freedom was infringed when the state effectively denied a party access to its electoral machinery. The Cranston charter provision before us also affects associational rights, albeit in a slightly different way. An individual may decide to join or participate in an organization or political party that shares his beliefs. He may even form a new group to forward his ideas. And at some juncture his supporters and fellow party members may decide that he is the ideal person to carry the group's standard into the electoral fray. To thus restrict the options available to political organization as the Cranston charter provision has done is to limit the effectiveness of association; and the freedom to associate is intimately related with the concept of making expression effective. Party access to the ballot becomes less meaningful if some of those selected by party machinery to carry the party's programs to the people are precluded from doing so because those nominees are civil servants.

Whether the right to run for office is looked at from the point of view of individual expression or associational effectiveness, wide opportunities exist for the individual who seeks public office. The fact of candidacy alone may open previously closed doors of the media. The candidate may be invited to discuss his views on radio talk shows; he may be able to secure equal time on television to elaborate his campaign program; the newspapers may cover his candidacy; he may be invited to debate before various groups that had theretofore never heard of him or his views. In short, the fact of candidacy opens up a variety of

> communicative possibilities that are not available to even the most diligent of picketers or the most loyal of party followers. A view today, that running for public office is not an interest protected by the First Amendment, seems to us an outlook stemming from an earlier era when public office was the preserve of the professional and the wealthy. Consequently we hold that candidacy is both a protected First Amendment right and a fundamental interest. Hence any legislative classification that significantly burdens that interest must be subjected to strict equal protection review.[35] (Citations omitted)

To democratize political power and give chance to political parties that cannot win in legislative district elections, the Constitution provides for the party-list system, and corollary, gives the voter the right to elect two representatives in the House of Representatives—one for his or her legislative district and another for his or her party-list group.[36] Undisputedly, there are substantial distinctions between a district representative or party-list representative, as clearly provided for in the Constitution:

> Article VI
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> SECTION 5. (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.
>
> (2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.
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> ....
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> Article IX
>
> C. The Commission on Elections
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> SECTION 6. A free and open party system shall be allowed to evolve according to the free choice of the people, subject to the provisions of this Article.
>
> SECTION 7. No votes cast in favor of a political party, organization, or coalition shall be valid, except for those registered under the party-list system as provided in this Constitution.

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35 *Quinto v. Commission on Elections*, 621 Phil. 236, 270–272 (2009) [Per J. Nachura, *En Banc*].

36 *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454, 528 (2013) [Per J. Carpio, *En Banc*].

> SECTION 8. Political parties, or organizations or coalitions registered under the party-list system, shall not be represented in the voters' registration boards, boards of election inspectors, boards of canvassers, or other similar bodies. However, they shall be entitled to appoint poll watchers in accordance with law.

There are clear differences in terms of representation between those elected from legislative districts and those elected through the party-list system, as I explained in my Separate Opinion in *Atong Paglaum, Inc*:[37]

> The core principle that defines the relationship between our government and those that it governs is captured in the constitutional phrase that ours is a "democratic and republican state". A democratic and republican state is founded on effective representation. It is also founded on the idea that **it is the electorate's choices that must be given full consideration.** We must always be sensitive in our crafting of doctrines lest the guardians of our electoral system be empowered to silence those who wish to offer their representation. We cannot replace the needed experience of our people to mature as citizen in our electorate.
>
> . . . .
>
> There are two types of representatives in the House of Representatives. Those in the first group are "elected from legislative districts". Those in the second group are "elected through a party list system of registered national, regional and sectoral parties and organizations."
>
> The differences in terms of representation are clear.
>
> Those who are elected from legislative districts will have their name in the ballot. They present their persons as the potential agent of their electorate. It is their individual qualifications that will be assessed by COMELEC on the basis of the Constitution and relevant statutes. Should there be disqualification it would be their personal circumstances, which will be reviewed, in the proper case, by the House of Representatives Electoral Tribunal (HRET). The individual representative can lose subsequent elections for various reasons, including dissatisfaction from those that initially elected him/her into office.
>
> Incidentally, those who present themselves for election by legislative districts may or may not be supported by a registered political party. This may give them added political advantages in the electoral exercise, which includes the goodwill, reputation and resources of the major political party they affiliate with. However, it is not the nature of the political party that endorses them that is critical in assessing the qualifications or disqualifications of the candidate.
>
> **The elected district representative in the House of Representative is directly accountable to his/her eleetorate.** The political party s/he affiliates with only shares that political accountability; but, only to a certain extent. Good performance is usually rewarded with subsequent election to another term. **It is the elected representative, not**

[37] J Leonen, Concurring and Dissenting Opinion in *Atong Paglaum, Inc. v. Commission on Elections*, 707 Phil. 454 (2013) [Per J. Carpio, *En Banc*].

the political party that will get re-elected. We can even take judicial notice that party affiliation may change in subsequent elections for various reasons, without any effect on the qualification of the elected representative.

The political party that affiliates those who participate in elections in legislative districts organize primarily to have their candidates win. These political parties have avowed principles and platforms of government. But, they will be known more through the personalities and popularity of their candidates. Often, compromises occur in the political party's philosophies in order to accommodate a viable candidate.

This has been the usual role of political parties even before the 1987 Constitution.

The party list system is an attempt to introduce a new system of politics in our country, one where voters choose platforms and principles primarily and candidate-nominees secondarily. As provided in the Constitution, the party list system's intentions are broader than simply to "ensure that those who are marginalized and represented become lawmakers themselves".

Historically, our electoral exercises privileged the popular and, perhaps, pedigreed individual candidate over platforms and political programs. Political parties were convenient amalgamation of electoral candidates from the national to the local level that gravitated towards a few of its leaders who could marshall the resources to supplement the electoral campaigns of their members. Most elections were choices between competing personalities often with very little discernible differences in their interpretation and solutions for contemporary issues. The electorate chose on the bases of personality and popularity; only after the candidates were elected to public offices will they later find out the concrete political programs that the candidate will execute. Our history is replete with instances where the programs that were executed lacked cohesion on the basis of principle. In a sense, our electoral politics alienated and marginalized large parts of our population.

The party list system was introduced to challenge the status quo. It could not have been intended to enhance and further entrench the same system. **It is the party or the organization that is elected. It is the party list group that authorizes, hopefully through a democratic process, a priority list of its nominees. It is also the party list group that can delist or remove their nominees, and hence replace him or her, should he or she act inconsistently with the avowed principles and platforms of governance of their organization. In short, the party list system assists gennine political parties to evolve. Genuine political parties enable true representation, and hence, provide the potential for us to realize a "democratic and republican state".**[38] (Emphasis supplied, citations omitted)

The party-list system envisions genuine political parties to evolve in order to achieve effective representation in the Congress and in effect, help the nation realize being a "democratic and republican state."[39] It aims to give

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[38] *Id.* at 738–741.

[39] *Id.*; CONST., art. II, sec. 1.

representation and expression of interests and advocacies, which may not be within the main focus of those who represent legislative districts:

> It is the nurturing ground to mature genuine political parties and give them the experience and the ability to build constituencies for other elective public offices.
>
> In a sense, challenging the politics of personality by constitutionally entrenching the ability of political parties and organizations to instill party discipline can redound to the benefit of those who have been marginalized and underrepresented in the past. It makes it possible for nominees to be chosen on the basis of their loyalty to principle and platform rather than their family affiliation. It encourages more collective action by the membership of the party and hence will reduce the possibility that the party be controlled only by a select few.
>
> Thus, it is not only "for the marginalized and underrepresented in our midst... who wallow in poverty, destitution and infirmity" that the party list system was enacted. Rather, it was for everyone in so far as attempting a reform in our politics.
>
> . . . .
>
> Environmental causes do not have as their constituency only those who are marginalized or underrepresented. Neither do they only have for their constituency those "who wallow in poverty, destitution and infirmity". In truth, all of us, regardless of economic class, are constituents of ecological advocacies.
>
> Also, political parties organized along ideological lines—the socialist or even right wing political parties—are groups motivated by their own narratives of our history, a vision of what society can be and how it can get there. There is no limit to the economic class that can be gripped by the cogency of their philosophies and the resulting political platforms. Allowing them space in the House of Representatives if they have the constituency that can win them a seat will enrich the deliberations in that legislative chamber. Having them voice out opinions--whether true or false--should make the choices of our representatives richer. It will make the choices of our representatives more democratic.
>
> Ideologically oriented parties work for the benefit of those who are marginalized and underrepresented, but they do not necessarily come mainly from that economic class. Just a glance at the history of strong political parties in different jurisdictions will show that it will be the public intellectuals within these parties who will provide their rationale and continually guide their membership in the interpretation of events and, thus, inform their movement forward.
>
> Political ideologies have people with kindred ideas as their constituents. They may care for the marginalized and underrepresented, but they are not themselves--nor for their effectivity in the House of Representatives should we require that they can only come from that class.
>
> Highlighting these groups in this opinion should not be mistaken as an endorsement of their platforms. Rather, it should be seen as clear examples where interests and advocacies, which may not be within the main

focus of those who represent legislative districts, cry out for representation.[40] (Citations omitted)

To have an effective representation, to take part in the conduct of public affairs, to vote and to be elected, and to have access to public service are subsumed under the right to electoral participation, provided in our international obligations under the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR):

The UDHR provides:

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Likewise, the ICCPR states:

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) To have access, on general terms of equality, to public service in his country.

[T]he scope of the right to electoral participation is elaborated by the Human Rights Committee in its General Comment No. 25 (Participation in Public Affairs and the Right to Vote) as follows:

1. Article 25 of the Covenant recognizes and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service. Whatever form of constitution or government is in force, the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant.

. . . .

15. The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as

[40] *Id.* at 741–744.

> education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office.[41]

Since the party-list system involves the fundamental principle of our nation and touches on the fundamental rights to electoral participation, freedom of expression and association, the strict scrutiny should be used to determine whether there is reasonable classification in the law.

Moreover, there is suspect class involved, or "a class saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process."[42] These are the groups, whose interests and advocacies may not be within the main focus of those who represent legislative districts historically, crying out for representation but relegated to a position of political powerlessness due to our history of favoring popular and pedigreed individuals in electoral exercises.

I submit that using strict scrutiny, the assailed portion of Section 8 of the Party-List System Act, particularly "*[t]he list shall not include . . . a person who has lost his bid for elective office in the immediately preceding election*," is constitutional and not violative of the equal protection clause. There is reasonable classification for those who have lost in their bid for an elective office in the immediately preceding election, so as to prohibit them from becoming party-list nominees, contrary to petitioners' claim.[43]

The strict scrutiny test requires that there be a compelling state interest and that the means employed to effect it are narrowly-tailored—being the least restrictive means for effecting the invoked interest.[44] In *Pamatong v. Commission on Elections*,[45] this Court held that the State could exclude nuisance candidates, or those candidates who have not evinced a *bona fide* intention to run for office, due to the compelling interest to ensure that the electoral exercises are rational, objective, orderly, and credible:

> The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical

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41 *Ang Ladlad LGBT Party v. Commission on Elections*, 632 Phil. 32, 88–90 (2010) [Per J. Del Castillo, *En Banc*].

42 *Zomer Development Co. Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 115, (2020) [Per J. Leonen, *En Banc*]

43 *Rollo* (G.R. No. 257610), p. 20; *Rollo* (UDK 17230), p. 9.

44 *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, *En Banc*].

45 470 Phil. 711 (2004) [Per J. Tinga, *En Banc*].

considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions. As the United States Supreme Court held:

> [T]here is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization and its candidates on the ballot — the interest, if no other, in avoiding confusion, deception and even frustration of the democratic [process].
>
> . . . .
>
> Given these considerations, the ignominious nature of a nuisance candidacy becomes even more galling. The organization of an election with *bona fide* candidates standing is onerous enough. To add into the mix candidates with no serious intentions or capabilities to run a viable campaign would actually impair the electoral process. This is not to mention the candidacies which are palpably ridiculous so as to constitute a one-note joke. The poll body would be bogged by irrelevant minutiae covering every step of the electoral process, most probably posed at the instance of these nuisance candidates. It would be a senseless sacrifice on the part of the State.
>
> Owing to the superior interest in ensuring a credible and orderly election, the State could exclude nuisance candidates and need not indulge in, as the song goes, "their trips to the moon on gossamer wings."
>
> The Omnibus Election Code and COMELEC Resolution No. 6452 are cognizant of the compelling State interest to ensure orderly and credible elections by excising impediments thereto, such as nuisance candidacies that distract and detract from the larger purpose. The COMELEC is mandated by the Constitution with the administration of elections and endowed with considerable latitude in adopting means and methods that will ensure the promotion of free, orderly and honest elections. Moreover, the Constitution guarantees that only bona fide candidates for public office shall be free from any form of harassment and discrimination. The determination of *bona fide* candidates is governed by the statutes, and the concept, to our mind is, satisfactorily defined in the Omnibus Election Code.[46]

Similarly, in my view, persons who have lost their bid for elective office in the immediately preceding election should be excluded as nominees of their party-list, due to the State's compelling interest to "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" as stated in the policy statement of The Party-List System Act:

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[46] *Id.* at 719–722.

> 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.

Indeed, it is the policy of the State to broaden electoral opportunities and possible representation of interests in Congress, through the party-list system, such that even those who could not win in the legislative district elections will be given a fair chance to enter and to have a voice in Congress. Thus, those who lost in the previous elections are not necessarily prohibited from becoming party-list nominees, but only those who ran and lost in an elective office in the immediately preceding elections are singled out by the law. This is the least restrictive means for effecting the invoked compelling interest. As pointed out by respondent, through the Office of the Solicitor General, those who lost in the immediately preceding elections "will be more inclined to seek alternative ways to secure public office" and use the party-list as a mechanism to secure public office after having lost in such elections.[47] The *ponente* likewise pointed out that the purpose would be to limit, discourage, and disallow the abuse of the party-list system as a fallback measure for traditional politicians to serve in an elective position.[48] Thus, to allow those persons who just ran and lost in the immediately preceding election to be nominated in the immediately succeeding election will patently run counter to the law's policy and intent, as it will be unlikely to enhance the "chances to compete for and win seats in the legislature."

Therefore, the assailed provision prohibiting a person who has lost his bid for elective office in the immediately preceding election from becoming a party-list nominee was sufficiently justified as it was indeed narrowly tailored to achieve the compelling state interest of establishing a "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" and was demonstrably the least restrictive means in promoting that interest—only those who lost in the immediately preceding election are prohibited from being nominated.

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47 *Rollo* (UDK 17230), p. 10.

48 *Ponencia*, p. 18.

In any case, all reasonable doubts should be resolved in favor of the constitutionality of a statute, being an act by the Legislature, approved by the Executive:

> This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. An act of the legislature approved by the executive, is presumed to be within constitutional limitations. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." And a statute finally comes before the courts sustained by the sanction of the executive. The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution. **The courts cannot but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. Then, there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case.** This is a proposition too plain to require a citation of authorities.[49] (Emphasis supplied, citations omitted)

The presumption of constitutionality can only be overcome by sufficient proof of clear and unequivocal breach of the Constitution:

> To justify the nullification of the law or its implementation, there must be a clear and unequivocal, not a doubtful, breach of the Constitution. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because "to invalidate [a law] based on . . . baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it." This presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.
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> . . . .
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> "[A]ll presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt; that a law may work hardship does not render it unconstitutional; that if any reasonable basis may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the

[49] *People v. Vera*, 65 Phil. 56, 95 (1937) [Per J. Laurel, First Division].

> constitution in favor of the constitutionality of legislation should be adopted."[50]

A party challenging the law must present concrete evidence and convincing argument of arbitrariness:

> No concrete evidence and convincing argument were presented to warrant a declaration of an act of the entire Congress and signed into law by the highest officer of the co-equal executive department as unconstitutional. Every classification made by law is presumed reasonable. Thus, the party who challenges the law must present proof of arbitrariness.
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> It is an established precept in constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification.
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> . . . .
>
> The challengers of Sections 4 and 7 of R.A. 8249 failed to rebut the presumption of constitutionality and reasonableness of the questioned provisions. The classification between those pending cases involving the concerned public officials whose trial has not yet commenced and whose cases could have been affected by the amendments of the *Sandiganbayan* jurisdiction under R.A. 8249, as against those cases where trial had already started as of the approval of the law, rests on substantial distinction that makes real differences.[51] (Citations omitted)

In failing to present concrete evidence and convincing argument of arbitrariness, petitioners patently failed to discharge the burden to overcome the presumption of constitutionality of the phrase "*a person who has lost his bid for elective office in the immediately preceding election*" stated in Section 8 of Republic Act No. 7941.

Consequently, respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in also providing that the list of nominees shall not include those "*who has lost his [or her] bid for an elective office in the May 13, 2019 National and Local Elections*" in its issued Commission on Elections Resolution No. 10717, or the "Rules And Regulations Governing: (1) Political Conventions; (2) Submission of Nominees of Groups or Organizations participating under the Party-List System of Representation; and (3) Filing of Certificates of Candidacy and Nomination of and Acceptance by Official Candidates of Registered Political Parties or Coalitions of Political Parties in Connection with the May 9, 2022 National and Local Elections."

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50 *Lawyers against Monopoly and Poverty (LAMP) v. Secretary of Budget and Management,* 686 Phil. 357, 373, 376–377 (2012) [Per J. Mendoza, *En Banc*].

51 *Lacson v. Executive Secretary,* 361 Phil. 251, 271–272 (1999) [Per J. Martinez, *En Banc*].

"There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of [its] judgment, as when the assailed order is bereft of any factual and legal justification."[52] In *Lokin, Jr. v. Commission on Elections*,[53] the Commission on Elections promulgated its "Rules on Disqualification Cases Against Nominees of Party-List Groups/Organizations Participating in the 10 May 2010 Automated National and Local Elections" by virtue of the mandate of the Party-List System Act, under Sections 8 and 9, vesting the Commission on Elections with jurisdiction over the nomination of party-list representatives and prescribing the qualifications of each nominee.

Since the Party-list System Act was enacted, the Commission on Elections by virtue of its constitutional mandate to enforce and administer election laws[54] issued Rules and Regulations governing Submission of Names of Nominees under the Party-List System, among other rules, for the National and Local Elections, specifically: Resolution No. 3307-A for the May 2001 elections; Resolution No. 6320 for the May 2004 elections; Resolution No. 7084 for the May 2007 elections; Resolution No. 8807 for the May 2010 elections; Resolution No. 9366 for the May 2013 elections; Resolution No. 9984 for the May 2016 elections; and Resolution No. 10420 for the May 2019 elections. The mentioned Resolutions included the assailed phrase in the present Petitions as a limitation to the list of nominees to be submitted by the party-lists.[55]

Based on the above reasons, there is factual and legal justification for respondent Commission on Elections' issuance of Resolution No. 10717, providing that the list of nominees of the party-lists shall not include those "*who has lost his [or her] bid for an elective office in the May 13, 2019 National and Local Elections.*" Therefore, respondent Commission on Elections did not commit grave abuse of discretion amounting to lack or excess of jurisdiction.

ACCORDINGLY, I vote to **DENY** the Petitions.

MARVIC M.V.F. LEONEN
Senior Associate Justice

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52 *The Senate Blue Ribbon Committee v. Majaducon*, 455 Phil. 61, 71 (2003) [Per J. Ynares-Santiago, *En Banc*].

53 689 Phil. 200 (2012) [Per J. Sereno, *En Banc*].

54 CONST., art. IX(C), sec. 2(1).

55 *See* Commission on Elections Resolution No. 10420, Section 5; Resolution No. 9984, Rule 1, Section 5; Resolution No. 9366, Rule 4, Sec. 5; Resolution No. 8807, Section 7; Resolution No. 7084, Section 10; Resolution No. 6320; and Resolution No. 3307, Sec. 15(c).