

ATTY. ALICIA RISOS-VIDAL, PETITIONER,*G.R. No. 206666. January 21, 2015*

Ponente: LEONARDO-DE CASTRO, J.

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Before the Court are (1) a Petition for Certiorari filed under Rule 64, in relation to Rule 65, both of the Revised Rules of Court, by Atty. Alicia Risos-Vidal (Risos-Vidal), which essentially prays for the issuance of the writ of certiorari annulling and setting aside the April 1, 2013[1] and April 23, 2013[2] Resolutions of the Commission on Elections (COMELEC), Second Division and En banc, respectively, in SPA No. 13-211 (DC), entitled “Atty. Alicia Risos-Vidal v. Joseph Ejercito Estrada” for having been rendered with grave abuse of discretion amounting to lack or excess of jurisdiction; and (2) a Petition-in-Intervention[3] filed by Alfredo S. Lim (Lim), wherein he prays to be declared the 2013 winning candidate for Mayor of the City of Manila in view of private respondent former President Joseph Ejercito Estrada’s (former President Estrada) disqualification to run for and hold public office.

The Facts

The salient facts of the case are as follows:

On September 12, 2007, the Sandiganbayan convicted former President Estrada, a former President of the Republic of the Philippines, for the crime of plunder in Criminal Case No. 26558, entitled “People of the Philippines v. Joseph Ejercito Estrada, et al.” The dispositive part of the graft court’s decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in Criminal Case No. 26558 finding the accused, Former President Joseph Ejercito Estrada, GUILTY beyond reasonable doubt of the crime of PLUNDER, defined in and penalized by Republic Act No. 7080, as amended. On the other hand, for failure of the prosecution to prove and establish their guilt beyond reasonable doubt, the Court finds the accused Jose “Jinggoy” Estrada and Atty. Edward S. Serapio NOT GUILTY of the crime of plunder, and accordingly, the Court hereby orders their ACQUITTAL.

The penalty imposable for the crime of plunder under Republic Act No. 7080, as amended by Republic Act No. 7659, is Reclusion Perpetua to Death. There being no aggravating or mitigating circumstances, however, the lesser penalty shall be applied in accordance with Article 63 of the Revised Penal Code. Accordingly, the accused Former President Joseph Ejercito Estrada is hereby sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.

The period within which accused Former President Joseph Ejercito Estrada has been under detention shall be credited to him in full as long as he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the government of the following:

(1) The total amount of Five Hundred Forty[-]Two Million Seven Hundred Ninety[-]One Thousand Pesos (P545,291,000.00), with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (P200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty[-]Nine Million Pesos (P189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as “Boracay Mansion” located at #100 11th Street, New Manila, Quezon City.

The cash bonds posted by accused Jose “Jinggoy” Estrada and Atty. Edward S. Serapio are hereby ordered cancelled and released to the said accused or their duly authorized representatives upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures. Likewise, the hold-departure orders issued against the said accused are hereby recalled and declared functus officio.[4]

On October 25, 2007, however, former President Gloria Macapagal Arroyo (former President Arroyo) extended executive clemency, by way of pardon, to former President Estrada. The full text of said pardon states:

MALACAÑAN PALACE
MANILA

By the President of the Philippines

PARDON

WHEREAS, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

WHEREAS, Joseph Ejercito Estrada has been under detention for six and a half years,

WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights.

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.

Given under my hand at the City of Manila,
this 25[th] Day of October, in the year of
Our Lord, two thousand and seven.

Gloria M. Arroyo (sgd.)

By the President:

IGNACIO R. BUNYE (sgd.)
Acting Executive Secretary[5]

On October 26, 2007, at 3:35 p.m., former President Estrada “received and accepted”[6] the pardon by affixing his signature beside his handwritten notation thereon.

On November 30, 2009, former President Estrada filed a Certificate of Candidacy[7] for the position of President. During that time, his candidacy earned three oppositions in the COMELEC: (1) SPA No. 09-024 (DC), a “Petition to Deny Due Course and Cancel Certificate of Candidacy” filed by Rev. Elly Velez B. Lao Pamatong, ESQ; (2) SPA No. 09-028 (DC), a petition for “Disqualification as Presidential Candidate” filed by Evilio C. Pormento (Pormento); and (3) SPA No. 09-104 (DC), a “Petition to Disqualify Estrada Ejercito, Joseph M. from Running as President due to Constitutional Disqualification and Creating Confusion to the Prejudice of Estrada, Mary Lou B” filed by Mary Lou Estrada. In separate Resolutions[8] dated January 20, 2010 by the COMELEC, Second Division, however, all three petitions were effectively dismissed on the uniform grounds that (i) the Constitutional proscription on reelection applies to a sitting president; and (ii) the pardon granted to former President Estrada by former President Arroyo restored the former’s right to vote and be voted for a public office. The subsequent motions for reconsideration thereto were denied by the COMELEC En banc.

After the conduct of the May 10, 2010 synchronized elections, however, former President Estrada only managed to garner the second highest number of votes.

Of the three petitioners above-mentioned, only Pormento sought recourse to this Court and filed a petition for certiorari, which was docketed as G.R. No. 191988, entitled “Atty. Evilio C. Pormento v. Joseph ‘ERAP’ Ejercito Estrada and Commission on Elections.” But in a Resolution[9] dated August 31, 2010, the Court dismissed the aforementioned petition on the ground of mootness considering that former President Estrada lost his presidential bid.

On October 2, 2012, former President Estrada once more ventured into the political arena, and filed a Certificate of Candidacy,[10] this time vying for a local elective post, that of the Mayor of the City of Manila.

On January 24, 2013, Risos-Vidal, the petitioner in this case, filed a Petition for Disqualification against former President Estrada before the COMELEC. The petition was docketed as SPA No. 13-211 (DC). Risos-Vidal anchored her petition on the theory that “[Former President Estrada] is Disqualified to Run for Public Office because of his Conviction for Plunder by the Sandiganbayan in Criminal Case No. 26558 entitled ‘People of the Philippines vs. Joseph Ejercito Estrada’ Sentencing Him to Suffer the Penalty of Reclusion Perpetua with Perpetual Absolute Disqualification.”[11] She relied on Section 40 of the Local Government Code (LGC), in relation to Section 12 of the Omnibus Election Code (OEC), which state respectively, that:

Sec. 40, Local Government Code:

SECTION 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;
- (e) Fugitives from justice in criminal or nonpolitical cases here or abroad;
- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble minded. (Emphasis supplied.)

Sec. 12, Omnibus Election Code:

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 public office, unless he has been given plenary pardon or granted amnesty. (Emphases supplied.)

In a Resolution dated April 1, 2013, the COMELEC, Second Division, dismissed the petition for disqualification, the fallo of which reads:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for utter lack of merit.[12]

The COMELEC, Second Division, opined that “[h]aving taken judicial cognizance of the consolidated resolution for SPA No. 09-028 (DC) and SPA No. 09-104 (DC) and the 10 May 2010 En Banc resolution affirming it, this Commission will not belabor the controversy further. Moreso, [Risos-Vidal] failed to present cogent proof sufficient to reverse the standing pronouncement of this Commission declaring categorically that [former President Estrada’s] right to seek public office has been effectively restored by the pardon vested upon him by former President Gloria M. Arroyo. Since this Commission has already spoken, it will no longer engage in disquisitions of a settled matter lest indulged in wastage of government resources.”[13]

The subsequent motion for reconsideration filed by Risos-Vidal was denied in a Resolution dated April 23, 2013.

On April 30, 2013, Risos-Vidal invoked the Court’s jurisdiction by filing the present petition. She presented five issues for the Court’s resolution, to wit:

I. RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT RESPONDENT ESTRADA’S PARDON WAS NOT CONDITIONAL;

II. RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT FINDING THAT RESPONDENT ESTRADA IS DISQUALIFIED TO RUN AS MAYOR OF MANILA UNDER SEC. 40 OF THE LOCAL GOVERNMENT CODE OF 1991 FOR HAVING BEEN CONVICTED OF PLUNDER, AN OFFENSE INVOLVING MORAL TURPITUDE;

III. RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE PETITION FOR DISQUALIFICATION ON THE GROUND THAT THE CASE INVOLVES THE SAME OR SIMILAR ISSUES IT ALREADY RESOLVED IN THE CASES OF “PORMENTO VS. ESTRADA”, SPA NO. 09-028 (DC) AND IN “RE: PETITION TO DISQUALIFY ESTRADA EJERCITO, JOSEPH M. FROM RUNNING AS PRESIDENT, ETC.,” SPA NO. 09-104 (DC);

IV. RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT RULING THAT RESPONDENT ESTRADA’S PARDON NEITHER RESTORED HIS RIGHT OF SUFFRAGE NOR REMITTED HIS PERPETUAL ABSOLUTE DISQUALIFICATION FROM SEEKING PUBLIC OFFICE; and

V. RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN NOT HAVING EXERCISED ITS POWER TO MOTU PROPRIO DISQUALIFY RESPONDENT ESTRADA IN THE FACE OF HIS PATENT DISQUALIFICATION TO RUN FOR PUBLIC OFFICE BECAUSE OF HIS PERPETUAL AND

ABSOLUTE DISQUALIFICATION TO SEEK PUBLIC OFFICE AND TO VOTE RESULTING FROM HIS CRIMINAL CONVICTION FOR PLUNDER.[14]

While this case was pending before the Court, or on May 13, 2013, the elections were conducted as scheduled and former President Estrada was voted into office with 349,770 votes cast in his favor. The next day, the local board of canvassers proclaimed him as the duly elected Mayor of the City of Manila.

On June 7, 2013, Lim, one of former President Estrada's opponents for the position of Mayor, moved for leave to intervene in this case. His motion was granted by the Court in a Resolution[15] dated June 25, 2013. Lim subscribed to Risos-Vidal's theory that former President Estrada is disqualified to run for and hold public office as the pardon granted to the latter failed to expressly remit his perpetual disqualification. Further, given that former President Estrada is disqualified to run for and hold public office, all the votes obtained by the latter should be declared stray, and, being the second placer with 313,764 votes to his name, he (Lim) should be declared the rightful winning candidate for the position of Mayor of the City of Manila.

The Issue

Though raising five seemingly separate issues for resolution, the petition filed by Risos-Vidal actually presents only one essential question for resolution by the Court, that is, whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that former President Estrada is qualified to vote and be voted for in public office as a result of the pardon granted to him by former President Arroyo.

In her petition, Risos-Vidal starts her discussion by pointing out that the pardon granted to former President Estrada was conditional as evidenced by the latter's express acceptance thereof. The "acceptance," she claims, is an indication of the conditional nature of the pardon, with the condition being embodied in the third Whereas Clause of the pardon, i.e., "WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office." She explains that the aforementioned commitment was what impelled former President Arroyo to pardon former President Estrada, without it, the clemency would not have been extended. And any breach thereof, that is, when former President Estrada filed his Certificate of Candidacy for President and Mayor of the City of Manila, he breached the condition of the pardon; hence, "he ought to be recommitted to prison to serve the unexpired portion of his sentence x x x and disqualifies him as a candidate for the mayoralty [position] of Manila." [16]

Nonetheless, Risos-Vidal clarifies that the fundamental basis upon which former President Estrada must be disqualified from running for and holding public elective office is actually the proscription found in Section 40 of the LGC, in relation to Section 12 of the OEC. She argues that the crime of plunder is both an offense punishable by imprisonment of one year or more and involving moral turpitude; such that former President Estrada must be disqualified to run for and hold public elective office.

Even with the pardon granted to former President Estrada, however, Risos-Vidal insists that the same did not operate to make available to former President Estrada the exception provided under Section 12 of the OEC, the pardon being merely conditional and not absolute or plenary.

Moreover, Risos-Vidal puts a premium on the ostensible requirements provided under Articles 36 and 41 of the Revised Penal Code, to wit:

ART. 36. Pardon; its effects. – A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

x x x x

ART. 41. Reclusion perpetua and reclusion temporal – Their accessory penalties. – The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphases supplied.)

She avers that in view of the foregoing provisions of law, it is not enough that a pardon makes a general statement that such pardon carries with it the restoration of civil and political rights. By virtue of Articles 36 and 41, a pardon restoring civil and political rights without categorically making mention what specific civil and political rights are restored “shall not work to restore the right to hold public office, or the right of suffrage; nor shall it remit the accessory penalties of civil interdiction and perpetual absolute disqualification for the principal penalties of reclusion perpetua and reclusion temporal.”[17] In other words, she considers the above constraints as mandatory requirements that shun a general or implied restoration of civil and political rights in pardons.

Risos-Vidal cites the concurring opinions of Associate Justices Teodoro R. Padilla and Florentino P. Feliciano in *Monsanto v. Factoran, Jr.*[18] to endorse her position that “[t]he restoration of the right to hold public office to one who has lost such right by reason of conviction in a criminal case, but subsequently pardoned, cannot be left to inference, no matter how intensely arguable, but must be stated in express, explicit, positive and specific language.”

Applying *Monsanto* to former President Estrada’s case, Risos-Vidal reckons that “such express restoration is further demanded by the existence of the condition in the [third] [W]hereas [C]lause of the pardon x x x indubitably indicating that the privilege to hold public office was not restored to him.”[19]

On the other hand, the Office of the Solicitor General (OSG) for public respondent COMELEC, maintains that “the issue of whether or not the pardon extended to [former President Estrada] restored his right to run for public office had already been passed upon by public respondent COMELEC way back in 2010 via its rulings in SPA Nos. 09-024, 09-028 and 09-104, there is no cogent reason for it to reverse its standing pronouncement and declare [former President Estrada] disqualified to run and be voted as mayor of the City of Manila in the absence of any new argument that would warrant its reversal. To be sure, public respondent COMELEC correctly exercised its discretion in taking judicial cognizance of the aforesaid rulings which are known to it and which can be verified from its own records, in accordance with Section 2, Rule 129 of the Rules of Court on the courts’ discretionary power to take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to them because of their judicial functions.”[20]

Further, the OSG contends that “[w]hile at first glance, it is apparent that [former President Estrada’s] conviction for plunder disqualifies him from running as mayor of Manila under Section 40 of the [LGC], the subsequent grant of pardon to him, however, effectively restored his right to run for any public office.”[21] The restoration of his right to run for any public office is the exception to the prohibition under Section 40 of the LGC, as provided under Section 12 of the OEC. As to the seeming requirement of Articles 36 and 41 of the Revised Penal Code, i.e., the express restoration/remission of a particular right to be stated in the pardon, the OSG asserts that “an airtight and rigid interpretation of Article 36 and Article 41 of the [RPC] x x x would be stretching too much the clear and plain meaning of the aforesaid provisions.”[22] Lastly, taking into consideration the third Whereas Clause of the pardon granted to former President Estrada, the OSG supports the position that it “is not an integral part of the decree of the pardon and cannot therefore serve to restrict its effectivity.”[23]

Thus, the OSG concludes that the “COMELEC did not commit grave abuse of discretion amounting to lack or

excess of jurisdiction in issuing the assailed Resolutions.”[24]

For his part, former President Estrada presents the following significant arguments to defend his stay in office: that “the factual findings of public respondent COMELEC, the Constitutional body mandated to administer and enforce all laws relative to the conduct of the elections, [relative to the absoluteness of the pardon, the effects thereof, and the eligibility of former President Estrada to seek public elective office] are binding [and conclusive] on this Honorable Supreme Court;” that he “was granted an absolute pardon and thereby restored to his full civil and political rights, including the right to seek public elective office such as the mayoral (sic) position in the City of Manila;” that “the majority decision in the case of *Salvacion A. Monsanto v. Fulgencio S. Factoran, Jr.*, which was erroneously cited by both Vidal and Lim as authority for their respective claims, x x x reveal that there was no discussion whatsoever in the ratio decidendi of the Monsanto case as to the alleged necessity for an expressed restoration of the ‘right to hold public office in the pardon’ as a legal pre-requisite to remove the subject perpetual special disqualification;” that moreover, the “principal question raised in this Monsanto case is whether or not a public officer, who has been granted an absolute pardon by the Chief Executive, is entitled to reinstatement to her former position without need of a new appointment;” that his “expressed acceptance [of the pardon] is not proof that the pardon extended to [him] is conditional and not absolute;” that this case is a mere rehash of the cases filed against him during his candidacy for President back in 2009-2010; that Articles 36 and 41 of the Revised Penal Code “cannot abridge or diminish the pardoning power of the President expressly granted by the Constitution;” that the text of the pardon granted to him substantially, if not fully, complied with the requirement posed by Article 36 of the Revised Penal Code as it was categorically stated in the said document that he was “restored to his civil and political rights;” that since pardon is an act of grace, it must be construed favorably in favor of the grantee;[25] and that his disqualification will result in massive disenfranchisement of the hundreds of thousands of Manileños who voted for him.[26]

The Court’s Ruling

The petition for certiorari lacks merit.

Former President Estrada was granted an absolute pardon that fully restored all his civil and political rights, which naturally includes the right to seek public elective office, the focal point of this controversy. The wording of the pardon extended to former President Estrada is complete, unambiguous, and unqualified. It is likewise unfettered by Articles 36 and 41 of the Revised Penal Code. The only reasonable, objective, and constitutional interpretation of the language of the pardon is that the same in fact conforms to Articles 36 and 41 of the Revised Penal Code.

Recall that the petition for disqualification filed by Risos-Vidal against former President Estrada, docketed as SPA No. 13---211 (DC), was anchored on Section 40 of the LGC, in relation to Section 12 of the OEC, that is, having been convicted of a crime punishable by imprisonment of one year or more, and involving moral turpitude, former President Estrada must be disqualified to run for and hold public elective office notwithstanding the fact that he is a grantee of a pardon that includes a statement expressing “[h]e is hereby restored to his civil and political rights.”

Risos-Vidal theorizes that former President Estrada is disqualified from running for Mayor of Manila in the May 13, 2013 Elections, and remains disqualified to hold any local elective post despite the presidential pardon extended to him in 2007 by former President Arroyo for the reason that it (pardon) did not expressly provide for the remission of the penalty of perpetual absolute disqualification, particularly the restoration of his (former President Estrada) right to vote and be voted upon for public office. She invokes Articles 36 and 41 of the Revised Penal Code as the foundations of her theory.

It is insisted that, since a textual examination of the pardon given to and accepted by former President Estrada

does not actually specify which political right is restored, it could be inferred that former President Arroyo did not deliberately intend to restore former President Estrada's rights of suffrage and to hold public office, or to otherwise remit the penalty of perpetual absolute disqualification. Even if her intention was the contrary, the same cannot be upheld based on the pardon's text.

The pardoning power of the President cannot be limited by legislative action.

The 1987 Constitution, specifically Section 19 of Article VII and Section 5 of Article IX-C, provides that the President of the Philippines possesses the power to grant pardons, along with other acts of executive clemency, to wit:

Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

x x x x

Section 5. No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission.

It is apparent from the foregoing constitutional provisions that the only instances in which the President may not extend pardon remain to be in: (1) impeachment cases; (2) cases that have not yet resulted in a final conviction; and (3) cases involving violations of election laws, rules and regulations in which there was no favorable recommendation coming from the COMELEC. Therefore, it can be argued that any act of Congress by way of statute cannot operate to delimit the pardoning power of the President.

In *Cristobal v. Labrador*[27] and *Pelobello v. Palatino*,[28] which were decided under the 1935 Constitution, wherein the provision granting pardoning power to the President shared similar phraseology with what is found in the present 1987 Constitution, the Court then unequivocally declared that "subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action." The Court reiterated this pronouncement in *Monsanto v. Factoran, Jr.*[29] thereby establishing that, under the present Constitution, "a pardon, being a presidential prerogative, should not be circumscribed by legislative action." Thus, it is unmistakably the long-standing position of this Court that the exercise of the pardoning power is discretionary in the President and may not be interfered with by Congress or the Court, except only when it exceeds the limits provided for by the Constitution.

This doctrine of non-diminution or non-impairment of the President's power of pardon by acts of Congress, specifically through legislation, was strongly adhered to by an overwhelming majority of the framers of the 1987 Constitution when they flatly rejected a proposal to carve out an exception from the pardoning power of the President in the form of "offenses involving graft and corruption" that would be enumerated and defined by Congress through the enactment of a law. The following is the pertinent portion lifted from the Record of the Commission (Vol. II):

MR. ROMULO. I ask that Commissioner Tan be recognized to introduce an amendment on the same section.

THE PRESIDENT. Commissioner Tan is recognized.

SR. TAN. Madam President, lines 7 to 9 state:

However, the power to grant executive clemency for violations of corrupt practices laws may be limited by legislation.

I suggest that this be deleted on the grounds that, first, violations of corrupt practices may include a very little offense like stealing P10; second, which I think is more important, I get the impression, rightly or wrongly, that subconsciously we are drafting a constitution on the premise that all our future Presidents will be bad and dishonest and, consequently, their acts will be lacking in wisdom. Therefore, this Article seems to contribute towards the creation of an anti-President Constitution or a President with vast responsibilities but no corresponding power except to declare martial law. Therefore, I request that these lines be deleted.

MR. REGALADO. Madam President, may the Committee react to that?

THE PRESIDENT. Yes, please.

MR. REGALADO. This was inserted here on the resolution of Commissioner Davide because of the fact that similar to the provisions on the Commission on Elections, the recommendation of that Commission is required before executive clemency is granted because violations of the election laws go into the very political life of the country.

With respect to violations of our Corrupt Practices Law, we felt that it is also necessary to have that subjected to the same condition because violation of our Corrupt Practices Law may be of such magnitude as to affect the very economic system of the country. Nevertheless, as a compromise, we provided here that it will be the Congress that will provide for the classification as to which convictions will still require prior recommendation; after all, the Congress could take into account whether or not the violation of the Corrupt Practices Law is of such magnitude as to affect the economic life of the country, if it is in the millions or billions of dollars. But I assume the Congress in its collective wisdom will exclude those petty crimes of corruption as not to require any further stricture on the exercise of executive clemency because, of course, there is a whale of a difference if we consider a lowly clerk committing malversation of government property or funds involving one hundred pesos. But then, we also anticipate the possibility that the corrupt practice of a public officer is of such magnitude as to have virtually drained a substantial portion of the treasury, and then he goes through all the judicial processes and later on, a President who may have close connections with him or out of improvident compassion may grant clemency under such conditions. That is why we left it to Congress to provide and make a classification based on substantial distinctions between a minor act of corruption or an act of substantial proportions.

SR. TAN. So, why do we not just insert the word GROSS or GRAVE before the word “violations”?

MR. REGALADO. We feel that Congress can make a better distinction because “GRAVE” or “GROSS” can be misconstrued by putting it purely as a policy.

MR. RODRIGO. Madam President.

THE PRESIDENT. Commissioner Rodrigo is recognized.

MR. RODRIGO. May I speak in favor of the proposed amendment?

THE PRESIDENT. Please proceed.

MR. RODRIGO. The power to grant executive clemency is essentially an executive power, and that is precisely why it is called executive clemency. In this sentence, which the amendment seeks to delete, an exception is being made. Congress, which is the legislative arm, is allowed to intrude into this prerogative of the executive. Then it limits the power of Congress to subtract from this prerogative of the President to grant executive clemency by limiting the power of Congress to only corrupt practices laws. There are many other crimes more serious than these. Under this amendment, Congress cannot limit the power of executive clemency in cases of drug addiction and drug pushing which are very, very serious crimes that can endanger the State; also, rape with murder, kidnapping and treason. Aside from the fact that it is a derogation of the power of the President to grant executive clemency, it is also defective in that it singles out just one kind of

crime. There are far more serious crimes which are not included.

MR. REGALADO. I will just make one observation on that. We admit that the pardoning power is an executive power. But even in the provisions on the COMELEC, one will notice that constitutionally, it is required that there be a favorable recommendation by the Commission on Elections for any violation of election laws.

At any rate, Commissioner Davide, as the principal proponent of that and as a member of the Committee, has explained in the committee meetings we had why he sought the inclusion of this particular provision. May we call on Commissioner Davide to state his position.

MR. DAVIDE. Madam President.

THE PRESIDENT. Commissioner Davide is recognized.

MR. DAVIDE. I am constrained to rise to object to the proposal. We have just approved the Article on Accountability of Public Officers. Under it, it is mandated that a public office is a public trust, and all government officers are under obligation to observe the utmost of responsibility, integrity, loyalty and efficiency, to lead modest lives and to act with patriotism and justice.

In all cases, therefore, which would go into the very core of the concept that a public office is a public trust, the violation is itself a violation not only of the economy but the moral fabric of public officials. And that is the reason we now want that if there is any conviction for the violation of the Anti-Graft and Corrupt Practices Act, which, in effect, is a violation of the public trust character of the public office, no pardon shall be extended to the offender, unless some limitations are imposed.

Originally, my limitation was, it should be with the concurrence of the convicting court, but the Committee left it entirely to the legislature to formulate the mechanics at trying, probably, to distinguish between grave and less grave or serious cases of violation of the Anti-Graft and Corrupt Practices Act. Perhaps this is now the best time, since we have strengthened the Article on Accountability of Public Officers, to accompany it with a mandate that the President's right to grant executive clemency for offenders or violators of laws relating to the concept of a public office may be limited by Congress itself.

MR. SARMIENTO. Madam President.

THE PRESIDENT. Commissioner Sarmiento is recognized.

MR. SARMIENTO. May I briefly speak in favor of the amendment by deletion.

Madam President, over and over again, we have been saying and arguing before this Constitutional Commission that we are emasculating the powers of the presidency, and this provision to me is another clear example of that. So, I speak against this provision. Even the 1935 and the 1973 Constitutions do not provide for this kind of provision.

I am supporting the amendment by deletion of Commissioner Tan.

MR. ROMULO. Commissioner Tingson would like to be recognized.

THE PRESIDENT. Commissioner Tingson is recognized.

MR. TINGSON. Madam President, I am also in favor of the amendment by deletion because I am in sympathy with the stand of Commissioner Francisco "Soc" Rodrigo. I do believe and we should remember that above all the elected or appointed officers of our Republic, the leader is the President. I believe that the country will be as the President is, and if we systematically emasculate the power of this presidency, the time may come when he will be also handcuffed that he will no longer be able to act like he should be acting.

So, Madam President, I am in favor of the deletion of this particular line.

MR. ROMULO. Commissioner Colayco would like to be recognized.

THE PRESIDENT. Commissioner Colayco is recognized.

MR. COLAYCO. Thank you very much, Madam President.

I seldom rise here to object to or to commend or to recommend the approval of proposals, but now I find that the proposal of Commissioner Tan is worthy of approval of this body.

Why are we singling out this particular offense? There are other crimes which cast a bigger blot on the moral character of the public officials.

Finally, this body should not be the first one to limit the almost absolute power of our Chief Executive in deciding whether to pardon, to reprieve or to commute the sentence rendered by the court.

I thank you.

THE PRESIDENT. Are we ready to vote now?

MR. ROMULO. Commissioner Padilla would like to be recognized, and after him will be Commissioner Natividad.

THE PRESIDENT. Commissioner Padilla is recognized.

MR. PADILLA. Only one sentence, Madam President. The Sandiganbayan has been called the Anti-Graft Court, so if this is allowed to stay, it would mean that the President's power to grant pardon or reprieve will be limited to the cases decided by the Anti-Graft Court, when as already stated, there are many provisions in the Revised Penal Code that penalize more serious offenses.

Moreover, when there is a judgment of conviction and the case merits the consideration of the exercise of executive clemency, usually under Article V of the Revised Penal Code the judge will recommend such exercise of clemency. And so, I am in favor of the amendment proposed by Commissioner Tan for the deletion of this last sentence in Section 17.

THE PRESIDENT. Are we ready to vote now, Mr. Floor Leader?

MR. NATIVIDAD. Just one more.

THE PRESIDENT. Commissioner Natividad is recognized.

MR. NATIVIDAD. I am also against this provision which will again chip more powers from the President. In case of other criminals convicted in our society, we extend probation to them while in this case, they have already been convicted and we offer mercy. The only way we can offer mercy to them is through this executive clemency extended to them by the President. If we still close this avenue to them, they would be prejudiced even worse than the murderers and the more vicious killers in our society. I do not think they deserve this opprobrium and punishment under the new Constitution.

I am in favor of the proposed amendment of Commissioner Tan.

MR. ROMULO. We are ready to vote, Madam President.

THE PRESIDENT. Is this accepted by the Committee?

MR. REGALADO. The Committee, Madam President, prefers to submit this to the floor and also because of the objection of the main proponent, Commissioner Davide. So we feel that the Commissioners should vote on this question.

VOTING

THE PRESIDENT. As many as are in favor of the proposed amendment of Commissioner Tan to delete the last sentence of Section 17 appearing on lines 7, 8 and 9, please raise their hand. (Several Members raised their hand.)

As many as are against, please raise their hand. (Few Members raised their hand.)

The results show 34 votes in favor and 4 votes against; the amendment is approved.[30] (Emphases supplied.)

The proper interpretation of Articles 36 and 41 of the Revised Penal Code.

The foregoing pronouncements solidify the thesis that Articles 36 and 41 of the Revised Penal Code cannot, in any way, serve to abridge or diminish the exclusive power and prerogative of the President to pardon persons convicted of violating penal statutes.

The Court cannot subscribe to Risos-Vidal's interpretation that the said Articles contain specific textual commands which must be strictly followed in order to free the beneficiary of presidential grace from the disqualifications specifically prescribed by them.

Again, Articles 36 and 41 of the Revised Penal Code provides:

ART. 36. Pardon; its effects. – A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

x x x x

ART. 41. Reclusion perpetua and reclusion temporal – Their accessory penalties. – The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphases supplied.)

A rigid and inflexible reading of the above provisions of law, as proposed by Risos-Vidal, is unwarranted, especially so if it will defeat or unduly restrict the power of the President to grant executive clemency.

It is well-entrenched in this jurisdiction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[31] It is this Court's firm view that the phrase in the presidential pardon at issue which declares that former President Estrada "is hereby restored to his civil and political rights" substantially complies with the requirement of express restoration.

The Dissent of Justice Marvic M.V.F. Leonen agreed with Risos-Vidal that there was no express remission and/or restoration of the rights of suffrage and/or to hold public office in the pardon granted to former President Estrada, as required by Articles 36 and 41 of the Revised Penal Code.

Justice Leonen posits in his Dissent that the aforementioned codal provisions must be followed by the President, as they do not abridge or diminish the President's power to extend clemency. He opines that they do not reduce the coverage of the President's pardoning power. Particularly, he states:

Articles 36 and 41 refer only to requirements of convention or form. They only provide a procedural prescription. They are not concerned with areas where or the instances when the President may grant pardon;

they are only concerned with how he or she is to exercise such power so that no other governmental instrumentality needs to intervene to give it full effect.

All that Articles 36 and 41 do is prescribe that, if the President wishes to include in the pardon the restoration of the rights of suffrage and to hold public office, or the remission of the accessory penalty of perpetual absolute disqualification, he or she should do so expressly. Articles 36 and 41 only ask that the President state his or her intentions clearly, directly, firmly, precisely, and unmistakably. To belabor the point, the President retains the power to make such restoration or remission, subject to a prescription on the manner by which he or she is to state it.[32]

With due respect, I disagree with the overbroad statement that Congress may dictate as to how the President may exercise his/her power of executive clemency. The form or manner by which the President, or Congress for that matter, should exercise their respective Constitutional powers or prerogatives cannot be interfered with unless it is so provided in the Constitution. This is the essence of the principle of separation of powers deeply ingrained in our system of government which “ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere.”[33] Moreso, this fundamental principle must be observed if non-compliance with the form imposed by one branch on a co-equal and coordinate branch will result into the diminution of an exclusive Constitutional prerogative.

For this reason, Articles 36 and 41 of the Revised Penal Code should be construed in a way that will give full effect to the executive clemency granted by the President, instead of indulging in an overly strict interpretation that may serve to impair or diminish the import of the pardon which emanated from the Office of the President and duly signed by the Chief Executive himself/herself. The said codal provisions must be construed to harmonize the power of Congress to define crimes and prescribe the penalties for such crimes and the power of the President to grant executive clemency. All that the said provisions impart is that the pardon of the principal penalty does not carry with it the remission of the accessory penalties unless the President expressly includes said accessory penalties in the pardon. It still recognizes the Presidential prerogative to grant executive clemency and, specifically, to decide to pardon the principal penalty while excluding its accessory penalties or to pardon both. Thus, Articles 36 and 41 only clarify the effect of the pardon so decided upon by the President on the penalties imposed in accordance with law.

A close scrutiny of the text of the pardon extended to former President Estrada shows that both the principal penalty of reclusion perpetua and its accessory penalties are included in the pardon. The first sentence refers to the executive clemency extended to former President Estrada who was convicted by the Sandiganbayan of plunder and imposed a penalty of reclusion perpetua. The latter is the principal penalty pardoned which relieved him of imprisonment. The sentence that followed, which states that “(h)e is hereby restored to his civil and political rights,” expressly remitted the accessory penalties that attached to the principal penalty of reclusion perpetua. Hence, even if we apply Articles 36 and 41 of the Revised Penal Code, it is indubitable from the text of the pardon that the accessory penalties of civil interdiction and perpetual absolute disqualification were expressly remitted together with the principal penalty of reclusion perpetua.

In this jurisdiction, the right to seek public elective office is recognized by law as falling under the whole gamut of civil and political rights.

Section 5 of Republic Act No. 9225,[34] otherwise known as the “Citizenship Retention and Reacquisition Act of 2003,” reads as follows:

Section 5. Civil and Political Rights and Liabilities. – Those who retain or reacquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:

(1) Those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as “The Overseas Absentee Voting Act of 2003” and other existing laws;

(2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath;

(3) Those appointed to any public office shall subscribe and swear an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office: Provided, That they renounce their oath of allegiance to the country where they took that oath;

(4) Those intending to practice their profession in the Philippines shall apply with the proper authority for a license or permit to engage in such practice; and

(5) That right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who:

(a) are candidates for or are occupying any public office in the country of which they are naturalized citizens; and/or

(b) are in active service as commissioned or noncommissioned officers in the armed forces of the country which they are naturalized citizens. (Emphases supplied.)

No less than the International Covenant on Civil and Political Rights, to which the Philippines is a signatory, acknowledges the existence of said right. Article 25(b) of the Convention 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:

x x x x

(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[.] (Emphasis supplied.)

Recently, in *Sobejana-Condon v. Commission on Elections*,^[35] the Court unequivocally referred to the right to seek public elective office as a political right, to wit:

Stated differently, it is an additional qualification for elective office specific only to Filipino citizens who re-acquire their citizenship under Section 3 of R.A. No. 9225. It is the operative act that restores their right to run for public office. The petitioner’s failure to comply therewith in accordance with the exact tenor of the law, rendered ineffectual the Declaration of Renunciation of Australian Citizenship she executed on September 18, 2006. As such, she is yet to regain her political right to seek elective office. Unless she executes a sworn renunciation of her Australian citizenship, she is ineligible to run for and hold any elective office in the Philippines. (Emphasis supplied.)

Thus, from both law and jurisprudence, the right to seek public elective office is unequivocally considered as a political right. Hence, the Court reiterates its earlier statement that the pardon granted to former President Estrada admits no other interpretation other than to mean that, upon acceptance of the pardon granted to him, he regained his FULL civil and political rights – including the right to seek elective office.

On the other hand, the theory of Risos-Vidal goes beyond the plain meaning of said penal provisions; and prescribes a formal requirement that is not only unnecessary but, if insisted upon, could be in derogation of the constitutional prohibition relative to the principle that the exercise of presidential pardon cannot be affected by legislative action.

Risos-Vidal relied heavily on the separate concurring opinions in *Monsanto v. Factoran, Jr.*[36] to justify her argument that an absolute pardon must expressly state that the right to hold public office has been restored, and that the penalty of perpetual absolute disqualification has been remitted.

This is incorrect.

Her reliance on said opinions is utterly misplaced. Although the learned views of Justices Teodoro R. Padilla and Florentino P. Feliciano are to be respected, they do not form part of the controlling doctrine nor to be considered part of the law of the land. On the contrary, a careful reading of the majority opinion in *Monsanto*, penned by no less than Chief Justice Marcelo B. Fernan, reveals no statement that denotes adherence to a stringent and overly nuanced application of Articles 36 and 41 of the Revised Penal Code that will in effect require the President to use a statutorily prescribed language in extending executive clemency, even if the intent of the President can otherwise be deduced from the text or words used in the pardon. Furthermore, as explained above, the pardon here is consistent with, and not contrary to, the provisions of Articles 36 and 41.

The disqualification of former President Estrada under Section 40 of the LGC in relation to Section 12 of the OEC was removed by his acceptance of the absolute pardon granted to him.

Section 40 of the LGC identifies who are disqualified from running for any elective local position. Risos-Vidal argues that former President Estrada is disqualified under item (a), to wit:

- (a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence[.] (Emphasis supplied.)

Likewise, Section 12 of the OEC provides for similar prohibitions, but it provides for an exception, to wit:

Section 12. Disqualifications. – x x x unless he has been given plenary pardon or granted amnesty. (Emphasis supplied.)

As earlier stated, Risos-Vidal maintains that former President Estrada's conviction for plunder disqualifies him from running for the elective local position of Mayor of the City of Manila under Section 40(a) of the LGC. However, the subsequent absolute pardon granted to former President Estrada effectively restored his right to seek public elective office. This is made possible by reading Section 40(a) of the LGC in relation to Section 12 of the OEC.

While it may be apparent that the proscription in Section 40(a) of the LGC is worded in absolute terms, Section 12 of the OEC provides a legal escape from the prohibition – a plenary pardon or amnesty. In other words, the latter provision allows any person who has been granted plenary pardon or amnesty after conviction by final judgment of an offense involving moral turpitude, inter alia, to run for and hold any public office, whether local or national position.

Take notice that the applicability of Section 12 of the OEC to candidates running for local elective positions is not unprecedented. In *Jalosjos, Jr. v. Commission on Elections*,[37] the Court acknowledged the aforementioned provision as one of the legal remedies that may be availed of to disqualify a candidate in a local election filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation.[38] The pertinent ruling in the *Jalosjos* case is quoted as follows:

What is indisputably clear is that false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by prison mayor, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to petitioner.[39] (Emphasis supplied.)

The third preambular clause of the pardon did not operate to make the pardon conditional.

Contrary to Risos-Vidal's declaration, the third preambular clause of the pardon, i.e., "[w]hereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office," neither makes the pardon conditional, nor militate against the conclusion that former President Estrada's rights to suffrage and to seek public elective office have been restored. This is especially true as the pardon itself does not explicitly impose a condition or limitation, considering the unqualified use of the term "civil and political rights" as being restored.

Jurisprudence educates that a preamble is not an essential part of an act as it is an introductory or preparatory clause that explains the reasons for the enactment, usually introduced by the word "whereas." [40] Whereas clauses do not form part of a statute because, strictly speaking, they are not part of the operative language of the statute.[41] In this case, the whereas clause at issue is not an integral part of the decree of the pardon, and therefore, does not by itself alone operate to make the pardon conditional or to make its effectivity contingent upon the fulfilment of the aforementioned commitment nor to limit the scope of the pardon.

On this matter, the Court quotes with approval a relevant excerpt of COMELEC Commissioner Maria Gracia Padaca's separate concurring opinion in the assailed April 1, 2013 Resolution of the COMELEC in SPA No. 13-211 (DC), which captured the essence of the legal effect of preambular paragraphs/whereas clauses, viz:

The present dispute does not raise anything which the 20 January 2010 Resolution did not conclude upon. Here, Petitioner Risos-Vidal raised the same argument with respect to the 3[rd] "whereas clause" or preambular paragraph of the decree of pardon. It states that "Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office." On this contention, the undersigned reiterates the ruling of the Commission that the 3[rd] preambular paragraph does not have any legal or binding effect on the absolute nature of the pardon extended by former President Arroyo to herein Respondent.

This ruling is consistent with the traditional and customary usage of preambular paragraphs. In the case of *Echegaray v. Secretary of Justice*, the Supreme Court ruled on the legal effect of preambular paragraphs or whereas clauses on statutes. The Court stated, viz.:

Besides, a preamble is really not an integral part of a law. It is merely an introduction to show its intent or purposes. It cannot be the origin of rights and obligations. Where the meaning of a statute is clear and unambiguous, the preamble can neither expand nor restrict its operation much less prevail over its text.

If former President Arroyo intended for the pardon to be conditional on Respondent's promise never to seek a public office again, the former ought to have explicitly stated the same in the text of the pardon itself. Since former President Arroyo did not make this an integral part of the decree of pardon, the Commission is constrained to rule that the 3[rd] preambular clause cannot be interpreted as a condition to the pardon extended to former President Estrada.[42] (Emphasis supplied.)

Absent any contrary evidence, former President Arroyo's silence on former President Estrada's decision to run for President in the May 2010 elections against, among others, the candidate of the political party of former President Arroyo, after the latter's receipt and acceptance of the pardon speaks volume of her intention to restore him to his rights to suffrage and to hold public office.

Where the scope and import of the executive clemency extended by the President is in issue, the Court must turn to the only evidence available to it, and that is the pardon itself. From a detailed review of the four corners of said document, nothing therein gives an iota of intimation that the third Whereas Clause is actually a limitation, proviso, stipulation or condition on the grant of the pardon, such that the breach of the mentioned commitment not to seek public office will result in a revocation or cancellation of said pardon. To the Court, what it is simply is a statement of fact or the prevailing situation at the time the executive clemency was granted. It was not used as a condition to the efficacy or to delimit the scope of the pardon.

Even if the Court were to subscribe to the view that the third Whereas Clause was one of the reasons to grant the pardon, the pardon itself does not provide for the attendant consequence of the breach thereof. This Court will be hard put to discern the resultant effect of an eventual infringement. Just like it will be hard put to determine which civil or political rights were restored if the Court were to take the road suggested by Risos-Vidal that the statement “[h]e is hereby restored to his civil and political rights” excludes the restoration of former President Estrada’s rights to suffrage and to hold public office. The aforequoted text of the executive clemency granted does not provide the Court with any guide as to how and where to draw the line between the included and excluded political rights.

Justice Leonen emphasizes the point that the ultimate issue for resolution is not whether the pardon is contingent on the condition that former President Estrada will not seek another elective public office, but it actually concerns the coverage of the pardon – whether the pardon granted to former President Estrada was so expansive as to have restored all his political rights, inclusive of the rights of suffrage and to hold public office. Justice Leonen is of the view that the pardon in question is not absolute nor plenary in scope despite the statement that former President Estrada is “hereby restored to his civil and political rights,” that is, the foregoing statement restored to former President Estrada all his civil and political rights except the rights denied to him by the unremitted penalty of perpetual absolute disqualification made up of, among others, the rights of suffrage and to hold public office. He adds that had the President chosen to be so expansive as to include the rights of suffrage and to hold public office, she should have been more clear on her intentions.

However, the statement “[h]e is hereby restored to his civil and political rights,” to the mind of the Court, is crystal clear – the pardon granted to former President Estrada was absolute, meaning, it was not only unconditional, it was unrestricted in scope, complete and plenary in character, as the term “political rights” adverted to has a settled meaning in law and jurisprudence.

With due respect, I disagree too with Justice Leonen that the omission of the qualifying word “full” can be construed as excluding the restoration of the rights of suffrage and to hold public office. There appears to be no distinction as to the coverage of the term “full political rights” and the term “political rights” used alone without any qualification. How to ascribe to the latter term the meaning that it is “partial” and not “full” defies one’s understanding. More so, it will be extremely difficult to identify which of the political rights are restored by the pardon, when the text of the latter is silent on this matter. Exceptions to the grant of pardon cannot be presumed from the absence of the qualifying word “full” when the pardon restored the “political rights” of former President Estrada without any exclusion or reservation.

Therefore, there can be no other conclusion but to say that the pardon granted to former President Estrada was absolute in the absence of a clear, unequivocal and concrete factual basis upon which to anchor or support the Presidential intent to grant a limited pardon.

To reiterate, insofar as its coverage is concerned, the text of the pardon can withstand close scrutiny even under the provisions of Articles 36 and 41 of the Revised Penal Code.

The COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions.

In light of the foregoing, contrary to the assertions of Risos-Vidal, the COMELEC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Resolutions.

The Court has consistently held that a petition for certiorari against actions of the COMELEC is confined only to instances of grave abuse of discretion amounting to patent and substantial denial of due process, because the COMELEC is presumed to be most competent in matters falling within its domain.[43]

As settled in jurisprudence, grave abuse of discretion is the arbitrary exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be condemned as having been done with grave abuse of discretion, such an abuse must be patent and gross.[44]

The arguments forwarded by Risos-Vidal fail to adequately demonstrate any factual or legal bases to prove that the assailed COMELEC Resolutions were issued in a “whimsical, arbitrary or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law” or were so “patent and gross” as to constitute grave abuse of discretion.

On the foregoing premises and conclusions, this Court finds it unnecessary to separately discuss Lim’s petition-in-intervention, which substantially presented the same arguments as Risos-Vidal’s petition.

WHEREFORE, the petition for certiorari and petition-in-intervention are DISMISSED. The Resolution dated April 1, 2013 of the Commission on Elections, Second Division, and the Resolution dated April 23, 2013 of the Commission on Elections, En banc, both in SPA No. 13-211 (DC), are AFFIRMED.

SO ORDERED.

Sereno, (Chief Justice), I join the dissent of J. Leonen.

Velasco, Jr., Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concur.

Carpio, J., I join the dissent of J. Leonen.

Brion, J.[*], left his vote to dismiss the Rises Vidal Petition. See his Separate Opinion.

Mendoza, J., see concurring opinion.

Leonen, J., I dissent. See separate opinion.

Jardeleza, J., no part.

[*] On official leave.

[1] Rollo (Vol. I), pp. 39-46.

[2] Id. at 49-50.

[3] Id. at 395-414.

[4] Id. at 260-262.

[5] Id. at 265.

[6] Id.

[7] Rollo (Vol. II), p. 615.

- [8] Id. at 509-533 and 534-572.
- [9] *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010, 629 SCRA 530.
- [10] Rollo (Vol. I), p. 266.
- [11] Id. at 271.
- [12] Id. at 43.
- [13] Id.
- [14] Id. at 10-11.
- [15] Id. at 438.
- [16] Id. at 12-15.
- [17] Id. at 25.
- [18] 252 Phil. 192, 207 (1989).
- [19] Rollo (Vol. I), p. 29.
- [20] Rollo (Vol. II), p. 498.
- [21] Id. at 498-499.
- [22] Id. at 502.
- [23] Id. at 503.
- [24] Id. at 505.
- [25] Id. at 582-596.
- [26] Id. at 607.
- [27] 71 Phil. 34, 38 (1940).
- [28] 72 Phil. 441, 442 (1941).
- [29] *Supra* note 18 at 202.
- [30] Records of the Constitutional Commission of 1986 (Vol. II), July 31, 1986, pp. 524-526.
- [31] *Republic v. Camacho*, G.R. No. 185604, June 13, 2013, 698 SCRA 380, 398.
- [32] Dissenting Opinion (Justice Marvic M.V.F. Leonen), p. 42.
- [33] *Bureau of Customs Employees Association (BOCEA) v. Teves*, G.R. No. 181704, December 6, 2011, 661 SCRA 589, 604.
- [34] An Act Making the Citizenship of Philippine Citizens who Acquire Foreign Citizenship Permanent, Amending for the Purpose Commonwealth Act No. 63, as amended, and for Other Purposes.
- [35] G.R. No. 198742, August 10, 2012, 678 SCRA 267, 292.
- [36] *Supra* note 18.

- [37] G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1.
- [38] Commission on Elections Resolution No. 9523, Rule 25, Section 3.
- [39] Jalosjos, Jr. v. Commission on Elections, *supra* note 37 at 30-31.
- [40] *People v. Balasa*, 356 Phil. 362, 396 (1998).
- [41] *Llamado v. Court of Appeals*, 256 Phil. 328, 339 (1989).
- [42] *Rollo* (Vol. I), p. 46.
- [43] *Naval v. Commission on Elections*, G.R. No. 207851, July 8, 2014.
- [44] *Hayudini v. Commission on Elections*, G.R. No. 207900, April 22, 2014.

SEPARATE OPINION

BRION, J.:

I concur with the ponencia's conclusion that the pardon granted to respondent Joseph Ejercito Estrada (or Erap for brevity) by President Gloria Macapagal-Arroyo (or PGMA for brevity) restored his rights to run for and hold public office and to vote.

I likewise agree with the ponencia that Erap's pardon complied with the requirements under Articles 36 and 41 of the Revised Penal Code (RPC). Specifically, Erap's pardon contained an express restoration of his rights to vote and to hold public office and an express remission of Erap's perpetual absolute disqualification brought about by his conviction for plunder. As I will discuss below, these rights are subsumed under the phrase "civil and political rights" that PGMA expressly restored in Erap's pardon.

I add that aside from the points discussed by the ponencia, other material legal justifications exist that would support the same conclusion and address the vagueness that Risos-Vidal attributes to the textual language of Erap's pardon. These legal justifications include an unbiased examination of the third preambular clause of Erap's pardon, the official definition of "absolute pardon," and the pertinent rules on statutory construction that, in instances of doubt, give primacy to the interests of the voters in election cases such as the present case. I shall discuss all these below.

I maintain, too, that despite the ponencia's resolution of the issue of Erap's pardon and its effects on his perpetual absolute disqualification, an equally important issue lingers and remains unresolved - whether or not the Commission on Elections (COMELEC) gravely abused its discretion in relying on its 2010 rulings that Erap's pardon restored his rights to vote and to be voted for a public office.

This issue is particularly important since the Court's certiorari jurisdiction is being invoked and the assailed COMELEC rulings are not being questioned specifically on its ruling on the issue of Erap's pardon but on the COMELEC's reliance on its 2010 ruling on this particular issue.

This 2010 disqualification ruling pertained to the consolidated COMELEC Resolution in SPA No. 09-028 (DC) and SPA No. 09-104 (DC), entitled *Atty. Evilio C. Pormento v. Joseph Ejercito Estrada and In Re: Petition to Disqualify Estrada Ejercito, Joseph M. From Running As President Due to Constitutional Disqualification and Creating Confusion to the Prejudice of Estrada, Mary Lou B.* These cases were filed against Erap when he ran as President of the Philippines in the 2010 elections.

For clarity, the COMELEC Second Division's resolution dated April 1, 2013 that is being questioned in the present case states: "Today, this Commission is confronted with a controversy that is far from novelty. Albeit raised by another petitioner, the issue raised in the present case is glaringly similar to or intertwined with the issues involved in the consolidated resolution for SPA No. 09-028 (DC) and SPA No. 09-104 (DC). Therefore, it cannot be gainsaid that the question of whether or not the pardon granted to respondent has restored his right to run for public office, which was curtailed by virtue of his conviction for plunder that carries with it the penalty of perpetual absolute disqualification, has been passed upon and ruled out by this Commission way back in 2010... Having taken judicial cognizance of the consolidated resolution for SPA No. 09-028 (DC) and SPA No. 09-104 (DC) and the 10 May 2010 En Banc resolution affirming it, this Commission will not belabor the controversy further. More so, petitioner failed to present cogent proof sufficient to reverse the standing pronouncement of this Commission declaring categorically that respondent's right to seek public office has been effectively restored by the pardon vested upon him by former President Gloria M. Arroyo. Since this Commission has already spoken, it will no longer engage in disquisitions of a settled matter lest indulged in wastage of government resources."

This COMELEC Second Division ruling was upheld by the COMELEC en banc in its Resolution dated April 23, 2013, which is also being assailed in the present case.

I stress that the above 2013 COMELEC rulings that are sought to be nullified in the present case did not explicitly rule on the issue of Erap's pardon but merely relied on the 2010 COMELEC rulings on this particular issue. According to Risos-Vidal, this "reliance" constituted grave abuse of discretion.

To my mind, in the exercise of the Court's certiorari jurisdiction, the issue of whether or not the COMELEC gravely abused its discretion in relying on its 2010 rulings on Erap's pardon should be squarely ruled upon on the merits, especially because Risos-Vidal and the parties raised this particular issue in the present case.

Another crucial issue that must be resolved, in view of its jurisprudential repercussions, is the legal propriety of Alfredo S. Lim's (Lim) intervention in the present case.

I discuss all these issues below.

I.

Prefatory Statement

Before this Court is an election disqualification case involving a candidate (and subsequent winner) in the 2013 elections. By their nature, disqualification cases are not unusual; in our political system they are given free rein because they affect voters' choice and governance.

What distinguishes this case is the basis for the objection - the executive clemency (or as interchangeably used in this Opinion, the pardon) previously granted by the former President of the Republic Gloria Macapagal Arroyo to her immediate predecessor, respondent President Joseph Ejercito Estrada, whom the former replaced under extraordinary circumstances.

At issue is not the validity of the pardon as this issue has not been raised; at issue (to be decided in the context of the presence or absence of grave abuse of discretion by the COMELEC) are the interpretation of the terms of the pardon and the grantor's intent, a matter that – in the absence of direct evidence from grantor PGMA – the Court has to discern from the pardon's written terms. Intertwined with this issue is the question of whether or not the COMELEC gravely abused its discretion in dismissing the Risos-Vidal petition based on its 2010 ruling that Erap's pardon restored his rights to vote and to be voted for a public office.

Thus, we are largely left with the task of interpreting the terms of the pardon that a politician granted to another

politician, for the application of its terms to a dispute in a political setting – the elections of 2013. This characterization of the present case, however, should not change nor affect the Court's mode of resolution: the Constitution only allows us to adjudicate on the basis of the law, jurisprudence and established legal principles.

Under this approach, the Court should also be aware that beyond the direct parties, another party – the formally unnamed and unimpleaded electorate – has interests that the Court should take into account. The electorate has a continuing stake in this case because they participated and expressed their choice in the 2013 elections; in fact, not one of the entities that could have prevented them from voting – the COMELEC and this Court – acted to prevent Erap from being voted upon.

Their participation, to my mind, brings into the picture the need to consider and apply deeper democratic principles: while the voters are generally the governed, they are at the same time the sovereign who decides how and by whom they are to be governed. This step is particularly relevant in the present case since the electorate's unquestioned preference was Erap, the recipient of the disputed pardon.

I recite all these as they are the underlying considerations I shall take into account in this Separate Opinion.

Aside from points of law, I also take into account the interests of the voters. These interests, in my view, should not only be considered but given weight and even primacy, particularly in a situation of doubt.

II.

The Roots of the Present Case

A. The Early Roots: The Plunder and the Pardon.

The present case traces its roots to respondent Erap's term as President of the Philippines which started at noon of June 30, 1998. He relinquished his post in the middle of his term and was thereafter charged with the crime of Plunder.^[1] The Sandiganbayan convicted him on September 12, 2007 and imposed on him the penalty of reclusion perpetua and its accessory penalties.

On October 25, 2007, former President Gloria Macapagal-Arroyo (PGMA) granted Erap executive clemency under terms that in part provides:

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights. [Emphasis supplied]

Erap accepted the pardon without qualifications on October 26, 2007.

B. Erap's 2010 Presidential Candidacy & Disqualification Cases.

On November 30, 2009, Erap filed his Certificate of Candidacy (CoC) for the position of President of the Philippines.

His candidacy immediately drew a trilogy of cases that were filed on or about the same time, with the intent of disqualifying him from running as President and from holding office if he would win.

The first was a petition to cancel and deny due course to Estrada's CoC [SPA 09-024 (DC)][²] filed by Elly Velez B. Lao Pamatong (Pamatong). PGMA was also impleaded as a respondent. Pamatong alleged that Erap could not validly run for the presidency because of the constitutional ban against re-election; he also claimed that PGMA was also prohibited from running for any elective public office, even as a representative of the 2nd

district of Pampanga. Pamatong also argued in his position paper that Erap's pardon was not absolute as it was conditioned on his promise not to run for any public office.[3]

The second formal objection to Erap's presidential candidacy came from Evilio C. Pormento (Pormento) who filed his "Urgent Petition for Disqualification as Presidential Candidate" on December 5, 2009 (docketed as SPA 09-028). Pormento alleged that Erap was not eligible for re-election for the position of President pursuant to Article VII, Section 4 of the Constitution. In his answer to Pormento, Erap re-pleaded his defenses in the Pamatong case and added that the grant of executive clemency in his favor removed all legal impediments that might bar his candidacy for the presidency.[4]

The third objection was filed by Mary Lou Estrada, a presidential candidate, who filed a petition for disqualification and cancellation of Erap's CoC based on the grounds that he was not eligible for re-election and that Erap's candidacy would confuse the electorate, to her prejudice. This case was docketed as SPA 09-104.

The COMELEC, Second Division, called the trilogy to a joint hearing but opted to issue separate but simultaneous decisions because the Pamatong case, SPA 09-024, involved PGMA as a second respondent, while the two other cases [docketed as SPA Nos. 09-028 (DC) and 09-104 (DC)] only involved Erap as the respondent. Significantly, while three separate decisions were issued, they all commonly discussed, practically using the same wording, the pardon extended to Erap and concluded that the pardon restored Erap's "right to vote and to be voted for a public office." [5]

B.1. The Disqualification Rulings in the 2010 Election Cases.

Thus, in clear and explicit terms, the Resolutions in all three cases uniformly ruled that Erap was not disqualified from running and from holding office, not only because he was not running for re-election, but likewise because of the pardon that had been extended to him.

The COMELEC specifically ruled that the statement in the pardon stating that – "Whereas, Joseph Estrada has publicly committed to no longer seek any elective position or office" – was not really a condition but was merely a part of the pardon's preliminary statement. The dispositive portion of the pardon did not state that it was conditioned on this purported public commitment. Additionally, his public statement cannot serve to restrict the operation of, or prevail over, the explicit statement in the pardon that restored all his civil and political rights, including the right to vote and to be voted for a public office.[6]

Petitioner Mary Lou Estrada pointedly questioned the COMELEC rulings in her motion for reconsideration, including the terms of the pardon extended to Erap.[7] Before the 2010 elections took place, the COMELEC en banc adopted the Second Division ruling and denied all the motions.[8] Only Pormento responded to the denial by filing a petition for certiorari before the Court, docketed as G.R. No. 191988.

In resolving Pormento's petition, the Court solely touched on the issue of "re-election" and held that there was no longer any justiciable issue to be resolved because Erap had already lost the 2010 elections. Thus, the Court dismissed the whole petition, observing that Erap fully participated in the elections since Pormento did not pray for the issuance of a TRO.

Pamatong and Mary Lou Estrada did not pursue further remedies after the COMELEC en banc denied their respective motions for reconsideration. This Court, on the other hand, dismissed Pormento's Rules 64/65 petition assailing the COMELEC ruling. Thus, the COMELEC ruling in the three cases became final, executory, non-appealable and non-assailable.[9]

As I will discuss below, these final COMELEC decisions on Erap's pardon and his resulting qualification to run

for elective public office preclude this same issue of pardon from again being questioned because *res judicata* has already set in.

Significantly, when voting took place on May 10, 2010, no prohibition was in place to prevent the voters from voting for Erap as a candidate. Neither the COMELEC (because it had dismissed the petitions against Erap's candidacy) nor this Court (because it did not issue any temporary restraining order or injunction) prevented Erap from being voted upon. In a field of ten (10) candidates, Erap garnered 9,487,837 votes and landed in second place, as against the winner's 15,208,678 votes.[10]

III.

The Risos-Vidal Petition

On October 2, 2012, Erap filed his Certificate of Candidacy (CoC) for the position of City Mayor of Manila. As had happened in the past, this Erap move did not go unchallenged.

A. The COMELEC Petition.

Petitioner Risos-Vidal filed on January 24, 2013 – or before the 2013 elections – a petition for disqualification against private respondent Erap based on Section 40[11] of the Local Government Code (R.A. No. 7160, the LGC) in relation with Section 12[12] of the Omnibus Election Code (B.P. No. 881, the OEC). Both the LGC and the OEC commonly disqualify any person convicted of an offense involving moral turpitude from running for office.

She sought to disqualify Erap from running for mayor for having been convicted of a crime involving moral turpitude (plunder), an offense that carries the penalty of reclusion perpetua and the accessory penalties of interdiction and perpetual absolute disqualification. She alleged that Erap's subsequent pardon was conditional and did not cover the accessory penalty of perpetual absolute disqualification.

Risos-Vidal and Erap fully argued the pardon aspect of the case before the COMELEC and before the Court. In Risos-Vidal's Memorandum that she submitted to the Court, she attached as Annex "E" the COMELEC Memorandum of Erap with the attached Pamatong,[13] Pormento[14] and Mary Lou Estrada[15] COMELEC resolutions.

B. The COMELEC Ruling.

On April 1, 2013 or 42 days before the 2013 elections, the COMELEC Second Division dismissed the petition for disqualification, citing its 2010 rulings in the cases filed against Erap after he filed his CoC for the position of President of the Philippines in 2010. According to the COMELEC, it had already ruled in these disqualification cases and had then held that the pardon granted to Erap was absolute and unconditional; hence, his previous conviction no longer barred him from running for an elective public office.

The COMELEC en banc denied Risos-Vidal's motion for reconsideration,[16] prompting her to file the present petition for certiorari, where she alleged that the COMELEC gravely abused its discretion in issuing the assailed COMELEC resolutions.[17]

While the petition was pending before the Court, the 2013 elections took place. Neither the COMELEC nor this Court barred Erap from running and being voted upon. He obtained 349,770 votes and was proclaimed as the "duly elected" Mayor on May 14, 2013. His opponent, Lim, obtained 313,764 votes and conceded that Erap had won.[18]

C. The Lim Intervention.

On June 7, 2013 – i.e., after the 2013 elections; Erap’s proclamation as elected Mayor; his concession of the elections to Erap; and while the present petition was pending before the Court – Lim (Erap’s opponent in the mayoralty race) filed a motion for leave to intervene, which motion the Court granted in a Resolution dated June 25, 2013.

IV.

The Issues for Resolution

The main issue in this case is whether the COMELEC committed GRAVE ABUSE OF DISCRETION in ruling that Erap had been extended a PARDON that qualified him to run for City Mayor of Manila in the 2013 elections.

Interrelated with this issue is the question of whether or not the COMELEC committed GRAVE ABUSE OF DISCRETION in dismissing the Risos-Vidal petition based on the 2010 COMELEC rulings that Erap’s pardon restored his rights to vote and to be voted for a public office.

Closely related to these main issues is the question of whether – based on the voting circumstances that surrounded the 2010 and 2013 elections – equitable reasons exist that should now prevent the Court from declaring Erap ineligible for the position to which he had been elected by the majority of Manila voters.

Central to these issues is the determination of the nature and effects of the pardon granted to Erap, as well as the effects of all the developments in the case on the electorate – the innocent third party whose exercise of the democratic right to vote underlies the present dispute.

A tangential side issue that should be settled for its jurisprudential value is the legal propriety of the intervention of Alfredo S. Lim only at the Supreme Court level.

Other subsidiary issues must necessarily be resolved to get at the main and side issues. They shall all be topically identified in the course of resolving the leading issues.

V.

My Separate Opinion

A. Preliminary Considerations.

A.1. The Standard of Review in Considering the present petition.

In the review of the COMELEC’s ruling on the Risos-Vidal petition, an issue that we must settle at the outset is the nature and extent of the review we shall undertake. This determination is important so that everyone – both the direct parties as well as the voting public – will know and understand how this case was decided and that the Court had not engaged in any kind of “overreach.”

Section 7, Article IX of the Constitution provides that “unless otherwise provided by this Constitution or by law, any decision, order or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party.” A similar provision was found in the 1973 Constitution.

In *Aratuc v. COMELEC* (a 1979 case)[19] the Court clarified that unlike in the 1935 Constitution where the Court had the power of review over the decisions, orders and rulings of the COMELEC,[20] the 1973 Constitution changed the nature of this remedy from appellate review to certiorari.

Aratuc explained that under the then existing Constitution and statutory provisions, the certiorari jurisdiction of the Court over orders, and decisions of the COMELEC was not as broad as it used to be and should be confined to

instances of grave abuse of discretion amounting to patent and substantial denial of due process.[21]

The Court further observed that these constitutional, statutory and jurisprudential changes show the definite intent to enhance and invigorate the role of the COMELEC as the independent constitutional body tasked to safeguard free, peaceful and honest elections. In other words, the limited reach and scope of certiorari, compared with appellate review, direct that utmost respect be given the COMELEC as the constitutional body given the charge of elections.[22]

A.1(a) Certiorari v. Appeal.

An appellate review includes the full consideration of the merits, demerits and errors of judgment in the decision under review, while certiorari deals exclusively with the presence or absence of grave abuse of discretion amounting to lack of jurisdiction that rendered the assailed decision or ruling a nullity; such kind of abuse is way beyond mere error in the assailed judgment or ruling, and is not necessarily present in a valid but erroneous decision.

A.1(b) Grave Abuse of Discretion.

The grave abuse of discretion that justifies the grant of certiorari involves a defect of jurisdiction brought about, among others, by an indifferent disregard for the law, arbitrariness and caprice, an omission to weigh pertinent considerations, or a decision arrived at without rational deliberation[23] - due process issues that rendered the decision or ruling void.

Our 1987 Constitution maintained the same remedy of certiorari in the review of COMELEC decisions elevated to the Supreme Court as the Constitutional Convention deliberations show.[24] This constitutional provision has since then been reflected under Rules 64 and 65 of the Rules of Court.

Aside from the jurisdictional element involved, another basic and important element to fully understand the remedy of certiorari, is that it applies to rulings that are not, or are no longer, appealable. Thus, certiorari is not an appeal that opens up the whole case for review; it is limited to a consideration of a specific aspect of the case, to determine if grave abuse of discretion had intervened.

For example, it is a remedy that may be taken against an interlocutory order (or one that does not resolve the main disputed issue in the case and is thus not a final order on the merits of the case) that was issued with grave abuse of discretion. This is the remedy to address a denial of a bill of particulars[25] or of the right to bail[26] by the trial court in a criminal case. It is also the sole remedy available against a COMELEC ruling on the merits of a case as this ruling on the main disputed issue is considered by the Constitution and by the law to be final and non-appealable.[27]

A.1(c) Application of the Standards of Review to the COMELEC Ruling.

To assail a COMELEC ruling, the assailing party must show that the final and inappealable ruling is void, not merely erroneous, because the COMELEC acted with grave abuse of discretion in considering the case or in issuing its ruling.

Under our established jurisprudence, this grave abuse of discretion has been almost uniformly defined as a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion, to be grave, must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."

The present Erap case is an election case brought from a ruling of the COMELEC en banc to this Court as an

independent action for certiorari under Rule 64 in relation with Rule 65 of the Rules of Court, and must perforce be judged under the above-discussed standards.

The question before us is not simply whether the COMELEC erred in appreciating the nature of the pardon granted to Erap and in relying on its 2010 rulings on this matter; the question to ask is, even if the COMELEC did err, whether its error is to the point of grave abuse of discretion.

1. The Interests of the Electorate.

As I narrated above, the Erap story did not end with his crime and conviction. While he had undeniably committed a crime involving betrayal of the public trust, he was subsequently and lawfully pardoned for his misdeed. While jurisprudence may be divided on the effects of pardon (i.e. whether it erases both the guilt and the penalty), the various cases giving rise to this jurisprudence do not appear to have considered at all the election setting that presently confronts us.

Where the crime from which the guilt resulted is not unknown and was in fact a very widely publicized event in the country when it happened, the subsequent electoral judgment of the people on the recipient of the executive clemency cannot and should not be lightly disregarded. People participation is the essence of democracy and we should be keenly aware of the people's voice and heed it to the extent that the law does not bar this course of action. In case of doubt, the sentiment that the people expressed should assume primacy.

When the recipient of pardon is likewise the people's choice in an election held after the pardon, it is well to remember that pardon is an act of clemency and grace exercised to mitigate the harshness of the application of the law and should be understood in this spirit, i.e., in favor of the grantee whom the people themselves have adjudged and found acceptable.

It ought not be forgotten that in two high profile elections, the State had allowed Erap to offer himself as a candidate without any legal bar and without notice to the voting public that a vote for him could be rendered useless and stray.

In the 2010 presidential elections, he had offered himself as a presidential candidate and his candidacy was objected to, among others, because of the nature of the pardon extended to him. The COMELEC resolved the objection and he was voted upon without any formal notice of any legal bar to his candidacy. It is now a matter of record and history that he landed 2nd in these elections, in a field of ten (10) candidates, with 9,487,837 voting for him as against the winner who garnered 15,208,678 votes. To Erap's credit, he gracefully accepted his electoral defeat.[28]

In 2013, he again ran for office. He won this time but a case was again filed against him with the COMELEC and the case eventually reached this Court. This is the present case.

The COMELEC cleared Erap by election day of 2013, dismissing the disqualification case against him and ruling that the pardon granted to him restored his right to vote and to be voted upon. Notably, even this Court did not prevent Erap's candidacy and did not prevent him from being voted upon after his disqualification case was brought to this Court. Thus, the people went to the polls and voted Erap into office with no expectation that their votes could be rendered stray.

Under these circumstances, we cannot and should not rashly rule on the basis of black letter law and jurisprudence that address only the fact of pardon; we cannot forget the election setting and simply disregard the interests of the voters in our ruling. While the people were not impleaded as direct parties to the case, we cannot gloss over their interests as they are the sovereign who cannot be disregarded in a democratic state like ours.

2. The Intervention of former Mayor Alfredo S. Lim.

I have included the intervention of former Mayor Alfredo S. Lim as a matter for Preliminary Consideration as it is an immaterial consideration under my position that the COMELEC did not gravely abuse its discretion in its assailed ruling. Despite its immateriality, I nevertheless discuss it in light of the Court's prior action approving his intervention, which court approval was an interlocutory order that is subject to the Court's final ruling on the merits of the case.

I have to discuss the intervention, too, for jurisprudential reasons: this intervention, apparently granted without indepth consideration, may sow confusion into the jurisprudence that those who came before us in this Court took pains to put in order.

2.a. Intervention in General.

Intervention is a remedy whereby a third party, not originally impleaded in the proceedings, becomes a litigant in the case so that the intervenor could protect or preserve a right or interest that may be affected by the proceedings.

The intervenor's interest must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. It must be of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

As discussed below, there are also other equally important limitations and restrictions to consider before an intervention can be allowed, among them, the need for the intervention to be timely filed.

2.b. The context of Lim's intervention.

The timing and incidents of Lim's intervention are jurisprudentially interesting and, by themselves, speak loudly against his cause.

The records of this case show that Lim never filed any petition to cancel Erap's CoC nor to disqualify him. Neither did he intervene in the COMELEC proceedings in the Risos-Vidal petition. Instead, Lim allowed Erap to continue as his rival candidate in the 2013 elections for Mayor of the City of Manila.

It will be recalled that Risos-Vidal filed her petition for certiorari before this Court on April 30, 2013 (or before the May 13, 2013 elections). Lim likewise did not intervene at that point. Erap won in the elections and in fact, on May 14, 2013, Lim publicly announced that he respected and acknowledged the COMELEC's proclamation of Erap and wished him all the best.[29]

On June 7, 2013 (25 days after the May 13, 2013 elections, or 24 days after Erap's proclamation, and 24 days likewise after Lim conceded victory to Erap), Lim then filed with this Court his motion for leave to intervene with the attached petition-in-intervention. His arguments were: 1) Erap was disqualified to run for public office as his pardon did not restore his rights to vote and to hold public office;[30] and 2) his intervention was still timely.

Lim also argued that it would have been premature to intervene in the Risos-Vidal petition before the proclamation because had Erap's votes not then been counted, they would have been considered stray and intervention would have been unnecessary. Lim further argued that, in view of Erap's disqualification, he should be declared as the winner, having obtained the second highest number of votes. Lim also additionally alleged that he never conceded defeat, and the COMELEC committed grave abuse of discretion when it dismissed Risos-Vidal's petition for disqualification based on its 2010 rulings.[31]

2.c. Lim's petition-in-intervention should be dismissed.

Since Lim intervened only in the present petition for certiorari before this Court, the Rules of Court on

intervention directly applies. Section 2, Rule 19 of the Rules of Court provides that the time to intervene is at any time before the rendition of judgment by the trial court.

The Court explained in *Ongco v. Dalisay*[32] that “the period within which a person may intervene is restricted and after the lapse of the period set in Section 2, Rule 19, intervention will no longer be warranted. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation.”

In *Ongco*,[33] the Court further traced the developments of the present rule on the period to file a motion for intervention. The former rule was that intervention may be allowed “before or during a trial.” Thus, there were Court rulings that a motion for leave to intervene may be filed “before or during a trial,” even on the day when the case is submitted for decision as long as it will not unduly delay the disposition of the case.[34] There were also rulings where the Court interpreted “trial” in the restricted sense such that the Court upheld the denial of the motion for intervention when it was filed after the case had been submitted for decision.[35] In *Lichauco v. CA*,[36] intervention was allowed at any time after the rendition of the final judgment.[37] In one exceptional case,[38] the Court allowed the intervention in a case pending before it on appeal in order to avoid injustice.

To cure these inconsistent rulings, the Court clarified in *Ongco* that “[t]he uncertainty in these rulings has been eliminated by the present Section 2, Rule 19, which permits the filing of the motion to intervene at any time before the rendition of the judgment, in line with the ruling in *Lichauco*.[39]

The justification for this amendment is that before judgment is rendered, the court, for good cause shown, may still allow the introduction of additional evidence as this is still within a liberal interpretation of the period for trial. Also, since no judgment has yet been rendered, the matter subject of the intervention may still be readily resolved and integrated in the judgment disposing of all claims in the case, without requiring an overall reassessment of these claims as would be the case if the judgment had already been rendered.[40]

The Court held in *Ongco* that under the present rules, [t]he period within which a person may intervene is also restricted... after the lapse of this period, it will not be warranted anymore. This is because, basically, intervention is not an independent action but is ancillary and supplemental to an existing litigation.[41]

The Court further held in *Ongco* that “there is wisdom in strictly enforcing the period set by Rule 19 of the Rules of Court for the filing of a motion for intervention. Otherwise, undue delay would result from many belated filings of motions for intervention after judgment has already been rendered, because a reassessment of claims would have to be done. Thus, those who slept on their lawfully granted privilege to intervene will be rewarded, while the original parties will be unduly prejudiced.”[42]

While the Court may have liberally relaxed the rule on intervention in some cases, a liberal approach cannot be made in the present case because of jurisdictional restrictions, further explained below.

Other than these reasons, I add that under COMELEC rules, only “a person allowed to initiate an action or proceeding may, before or during the trial of an action or proceeding, be permitted by the Commission, in its discretion, to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding.” Thus, Lim could have intervened at the COMELEC level before or during the hearing of the petition for disqualification that Risos-Vidal filed.

The records show that Lim intervened only after Risos-Vidal filed the present petition for certiorari with the Court and not during the disqualification proceedings before the COMELEC. He was therefore never a party in the disqualification proceeding before the COMELEC and, consequently, has not presented any evidence to support

his claims; nor was Erap ever given the chance to controvert Lim's claims before the COMELEC, the tribunal vested with the jurisdiction to settle the issues that he raised in his petition-in-intervention before the Court.

From the perspective of Rule 65 of the Rules of Court, I add that because Lim was not a party before the COMELEC, he never had the chance to file a motion for reconsideration before that body – a constitutional and procedural requirement before a petition for certiorari may be filed before the Court.[43] As a non-party to the disqualification case before the COMELEC, he cannot be deemed an “aggrieved party” who has earned the rights under Rule 65 to file a certiorari petition or to intervene to assail the COMELEC's decision. The Court, in particular, has no jurisdiction to grant the prayer of Lim to be declared as the winner, especially since the COMELEC never had the chance to rule on this in its assailed decision.

The original jurisdiction to decide election disputes lies with the COMELEC, not with this Court.[44] Thus, any ruling from us in the first instance on who should sit as mayor (in the event we grant the Risos-Vidal petition) will constitute grave abuse of discretion. Unfortunately, no recourse is available from our ruling. This character of finality renders it very important for us to settle the Lim intervention correctly.

At this juncture, I refer back to Ongco, where the Court held that the filing of a motion for intervention with the CA after the MTC had rendered judgment is an inexcusable delay and is a sufficient ground for denying a motion for intervention.[45]

Note that in Ongco, the Court still upheld the CA's denial of the motion for intervention and strictly applied the period to intervene even if what was involved was an appeal or a continuation of the proceedings of the trial court.

In contrast, the present case is not a continuation of the COMELEC proceedings and decision, but an original special civil action of certiorari. Thus, with more reason should the rules on intervention be more stringently applied, given too that the Court has no original jurisdiction over the issues involved in the requested intervention, in particular, over the issue of who should sit as Mayor of the City of Manila if Risos-Vidal petition would be granted.

As my last two points on the requested intervention, I would deny the intervention even if it technically satisfies the rules by reason of the estoppel that set in when Lim publicly announced that he was acknowledging and respecting Erap's proclamation. This public announcement is an admission against his interest that, in a proper case, would be admissible against Lim.

I also disregard outright, for lack of relevance, the cases that Lim cited regarding intervention. In his cited *Maquiling v. COMELEC*[46] and *Aratea v. COMELEC*[47] cases, the intervenors filed their intervention before the COMELEC and not before the Court. Thus, any reliance on these cases would be misplaced.

In sum, I maintain that Lim should be barred from participating in the present case as intervenor. Otherwise, the Court will effectively throw out of the window the jurisprudence that has developed on intervention, while disregarding as well the sound and applicable COMELEC rules on the same topic.

VI.

The Merits of the Petition

A.

On the Issue of Pardon and the COMELEC's Grave Abuse of Discretion.

The COMELEC did not err at all and thus could not have committed grave abuse of discretion in its ruling that

the terms of Erap's pardon restored to him the right to vote and to be voted upon. Too, the COMELEC did not gravely abuse its discretion in dismissing the petition of Riso-Vidal and in citing its 2010 final and executory rulings that Erap's pardon restored his right to vote and be voted upon.

A.1. Pardoning Power and the Pardon Extended.

Section 19, Article VII of the Constitution provides for the pardoning power of the President. It states that except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

Pardon is defined as an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment that the law inflicts for a crime he has committed.[48]

The power to pardon, when exercised by the Chief Executive in favor of persons convicted of public crimes, is plenary, limited only by the terms of the Constitution; its exercise within these limits is otherwise absolute and fully discretionary. The reasons for its exercise are not open to judicial inquiry or review, and indeed it would appear that he may act without any reason, or at least without any expressed reason, in support of his action.[49]

Where appropriate, however, his acts may be subject to the expanded jurisdiction of the Court under Article VIII, Section 1, paragraph 2 of the Constitution. This jurisdiction may be triggered, for example, if the President acts outside, or in excess, of the limits of the pardoning power granted him, as when he extends a pardon for a crime as yet not committed or when he extends a pardon before conviction.[50]

Llamas v. Orbos,[51] a 1991 case, discussed the extent and scope of the President's pardoning power:

During the deliberations of the Constitutional Commission, a subject of deliberations was the proposed amendment to Art. VII, Sec. 19 which reads as follows: "However, the power to grant executive clemency for violation of corrupt practices laws may be limited by legislation." The Constitutional Commission, however, voted to remove the amendment, since it was in derogation of the powers of the President. As Mr. Natividad stated:

I am also against this provision which will again chip more powers from the President. In case of other criminals convicted in our society we extend probation to them while in this case, they have already been convicted and we offer mercy. The only way we can offer mercy to them is through this executive clemency extended to them by the President. If we still close this avenue to them, they would be prejudiced even worse than the murderers and the more vicious killers in our society x x x.

The proposal was primarily intended to prevent the President from protecting his cronies. Manifestly, however, the Commission preferred to trust in the discretion of Presidents and refrained from putting additional limitations on his clemency powers. (II RECORD of the Constitutional Commission, 392, 418-419, 524-525)

It is evident from the intent of the Constitutional Commission, therefore, that the President's executive clemency powers may not be limited in terms of coverage, except as already provided in the Constitution, that is, "no pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules and regulations shall be granted by the President without the favorable recommendation of the COMELEC" (Article IX, C, Section 5, Constitution). If those already adjudged guilty criminally in court may be pardoned, those adjudged guilty administratively should likewise be extended the same benefit. [Emphasis supplied]

In considering and interpreting the terms of the pardon therefore, the starting point for analysis is the position that the President's power is full and plenary, save only for the textual limits under the Constitution. In the exercise of this power, too, it is not unreasonable to conclude, in the absence of any plain and expressed contrary intention,

that the President exercised the full scope of his power.

A.2. Structural Examination of the Erap Pardon.

The whole text of the pardon that PGMA granted states:

WHEREAS, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

WHEREAS, Joseph Ejercito Estrada has been under detention for six and half years,

WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights.

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.

Structurally, this grant is composed of two parts, namely, the introductory Whereas Clauses consisting of three (3) paragraphs, and the Dispositive or Command portion which defines the clemency extended and commands its implementation.

In issuing a pardon, the President not only exercises his full discretion but likewise directs and gives notice to all – the recipient, the officials and entities concerned – that the recipient should now be released and his disqualification lifted, pursuant to the terms of the pardon. In this sense, the structure of the written pardon assumes importance as pardon has to be implemented in accordance with its express terms and is no different in this sense from a judicial decision that likewise must be implemented.

In judicial decisions, the Court's resolution on a given issue before it is always embodied in the decision or order's fallo or dispositive portion.[52] It is the directive part of the decision or order which must be enforced or, in legal parlance, subjected to execution. A court that issues an order of execution contrary to the terms of its final judgment exceeds its jurisdiction, thus rendering its order invalid.[53] Hence, the order of execution should always follow the terms of the fallo or dispositive portion.

Other than the fallo, a decision or executory order contains a body – the court's opinion – explaining and discussing the decision. This opinion serves as the reason for the decision or order embodied in the fallo. In legalese, this opinion embodies the decision's ratio decidendi[54] or the matter or issue directly ruled upon and the terms and reasons for the ruling.

The decision's structure has given rise in certain instances to conflicts, or at the very least, to ambiguities that clouded the implementation of the decision. In *Gonzales v. Solid Cement Corporation*,[55] this Court laid down the rule when these instances occur: in a conflict between the body of the decision and its fallo or dispositive portion, the rule is:

The resolution of the court in a given issue – embodied in the fallo or dispositive part of a decision or order – is the controlling factor in resolving the issues in a case. The fallo embodies the court's decisive action on the issue/s posed, and is thus the part of the decision that must be enforced during execution. The other parts of the decision only contain, and are aptly called, the ratio decidendi (or reason for the decision) and, in this sense, assume a lesser role in carrying into effect the tribunal's disposition of the case.

When a conflict exists between the dispositive portion and the opinion of the court in the text or body of the decision, the former must prevail over the latter under the rule that the dispositive portion is the definitive order, while the opinion is merely an explanatory statement without the effect of a directive. Hence, the execution must conform with what the fallo or dispositive portion of the decision ordains or decrees.[56] [Emphasis supplied]

Thus, the body of the decision (or opinion portion) carries no commanding effect; the fallo or dispositive portion carries the definite directive that prevails over whatever is written in the opinion of the court. The body contains the reasons or conclusions of the court, but orders nothing; execution springs from the fallo or dispositive portion, not from the decision's body or opinion portion. In short, the fallo or dispositive portion prevails in case of conflict.

I say all these, aware that in *Cobarrubias v. People*,^[57] the Court made an exception to the general rule that the fallo or dispositive portion always prevails over the decision or order's body. The exception is when one can clearly and unquestionably conclude, based on the body of the decision and its discussions, that a mistake had been committed in formulating the dispositive portion. In such cases, reason dictates that the body of the decision should prevail.^[58]

This contrary *Cobarrubias* result, to be properly understood, must be read and considered in its factual context. In this case, the court itself made a blatant mistake in the dispositive portion as it mixed up the criminal docket case numbers, thus resulting in the erroneous dismissal of the wrong criminal case. Since the decision's body very clearly discussed which criminal case should be dismissed, the Court then held that the body should prevail over the dispositive portion. In other words, when the decision's intent is beyond doubt and is very clear but was simply beclouded by an intervening mistake, then the body of the decision must prevail.

A pardon, as an expression of an executive policy decision that must be enforced, hews closely to the structure of a court decision. Their structures run parallel with each other, with the *Whereas* Clauses briefly stating the considerations recognized and, possibly, the intents and purposes considered, in arriving at the directive to pardon and release a convicted prisoner.

Thus, while a pardon's introductory or *Whereas* Clauses may be considered in reading the pardon (in the manner that the opinion portion of a court decision is read), these *whereas* clauses – as a rule – cannot also significantly affect the pardon's dispositive portion. They can only do so and in fact may even prevail, but a clear and patent reason indicating a mistake in the grantor's intent must be shown, as had happened in *Cobarrubias* where a mistake intervened in the fallo.

A.3. The Pardon Extended to Erap Examined.

A.3(a) The Decision Convicting Erap.

To fully understand the terms of the granted executive clemency, reference should be made to the September 12, 2007 decision of the Sandiganbayan which states:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in Criminal Case No. 26558 finding the accused, Former President Joseph Ejercito Estrada, GUILTY beyond reasonable doubt of the crime of PLUNDER, defined in and penalized by Republic Act No. 7080, as amended. On the other hand, for failure of the prosecution to prove and establish their guilt beyond reasonable doubt, the Court finds the accused Jose "Jinggoy" Estrada and Atty. Edward S. Serapio NOT GUILTY of the crime of plunder and, accordingly, the Court hereby orders their ACQUITTAL.

The penalty imposable for the crime of plunder under Republic Act No. 7080, as amended by Republic Act No. 7659, is Reclusion Perpetua to Death. There being no aggravating or mitigating circumstances, however,

the lesser penalty shall be applied in accordance with Article 63 of the Revised Penal Code. Accordingly, the accused Former President Joseph Ejercito Estrada is hereby sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.

The period within which accused Former President Joseph Ejercito Estrada has been under detention shall be credited to him in full as long as he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the government of the following:

(1) The total amount of Five Hundred Forty Two Million Seven Hundred Ninety One Thousand Pesos (P545,291,000.00), with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (P200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty Nine Million Pesos (P189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as Boracay Mansion located at #100 11th Street, New Manila, Quezon City.

The cash bonds posted by accused Jose Jinggoy Estrada and Atty. Edward S. Serapio are hereby ordered cancelled and released to the said accused or their duly authorized representatives upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures. Likewise, the hold-departure orders issued against the said accused are hereby recalled and declared *functus officio*.

SO ORDERED.

A.3(b) The Pardon in light of the Judgment of Conviction.

This judgment has several components, namely: the finding of guilt; the principal penalty of imprisonment imposed; the inherent accessory penalties; the confiscation and forfeitures; and the disposition of the cash bonds that the acquitted accused filed.

Of these, actions on the forfeitures and the cash bonds have apparently been recognized as completed pursuant to Article 45 of the RPC, and have been expressly excluded from the executive clemency.[59] Thus, what remained for the executive clemency to touch upon were the principal and the accessory penalties that were outstanding, i.e., the remaining terms of the imprisonment; and the accessory penalties decreeing that Erap is “restored to his civil and political rights.”

B.

The Risos-Vidal's Objections Relating to Pardon.

The Risos-Vidal petition sows confusion into the plain terms of the executive clemency by arguing that: first, the Third Whereas Clause (referring to Erap's public commitment that he would no longer seek public office) in fact embodies a condition for the grant of the executive clemency; and second, no express restoration of the right to hold public office and to suffrage was made as the “restoration” was under general terms that did not cover these specific rights.

B.1. Refutation of the Risos-Vidal Objections.

B.1(a) “Absolute Pardon” as Officially Defined.

A ready reference to understand a pardon is its official definition under the applicable law and applicable rules and regulations. The definition of absolute pardon appears in the rules and regulations of the Board of Pardons and Parole (BPP).[60] The BPP is the constituent office in the Executive Department[61] responsible for the handling of cases of pardon upon petition, or any referral by the Office of the President on pardons and parole, or motu proprio.[62] In other words, the BPP is the foremost authority on what its title plainly states – pardons and paroles.

Under the BPP’s Revised Rules and Regulations, “absolute pardon” refers “to the total extinction of the criminal liability of the individual to whom it is granted without any condition. It restores to the individual his civil and political rights and remits the penalty imposed for the particular offense of which he was convicted.”[63]

Aside from absolute pardon, there is the conditional pardon[64] which is defined as “the exemption of an individual, within certain limits or conditions, from the punishment which the law inflicts for the offense he had committed resulting in the partial extinction of his criminal liability.”

These are the authoritative guidelines in determining the nature and extent of the pardon the President grants, i.e., whether it is absolute or conditional. To stress, the BPP is the body that investigates and recommends to the President whether or not a pardon should be granted to a convict, and that closely coordinates with the Office of the President on matters of pardons and parole.

Even a cursory examination of the Erap pardon and the BPP Rules would show that the wordings of the pardon, particularly on civil and political rights, carried the wordings of the BPP Rules. Thus, Erap’s pardon states:

IN VIEW HEREOF, and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights.

In these lights, when PGMA (as President and Head of the Executive Department to which the BPP belongs) granted Erap executive clemency and used the words of the BPP rules and regulations, she raised the inference that her grant was in the spirit in which the terms of the pardon are understood in the BPP rules.

In other words, she clearly intended the granted pardon to be absolute. Thus, the pardon granted totally extinguished the criminal liability of Erap, including the accessory penalty of perpetual absolute disqualification. It cannot be otherwise under the plain and unequivocal wording of the definition of absolute pardon, and the statement in the pardon that Erap is restored to his civil and political rights.

B.2. The Third Whereas Clause as a Condition.

The pardon extended to Erap was very briefly worded. After three short Whereas Clauses referring to: the Administration policy on the release of inmates;[65] the period Erap had been under detention;[66] and Erap’s attributed past statement publicly committing that he would “no longer seek any elective position,[67] the pardon proceeds to its main directives touching on the principal penalty of reclusion perpetua and the accessory penalties by expressly restoring Erap’s civil and political rights.

Unlike in a court decision where the ratio decidendi fully expounds on the presented issues and leads up to the dispositive portion, the Whereas Clauses all related to Erap but did not, singly or collectively, necessarily indicate that they are conditions that Erap must comply with for the continued validity of his pardon.

Notably, the first two Whereas Clauses are pure statements of fact that the grantor recognized, referring as they do to an administration policy and to the age of Erap.

The statement on the administration policy of releasing convicts who are 70 years old, to be sure, could not have been intended to be conditional so that a future change of policy or a mistake in Erap's age would have led to the invalidity of the pardon. Purely and simply, these two Whereas clauses were nothing more than statements of fact that the grantor recognized in the course of considering the pardon and they were never intended to operate as conditions.

The third Whereas Clause, one of the three clauses that the pardon contains, is similarly a statement of fact – what Erap had publicly committed in the past, i.e., that he would no longer seek public office. Such a statement would not be strange coming from a 70-year-old man convicted of plunder and sentenced to reclusion perpetua (literally, life imprisonment) and who, in the ordinary course, looks forward to an extended prison term. Under these conditions, he could easily say he would not seek political office again.

Of course, because the statement, standing by itself, can be equivocal, it can also be read with a bias against Erap and be understood to be a promise or a “commitment.” The plain reality, however, is that this clause does not bear the required context that would lead to this conclusion, and is totality lacking in any indicator that would make it a condition for the pardon. In short, a clear link to this kind of conclusion is plainly missing.

This link, for example, would have been there and would have radically changed the meaning of this Whereas clause had it stated that Erap publicly committed that, if pardoned, he would not seek public office. No such link, however, appears in the body of the pardon, nor is any evidence available from the records of the case, to show that a promissory commitment had been made and adopted by PGMA, as grantor.

Thus, as matters stand, the third Whereas clause stands in the same footing and should be characterized in the same manner that the two other clauses are characterized: singly or collectively, they are simply declarations of what the grantor recognized as facts at the time the pardon was granted. In the manner the Court spoke of preambles in the case of *Kuwait Airways Corporation v. Philippine Airlines, Inc.*,^[68] the Whereas clauses merely manifest considerations that cannot be the origin of rights and obligations^[69] and cannot make the Erap pardon conditional.

Simply as an aside (as I feel the topic does not deserve any extended consideration), I do not believe that the “acceptance” of the pardon is important in the determination of whether the pardon extended is absolute or conditional.

Irrespective of the nature of the pardon, the moment the convict avails of the clemency granted, with or without written acceptance, then the pardon is already accepted. If this is to be the standard to determine the classification of the pardon, then there would hardly be any absolute pardon; upon his release, the pardon is deemed accepted and therefore conditional.

If an express acceptance would serve a useful purpose at all, it is in the binding effect that this acceptance would put in place. As in the case of an appointment, a pardon can be withdrawn at any time before it is accepted by the grantor. Acceptance would thus be the means to tie the grantor to the grant.

What is important, to my mind, is proof of the communication of the pardon to the convict, in the cases when terms and conditions are attached to the pardon. Communications of these terms, and proof that the convict availed himself of the granted clemency, would suffice to conclude that the terms and conditions had been accepted and should be observed.

B.3. Any Doubt Should Take Popular Vote into Account.

At most, I can grant in a very objective reading of the bare terms of the third Whereas clause that it can admit of

various interpretations. Any interpretative exercise, however, in order to be meaningful and conclusive must bring into play relevant interpretative aids, even those extraneous to the pardon, such as the events that transpired since the grant of the pardon. This case, in particular, the most relevant interpretative aids would be the two elections where Erap had been a candidate, the electorate's choices, and the significant number who voted in good faith to elect Erap.

In 2010, this number was sizeable but Erap only landed in second place with a vote of 9,487,837 in a field of ten (10) candidates. This result though cannot but be given appropriate recognition since the elections were nationwide and Erap's conviction and pardon were issues used against him.

In the 2013 elections (where Erap's qualification is presently being contested), the results were different; he garnered sufficient votes to win, beating the incumbent in this electoral fight for the premiere post in the City of Manila.

Under these circumstances, no reason exists to disregard the popular vote, given that it is the only certain determinant under the uncertainty that petitioner Riso-Vidal NOW TRIES to introduce in the present case. If this is done and the popular vote is considered together with the official definition of pardon under the BPP regulations, the conclusion cannot but be the recognition by this Court that Erap had been given back his right to vote and be voted upon.

B.3(a) The Express Restoration of the Right to Hold Office.

The petitioner Riso-Vidal in her second substantive objection posits that the pardon did not expressly include the right to hold office, relying on Article 36 of the RPC that provides:

Pardon; its effects. – A pardon shall not work on the restoration of the right to hold public office or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

To the petitioner, it was not sufficient that under the express terms of the pardon, Erap had been “restored to his civil and political rights.” Apparently, she wanted to find the exact wording of the above-quoted Article 36 or, as stated in her various submissions, that Erap should be restored to his “full” civil and political rights.

To set the records straight, what is before us is not a situation where a pardon was granted without including in the terms of the pardon the restoration of civil and political rights. What is before us is a pardon that expressly and pointedly restored these rights; only, the petitioner wants the restoration in her own terms.

In raising this objection, the petitioner apparently refuses to accept the official definition of “absolute pardon” pointed out above; she also fails or refuses to grasp the full import of what the term “civil and political rights” connotes. The term traces its roots to the International Covenant on Civil and Political Rights^[70] which in turn traces its genesis to the same process that led to the Universal Declaration of Human Rights to which the Philippines is a signatory.^[71]

Closer to home, Republic Act No. 9225 (The Citizenship Retention and Reacquisition Act of 2003) also speaks of “Civil and Political Rights and Liabilities” in its Section 5 by providing that “Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all the attendant liabilities and responsibilities under existing laws of the Philippines...” and in Section 5(5) mentions the “right to vote and be elected or appointed to any public office in the Philippines x x x.”

In *Simon v. Commission on Human Rights*,^[72] the Court categorically explained the rights included under the term “civil and political rights,” in the context of Section 18, Article XIII of the Constitution which provides for the Commission on Human Rights' power to investigate all forms of human rights violations involving civil and

political rights.”

According to Simon, the term “civil rights,”[31] has been defined as referring (t)o those (rights) that belong to every citizen of the state or country, or, in wider sense, to all its inhabitants, and are not connected with the organization or administration of the government. They include the rights of property, marriage, equal protection of the laws, freedom of contract, etc. or, as otherwise defined, civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action. Also quite often mentioned are the guarantees against involuntary servitude, religious persecution, unreasonable searches and seizures, and imprisonment for debt.[73]

Political rights, on the other hand, refer to the right to participate, directly or indirectly, in the establishment or administration of government, the right of suffrage, the right to hold public office, the right of petition and, in general, the rights appurtenant to citizenship vis-a-vis the management of government.[74]

In my view, these distinctions and enumerations of the rights included in the term “civil and political rights,”[75] as accepted internationally and domestically, are sufficiently clear and cannot be made the serious basis of the present objection, i.e., that further specification should be made in light of Article 36 of the RPC that requires the restoration of the rights of the right to suffrage and to hold office to be express. To insist on this argument is to require to be written into the pardon what is already there, in the futile attempt to defeat the clear intent of the pardon by mere play of words.

B.3(a)(i) The RPC Perspectives.

From the perspective of the RPC, it should be appreciated, as discussed above, that a conviction carries penalties with varying components. These are mainly the principal penalties and the accessory penalties.[76]

Reclusion perpetua, the penalty imposed on Erap, carries with it the accessory penalty of civil interdiction for life or during the period of the sentence and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been remitted in the pardon.[77]

The full understanding of the full practical effects of pardon on the principal and the accessories penalties as embodied in the RPC, requires the combined reading of Articles 36 and 41 of the RPC, with Article 41 giving full meaning to the requirement of Article 36 that the restoration of the right to hold office be expressly made in a pardon if indeed this is the grantor’s intent. An express mention has to be made of the restoration of the rights to vote and be voted for since a pardon with respect to the principal penalty would not have the effect of restoring these specific rights unless their specific restoration is expressly mentioned in the pardon.

The Erap’s pardon sought to comply with this RPC requirement by specifically stating that he was “restored to his civil and political rights.” I take the view that this restoration already includes the restoration of the right to vote and be voted for as these are rights subsumed within the “political rights” that the pardon mentions; in the absence of any express accompanying reservation or contrary intent, this formulation grants a full restoration that is coterminous with the remitted principal penalty of reclusion perpetua.

Risos-Vidal objects to this reading of Article 36 on the ground that Section 36[78] and 41[79] expressly require that the restoration be made specifically of the right to vote and to be voted upon. J. Leonen supports Risos-Vidal’s arguments and opines that civil and political rights collectively constitute a bundle of rights and the rights to vote and to be voted upon are specific rights expressly singled out and required by these RPC articles and thus must be expressly restored. It posits too that these are requirements of form that do not diminish the pardoning power of the President.

I note in this juncture that J. Leonen's position on the requirements of Articles 36 and 41, is a very literal reading of 80-year old provisions[80] whose interpretations have been overtaken by events and should now be updated. As I discussed above, technical meanings have since then attached to the term "civil and political rights," which meanings cannot be disregarded without doing violence to the safeguards that these rights have acquired over the years.

In this age and time, "political rights" cannot be understood meaningfully as rights with core values that our democratic system protects, if these rights will not include the right to vote and be voted for. To exclude the rights of suffrage and candidacy from the restoration of civil and political rights shall likewise signify a diminution, other than what the Constitution allows, of the scope of pardon that the President can extend under the 1987 Constitution. Significantly, this Constitution itself did not yet exist when the Revised Penal Code was passed so that this Code could not have taken into account the intent of the framers of this Constitution to maintain the plenary nature of the pardoning power.[81]

B.3(a)(ii) Harmonization of Conflicting Provisions.

Where seeming conflicts appear between or among provisions of law, particularly between a constitutional provision and a statute, the primary rule in understanding these seeming conflicts is to harmonize them, giving effect to both provisions within the limits of the constitutional provision.[82]

As posed in this case, this seeming conflict occurs between the terms and intent of the current Constitution to give the President the full power to grant executive clemency, limited only by the terms of the Constitution itself, on the one hand, and the collective application of the Articles 36 and 41 of the RPC, on the other.

In my view, harmonization occurs under the Erap pardon by giving due recognition to the essentially plenary nature of the President's pardoning power under Section 19, Article VII of the Constitution, while giving effect to the RPC intent to make clear in the terms of the pardon the intent to restore the convict's rights to vote and to be voted upon, as a matter of form that is satisfied by reference to the restoration of political rights that, as now understood internationally and domestically, include the restoration of the right to vote and to be voted upon. Understood in this manner, the RPC provisions would not be constitutionally infirm as they would not diminish the pardoning power of the President.

To address another concern that J. Leonen expressed, no need exists to require the President to grant the "full" restoration of Erap's civil and political rights as this kind of interpretation renders illusory the extent of the President's pardoning power by mere play of words. In the absence of any contrary intent, the use of the modifier "full" is an unnecessary surplusage.

B.3(a)(iii) The Monsanto v. Factoran Case.

I also address J. Leonen's discussion of the Monsanto v. Factoran case.

Part and parcel of the topic "RPC Perspectives" is the position that J. Leonen took in Monsanto – in the course of repudiating Cristobal v. Labrador,[83] Pelobello v. Palatino[84] and Ex Parte Garland.[85] J. Leonen took notice of the statement in Monsanto that "[t]he better considered cases regard full pardon x x x as relieving the party from all the punitive consequences of his criminal act, including the disqualification or disabilities based on finding of guilt." J. Leonen went on to state that this "including phrase or inclusion" is not an authority in concluding that the grant of pardon ipso facto remits the accessory disqualifications or disabilities imposed on a convict regardless of whether the remission was explicitly stated,[86] citing the following reasons:

First, J. Leonen maintains that the inclusion was not a pronouncement of a prevailing rule but was merely a

statement made in the course of a comparative survey of cases during which the Court manifested a preference for “authorities [that reject] the unduly broad language of the Garland case.”[87]

Second, the footnote to the inclusion indicates that Monsanto relied on a case decided by a United States court. Thus, Monsanto was never meant as a summation of the controlling principles in this jurisdiction and did not consider Articles 36 and 41 of the RPC.

Lastly, J. Leonen argues that even granting that the inclusion articulated a rule, this inclusion, made in 1989, must be deemed to have been abandoned, in light of the Court’s more recent pronouncements - in 1997, in *People v. Casido*,[88] and in 2000, in *People v. Patriarca*[89]- which cited with approval this Court’s statement in *Barrioquinto v. Fernandez*. [90]

J. Leonen added that the Monsanto inclusion must also be deemed superseded by the Court’s ruling in *Romeo Jalosjos v. COMELEC*[91] which recognized that “one who is previously convicted of a crime punishable by reclusion perpetua or reclusion temporal continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, unless the accessory penalty shall have been expressly remitted in the pardon.”

I disagree with these positions, particularly with the statement that the Monsanto inclusion was overturned by *Casido*, *Patriarca* (citing *Barrioquinto*) and *Romeo Jalosjos*.

I maintain that the inclusion was the ratio decidendi of the case and was not just a passing statement of the Court. In *Monsanto*, the Court emphasized that a pardon may remit all the penal consequences of a criminal indictment.[92] The Court even applied this statement by categorically ruling that the full pardon granted to Monsanto “has resulted in removing her disqualification from holding public employment.”[93] In fact, J. Leonen’s interpretation of *Monsanto* is misleading; his conclusion on the superiority of *Casido*, *Patriarca* and *Jalosjos* over *Monsanto* is likewise misplaced and without basis.

For clarity, the inclusion phrase is part of the Court’s discussion in *Monsanto* and was made in the context that although the Court repudiated the *Garland* ruling (as cited in *Pellobello* and *Cristobal*) that pardon erases the guilt of the convict, the Court still acknowledged that pardon may remove all the punitive consequences of a convict’s criminal act, including the disqualifications or disabilities based on the finding of guilt.[94]

The complete discussion of the Court in *Monsanto* where J. Leonen selectively lifted the inclusion for his own purposes is as follows:[95]

Having disposed of that preliminary point, we proceed to discuss the effects of a full and absolute pardon in relation to the decisive question of whether or not the plenary pardon had the effect of removing the disqualifications prescribed by the Revised Penal Code.

x x x x

The *Pellobello v. Palatino* and *Cristobal v. Labrador* cases, and several others show the unmistakable application of the doctrinal case of *Ex Parte Garland*, whose sweeping generalizations to this day continue to hold sway in our jurisprudence despite the fact that much of its relevance has been downplayed by later American decisions. Consider the following broad statements:

A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

Such generalities have not been universally accepted, recognized or approved. The modern trend of authorities now rejects the unduly broad language of the *Garland* case (reputed to be perhaps the most extreme statement which has been made on the effects of a pardon). To our mind, this is the more realistic approach. While a pardon has generally been regarded as blotting out the existence of guilt so that in the eye of the law the offender is as innocent as though he never committed the offense, it does not operate for all purposes. The very essence of a pardon is forgiveness or remission of guilt. Pardon implies guilt. It does not erase the fact of the commission of the crime and the conviction thereof. It does not wash out the moral stain. It involves forgiveness and not forgetfulness.

The better considered cases regard full pardon (at least one not based on the offender's innocence) as relieving the party from all the punitive consequences of his criminal act, including the disqualifications or disabilities based on the finding of guilt. But it relieves him from nothing more. "To say, however, that the offender is a "new man", and "as innocent as if he had never committed the offense;" is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offense is a convicted criminal, though pardoned; he may be deserving of punishment, though left unpunished; and the law may regard him as more dangerous to society than one never found guilty of crime, though it places no restraints upon him following his conviction."

x x x x

In this ponencia, the Court wishes to stress one vital point: While we are prepared to concede that pardon may remit all the penal consequences of a criminal indictment if only to give meaning to the fiat that a pardon, being a presidential prerogative, should not be circumscribed by legislative action, we do not subscribe to the fictitious belief that pardon blots out the guilt of an individual and that once he is absolved, he should be treated as if he were innocent. For whatever may have been the judicial dicta in the past, we cannot perceive how pardon can produce such "moral changes" as to equate a pardoned convict in character and conduct with one who has constantly maintained the mark of a good, law-abiding citizen.

x x x x

Pardon granted after conviction frees the individual from all the penalties and legal disabilities and restores him to all his civil rights. But unless expressly grounded on the person's innocence (which is rare), it cannot bring back lost reputation for honesty, integrity and fair dealing. This must be constantly kept in mind lest we lose track of the true character and purpose of the privilege.

Thus, notwithstanding the expansive and effusive language of the *Garland* case, we are in full agreement with the commonly-held opinion that pardon does not ipso facto restore a convicted felon to public office necessarily relinquished or forfeited by reason of the conviction although such pardon undoubtedly restores his eligibility for appointment to that office.

x x x x

For petitioner Monsanto, this is the bottom line: the absolute disqualification or ineligibility from public office forms part of the punishment prescribed by the Revised Penal Code for estafa thru falsification of public documents. It is clear from the authorities referred to that when her guilt and punishment were expunged by her pardon, this particular disability was likewise removed. Henceforth, petitioner may apply for reappointment to the office which was forfeited by reason of her conviction. And in considering her qualifications and suitability for the public post, the facts constituting her offense must be and should be evaluated and taken into account to determine ultimately whether she can once again be entrusted with public funds. Stated differently, the pardon granted to petitioner has resulted in removing her disqualification from holding public employment but it cannot

go beyond that. To regain her former post as assistant city treasurer, she must re-apply and undergo the usual procedure required for a new appointment. [Emphasis and underscoring supplied; citations omitted]

As against J. Leonen's interpretation of the Monsanto ruling above, I deduce the following contrary points:

First, contrary to J. Leonen's statement, the Court took into consideration the provisions of the RPC in arriving at its ruling in Monsanto.

To reiterate, Monsanto exhaustively discussed the effects of a full and absolute pardon on the accessory penalty of disqualification. Hence, the Court ruled that the full pardon granted to Monsanto resulted in removing her disqualification from holding public employment under the RPC but did not result in her automatic reinstatement as Assistant City Treasurer due to the repudiation of the Garland ruling cited in Pelobello and Labrador.

In contrast, the ruling of the Court in Casido[96] and Patriarca,[97] which both cited Barrioquinto,[98] all related to amnesty and not to pardon. The paragraph in Casido and Patriarca that J. Leonen quoted to contradict the Monsanto inclusion is part of the Court's attempt in Casido and Patriarca to distinguish amnesty from pardon.

For clarity, below is the complete paragraph in Casido[99] and Patriarca[100] where J. Leonen lifted the portion (highlighted in bold) that he used to contradict the Monsanto inclusion:

The theory of the respondents, supported by the dissenting opinion, is predicated on a wrong contention of the nature or character of an amnesty. Amnesty must be distinguished from pardon.

Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while amnesty by Proclamation of the Chief Executive with the concurrence of Congress, and it is a public act of which the courts should take judicial notice. Pardon is granted to one after conviction; while amnesty is to classes of persons or communities who may be guilty of political offenses, generally before or after the institution of the criminal prosecution and sometimes after conviction. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does "nor work the restoration of the rights to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon," and it "in no case exempts the culprit from the payment of the civil indemnity imposed upon him by the sentence" (article 36, Revised Penal Code). While amnesty looks backward and abolishes and puts into oblivion the offense itself, it so overlooks and obliterates the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense.[101] [Emphasis supplied]

As between Monsanto, involving a full pardon, and the three amnesty cases (Casido, Patriarca and Barrioquinto), Monsanto clearly applies to the pardon that is involved in the present case where the dispositive portion made a restoration of Erap's civil and political rights. Note that the pardon described in the amnesty cases does not even identify whether the pardon being described was absolute or conditional. In fact, the portion cited by the majority in the amnesty cases merely repeated what Article 36 of the RPC provides. Monsanto, on the other hand and to the contrary, took into consideration these RPC provisions on disqualifications in relation with the effects of a full pardon.

From this perspective, J. Leonen is thus careless and misleading in immediately concluding that the Monsanto ruling on "inclusion" was overturned by the amnesty cases.

Similarly, contrary to J. Leonen's argument, the ruling in Romeo Jalosjos v. COMELEC (Jalosjos) did not supersede the Monsanto ruling cited above.

In Jalosjos,[102] the Court merely reconciled the apparent conflict between Section 40(a)[103] of the Local

Government Code and Article 30[104] of the RPC, which provides for the effects of perpetual or temporary absolute disqualification.

The Court held in *Jalosjos* that Article 41 of the RPC expressly states that one who was previously convicted of a crime punishable by reclusion perpetua or reclusion temporal continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, unless this accessory penalty had been expressly remitted in the pardon. In *Jalosjos*, the accessory penalty had not been expressly remitted in the Order of Commutation or by any subsequent pardon; hence, *Jalosjos*' disqualification to run for elective office was deemed to subsist.[105]

Jalosjos could be harmonized with *Monsanto* in that the latter also recognized the provisions of the RPC on the accessory penalty of disqualification but holds that the full pardon remits this disqualification.

In the present case, Erap's pardon fully complied with the RPC requirements for the express remission of the accessory penalty of perpetual absolute disqualification as the pardon in fact restored him to his civil and political rights. In this light, the *Monsanto* ruling still applies: while the PGMA pardon does not erase Erap's guilt, it nonetheless remitted his disqualification to run for public office and to vote as it expressly restored him to his civil and political rights.

The Office of the Solicitor General succinctly expressed the *Monsanto* ratio decidendi when it said that the Court, despite ruling against *Monsanto*, "nevertheless reaffirmed the well-settled doctrine that the grant of pardon also removes one's absolute disqualification or ineligibility to hold public office."

B.3(b) Arguments via the Interpretative Route.

Alternatively, if indeed the third *Whereas* clause had injected doubt in the express and unequivocal restoration made, then two interpretative recourses can be made to determine how this doubt can be resolved.

B.3(b)(i) The Liberal Mode of Interpretation.

The first approach is to use by analogy the ruling and reasoning in the case of *Frank v. Wolfe*[106] which involved commutation of sentence, a lesser grant but which is an act of grace nevertheless.

The Court held in this case that "it is a principle universally recognized that all such grants are to be construed favorably to the grantee, and strictly as to the grantor, not only because they partake of the nature of a deed, and the general rule of interpretation that the terms of a written instrument evidencing with especial force to grants or pardon and commutations, wherein the grantor executes the instrument with little or no right on the part of the grantee to intervene in its execution or dictate its terms, but because of the very nature of the grant itself as an act of grace and clemency. (Bishop *Crim. Law*, sec. 757, and cases cited: *Osborn v. U.S.*, 91 U.S. 474; *Lee v. Murphy*, 22 *Grat. Va.*, 789.) Applying the rule we think that, if it had been the intention of the commuting authority to deprive the prisoner of the beneficent provisions of Act No. 1533,[107] language should have been used and would have been used which would leave no room for doubt as to its meaning, and would make clearly manifest the object intended."

This approach, read with the plain meaning rule of statutory interpretation (i.e., that an instrument should, as a first rule, be read in accordance with the plain meaning that its words import[108]) cannot but lead us to the conclusion that the *Risos-Vidal*'s "third *Whereas* Clause" objection should be thrown out for lack of merit.

B.3(b)(ii) The *Vox Populi* Line of Cases.

The second approach is to accept that such doubt cannot be resolved within the four corners of the written pardon and resort should be taken to the external surrounding circumstances that followed the grant and the interests

involved (i.e., protection of the interests of the electorate and the recognition of vox populi), as already discussed above and supplemented by the rulings below.

In the *Fernandez v. House of Representatives Electoral Tribunal*[109] line of cases involving the issue of ineligibility based on the residency requirements, that Court declared that it must exercise utmost caution before disqualifying a winning candidate, shown to be the clear choice of the constituents to represent them in Congress.

Citing *Frivaldo v. COMELEC*,[110] the Court held that time and again it has liberally and equitably construed the electoral laws of our country to give fullest effect to the manifest will of our people, for in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate freely expressed through the ballot. Otherwise stated, legal niceties and technicalities cannot stand in the way of the sovereign will.

Furthermore, to successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people, would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.

Another significant ruling to consider is *Malabaguio v. COMELEC et al.*[111] involving the appreciation of ballots, the Court, citing its ruling in *Alberto v. COMELEC*,[112] declared that election cases involve public interest; thus, laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.

The Court further reiterated in *Maruhom v. COMELEC, et al.*[113] its ruling that the question really boils down to a choice of philosophy and perception of how to interpret and apply the laws relating to elections; literal or liberal; the letter or the spirit; the naked provision or the ultimate purpose; legal syllogism or substantial justice; in isolation or in context of social conditions; harshly against or gently in favor of the voter's obvious choice. In applying election laws, it would be far better to err in favor of popular sovereignty than to be right in complex but little understood legalisms.

In *Rulloda v. COMELEC, et al.*[114] involving substitution of candidates, the Court ruled that the purpose of election laws is to give effect to, rather than frustrate, the will of the voters. It is a solemn duty to uphold the clear and unmistakable mandate of the people. It is well-settled that in case of doubt, political laws must be so construed as to give life and spirit to the popular mandate freely expressed through the ballot.

Technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.[115]

Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.[116]

These rulings, applicable in a situation of doubt yields the conclusion that the doubt, if any, in the present case should be resolved in Erap's favor.

B.4. Conclusions on Pardon and Grave Abuse of Discretion.

In the light of all the above arguments on pardon and the refutation of the positions of the petitioner Risos-Vidal, I submit to the Court that under the Rule 65 standard of review discussed above, no compelling reason exists to

conclude that the COMELEC committed grave abuse of discretion in ruling on the pardon aspect of the case.

No grave abuse of discretion could have been committed as the COMELEC was correct in its substantive considerations and conclusions. As outlined above, Erap indeed earned the right to vote and to be voted for from the pardon that PGMA granted him. It is the only reasonable and logical conclusion that can be reached under the circumstances of the case.

C.

The Objections Relating to the 2010 COMELEC Rulings in the Disqualification Trilogy.

As I previously discussed, despite the ponencia's resolution that the COMELEC did not gravely abuse its discretion in ruling on the issue of Erap's pardon, another crucial issue to be resolved is whether or not the COMELEC gravely abused its discretion in relying on its 2010 rulings in dismissing the Risos-Vidal petition.

This issue must be resolved in the present case as the assailed COMELEC rulings did not rule specifically on the issue of Erap's pardon but resolved instead that the issue of Erap's pardon is already a previously "settled matter," referring to the consolidated COMELEC Rulings in SPA No. 09-028 (DC) and SPA No. 09-104 (DC), entitled *Atty. Evilio C. Pormento v. Joseph Ejercito Estrada and In Re: Petition to Disqualify Estrada Ejercito, Joseph M. From Running As President Due to Constitutional Disqualification and Creating Confusion to the Prejudice of Estrada, Mary Lou B.*

As I will discuss below, the COMELEC did not gravely abuse its discretion in relying on its 2010 disqualification rulings in dismissing Risos-Vidal's petition.

C.1. The Trilogy of Disqualification Cases in 2010.

As narrated above,[117] Erap's 2010 presidential candidacy gave rise to three cases – the Pamatong, Pormento and Mary Lou Estrada cases - all aimed at disqualifying him. The COMELEC duly ruled in all these cases. If the effects of these rulings have been muddled at all in the understanding of some, the confusion might have been due to the failure to look at the whole 2010 disqualification scene and to see how these trilogy of disqualification cases interacted with one another.

The three cases, appropriately given their respective docket numbers, were heard at the same time. While they were essentially based on the same grounds (hence, the description trilogy or a series of three cases that are closely related under a single theme – the disqualification of Erap), only the Pormento and Mary Lou Estrada cases were formally consolidated; the Pamatong case, the first of the cases, was not included because Pamatong also sought the disqualification from public office of PGMA on the ground that she is also constitutionally barred from being re-elected.

Petitioner Pamatong expressly put in issue Erap's fitness to be a candidate based on his previous conviction for plunder and the terms of the pardon extended him by PGMA; the COMELEC, for its part, directly ruled on the matter. To quote the relevant portions of the COMELEC Resolution in Pamatong:[118]

On December 28, 2009, Petitioner Pamatong submitted his Position Paper on Joseph E. Estrada and Gloria M. Arroyo, asking the questions: Are they above the law? The Petitioner Pamatong took the absolutist point of view that former President Joseph Ejercito Estrada is banned forever from seeking the same position of President of the Republic having been previously elected as such President. He also espoused the idea that Respondent Gloria Macapagal Arroyo as the sitting President is forever banned from seeking any other elective office, including a post such as member of the House of Representatives.

x x x x

Furthermore, Petitioner maintains that the pardon granted Estrada was conditioned on his promise not to run for any public office again. It was not a full pardon but was a conditional one. The exercise of executive clemency was premised on the condition that former President Estrada should not run again for Office of the President of the Philippines or for any other public office.[119]

x x x x

Furthermore, there is absolutely no indication that the executive clemency exercised by President Gloria Arroyo to pardon Former President Estrada was a mere conditional pardon. It clearly stated that the Former President is “restored to his civil and political rights” and there is nothing in the same which limits the restoration. The only thing stated therein that may have some bearing on the supposed condition is that statement in the whereas clause that contained the following: Whereas, Joseph Estrada has publicly committed to no longer seek any elective position or office, but that is not a condition but is merely part of the preliminary statement. It cannot therefore serve to restrict the operation of or prevail over the explicit statement in the executive clemency which restored all of Estrada’s civil and political rights, including the “right to vote and to be voted for public office” for the position of the Presidency.

This executive clemency granted to the former President being absolute and unconditional and having been accepted by him, the same can no longer be revoked.[120] [Emphasis supplied]

How the three cases exactly related to one another in terms of the issues posed is described by the COMELEC in its consolidated Resolution in the cases of Pormento and Mary Lou Estrada, as follows:[121]

However, as to the substantive aspect of the case, the Respondent’s Answer basically raises and repleads the same defenses which were relied upon in SPA 09-024, except for the additional ground that “the grant of executive clemency removed all legal impediments that may bar his candidacy for the Presidency.”[122] These grounds consisted of:

(a)

The “President” being alluded to under section 4 of Article VII of the 1987 Constitution refers to the incumbent President;

(b)

The Prohibition does not apply to the person who merely serves a tenure and not a complete term;

(c)

Joseph Estrada is not running for reelection but is “running again” for the same position of President of the Philippines;

(d)

The Provisions of section 4 (1st par), Article VII of the 1987 Constitution is clear, unequivocal and unambiguous; hence not subject to any interpretation;

(e)

The evil sought to be prevented is directed against the incumbent President;

(f)

The sovereignty of the people should be paramount; and

(g)

The grant of executive clemency removed all legal impediments that may bar his candidacy for the presidency.
[Emphasis supplied]

As arranged during the COMELEC's common hearing on the trilogy, separate decisions were rendered simultaneously.[123] They all touched on the issue of pardon.

As likewise already explained above, all three cases became final, executory and unappealable five (5) days after its promulgation, pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure.[124] Since all the petitioners filed their respective motions for reconsideration, finality was reckoned from the denial of these motions.

Of the three, petitioner Pormento went one step further to assail the final COMELEC ruling before this Court. His effort did not bear fruitful result as the Court dismissed his petition for mootness – when the Court issued its ruling, Erap had lost the 2013 presidential elections.

In the dismissal of the Pormento petition before this Court [G.R. No. 191188], a nagging issue that has left some uncertainty is the effect of the dismissal on the COMELEC's Pormento ruling. This assailed COMELEC resolution tackled two issues: 1) the constitutional prohibition on re-election; and 2) the nature of Erap's pardon and its effect on his qualification to run for an elective public office or as President.

The Court, however, in dismissing the case, focused its discussions solely on the issue of the constitutional ban on re-election and ruled that this issue had been rendered moot by the supervening event of Erap's loss in the 2010 elections; the Court did not discuss or even mention the issue of whether the COMELEC gravely abused its discretion in ruling that Erap's pardon was absolute and had restored his right to run for the Presidency.

In this situation, the assailed COMELEC ruling simply becomes, not only final and executory, but unassailable. No appeal is available as an appeal is barred by the Constitution.[125] No petition for certiorari is likewise available unless another petition had been filed within the period for filing allowed by the Rules of Court.[126] Thus, the COMELEC rulings on the trilogy of disqualification cases fully stand, enforceable according to their terms. From the perspective of the Court, no enforceable ruling was made nor any principle of law established. In other words, the final ruling to be reckoned with in any future dispute is effectively the COMELEC ruling.

C.2. The Risos-Vidal Petition and its Objections against Erap's Status.

C.2(a) The Objections and its Fallacies.

The Risos-Vidal petition, fully supported by J. Leonen, objects to the binding effect of the 2010 disqualification trilogy decisions, on the claim that *res judicata* did not apply because pardon was not an issue ruled upon in 2010.

This may have partly stemmed from the statement of issues in the 2010 COMELEC Resolution in Pormento defining the issues common to Pormento and Mary Lou Estrada, disregarding the incidents that transpired in the trilogy and the issues that Erap raised in his Answer.[127] Another source of confusion perhaps was the fact that the COMELEC, in ruling on the 2013 Risos-Vidal petition, only cited the Pormento and Mary Lou Estrada cases.

The objections, in my view, do not take into account the sequence of events in 2010 on the filing of the disqualification cases, the relationship of the disqualification cases with one another, the law on the finality and binding effect of rulings, and the reason for the COMELEC's citation of the Pormento and Mary Lou Estrada rulings in the subsequent 2013 Risos-Vidal petition.

In Pamatong, Pamatong raised this issue in his Position Paper. Thus, pardon was an issue raised and ruled upon.

The same process took place in the subsequent consolidated cases of Pormento and Mary Lou Estrada, so that the COMELEC itself, in its resolution of these cases, recognized that pardon was one of the issues that Erap raised and accordingly ruled on the matter. Significantly, the COMELEC rulings on the matter of pardon in all three cases practically carried the same wording, revealing the COMELEC's view that the cases constituted a trilogy that posed practically the same issues, one of which is the pardon of Erap.

C.2(b) Res Judicata and its Application to the Case.

The COMELEC Second Division, in dismissing the Risos-Vidal disqualification petition against Erap, emphasized that the issue of whether Erap's pardon allowed him to run for office had already been fully discussed in previous cases, and no longer needed re-examination. The COMELEC additionally pointed out that petitioner Risos-Vidal failed to provide sufficient reason to reverse its prior decision.

J. Leonen noted that this Court is not barred by res judicata from revisiting the issue of Erap's pardon; we can review the COMELEC's decision because there is neither identity of the parties, of subject matters, and of causes of action in the previous disqualification cases. J. Leonen also pointed out that the Court had not ruled with finality on the issue of Erap's pardon in Pormento, because supervening events had rendered the case moot.

I disagree with J. Leonen. As I earlier pointed out, we must review the COMELEC's decision using the standard of grave abuse of discretion: we nullify the COMELEC ruling if it gravely abused its discretion in ruling on the present case; if no grave abuse of discretion existed, the Risos-Vidal petition should be dismissed instead of being granted.

As I will proceed to discuss below, the COMELEC did not gravely abuse its discretion when it ruled in the present case that Erap's pardon qualified him to run for an elective public office and that this issue is a previously "settled matter." [128] I say this because the principle of res judicata, under either of its two modes - conclusiveness of judgment or bar by prior judgment - applies in the present case.

Res judicata embraces two concepts: first, the bar by prior judgment under Rule 39, Section 47 (b) of the Rules of Court; and second, the preclusion of a settled issue or conclusiveness of judgment under Rule 39, Section 47 (c) of the Rules of Court. The COMELEC's 2010 decision resolving whether Erap's pardon allowed him to run for elections precludes further discussion of the very same issue in the 2013 petition filed against his candidacy.

Under our review in the present case that is limited to the determination of grave abuse of discretion and not legal error, I cannot agree with J. Leonen's strict application of the requisites of bar by prior judgment. Jurisprudence has clarified that res judicata does not require absolute identity, but merely substantial identity. This consideration, under a grave abuse standard of review, leads me to the conclusion that we cannot reverse the COMELEC's decision to apply res judicata, even if it meant the application of the concept of bar by prior judgment.

C.2(b)(i) Issue preclusion or res judicata by conclusiveness of judgment.

Issue preclusion (or conclusiveness of judgment) prevents the same parties and their privies from re-opening an issue that has already been decided in a prior case. In other words, once a right, fact, or matter in issue has been directly adjudicated or necessarily involved in the determination of an action, it is conclusively settled and cannot again be litigated between the parties and their privies, regardless of whether or not the claim, demand, or subject matter of the two actions are the same.

For conclusiveness of judgment to apply, the second case should have identical parties as the first case, which must have been settled by final judgment. It does not, unlike the bar by previous judgment, need identity of

subject matter and causes of action.

Note at this point, that Rule 37, Section 3 of the COMELEC Rules of Procedure renders the COMELEC's decision final and executory within five days after its promulgation, unless otherwise restrained by the Court. Neither of the two COMELEC decisions involving Erap's disqualification in 2010 had been restrained by the Court; suffice it to say that the five-day period after promulgation of the decisions in these cases had long passed.

Thus, the COMELEC did not err in considering its decisions in these cases – all of which resolved the character of Erap's pardon on the merits – to be final and executory. That the Court refused to give due course to Pormento's petition assailing the COMELEC decision on the ground that its issues had been rendered moot by the 2010 elections, did not make the COMELEC's decision any less final. In fact, Pormento was already final when it reached the Court, subject to the Court's authority to order its nullification if grave abuse of discretion had intervened.

On the requirement of identity of parties, Erap was the defendant in all four cases. While the petitioners in these cases were not the same persons, all of them represented the same interest as citizens of voting age filing their petitions to ensure that Erap, an election candidate, is declared not qualified to run and hold office. Notably, Rule 25, Section 2 of the COMELEC Rules of Procedure^[129] requires a prospective petitioner to be a citizen of voting age, or a duly registered political party, to file a petition for disqualification, regardless of the position the candidate sought to be disqualified aspires for.

We have had, in several instances, applied *res judicata* to subsequent cases whose parties were not absolutely identical, but substantially identical in terms of the interests they represent.^[130] The cases filed against Erap's candidacy in the 2010 elections and in the 2013 elections share substantially the common interest of disqualifying Erap as a candidate; these petitioners also all contended that Erap was not qualified to be a candidate because of his previous conviction of plunder.

That the 2010 cases involved Erap's bid for re-election for presidency and the 2013 cases revolved around his mayoralty bid is not, in my view, relevant for purposes of applying collateral estoppel because the identity of the causes of action or the subject matters are not necessary to preclude an issue already litigated and decided on the merits in a prior case. What is crucial for collateral estoppel to apply to the second case is the identity of the issues between the two cases, which had already been decided on the merits in the first case. All the cases seeking to disqualify Erap from running hinged on his previous conviction and on arguments characterizing his subsequent pardon to be merely conditional.

The COMELEC had already decided this issue, not once, but twice when it separately but simultaneously decided Pamatong's petition and the consolidated petitions of Pormento and Estrada. In these cases, it gave the petitioners Pamatong, Pormento and Estrada ample opportunity to present their arguments regarding the nature of Erap's pardon, to which Erap had also been allowed to reply. After considering their arguments, the COMELEC issued its resolutions that the absolute nature of Erap's pardon restored both his right to vote and be voted for.

C.2(b)(ii) *Res judicata* through bar by prior judgment.

Res judicata, by way of bar by prior judgment, binds the parties to a case, as well as their privies to its judgment, and prevents them from re-litigating the same cause of action in another case. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or other tribunal.

Res judicata through bar by prior judgment requires (a) that the former judgment be final; (b) that the judgment

was rendered by a court of competent jurisdiction; (c) that it is a judgment on the merits; and (d) that, between the first and the second actions, there is identity of parties, subject matters, and causes of action.

These requisites were complied with in the present case.

C.2(b)(ii)(a) COMELEC as Tribunal of Competent Jurisdiction.

That the COMELEC is a tribunal of competent jurisdiction in cancellation of CoC and candidate disqualification cases is mandated by the Constitution no less. Section 2(2), Article IX(C) of the Constitution provides that:

Section 2. The Commission on Elections shall exercise the following powers and functions:

x x x x

2. Exercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective barangay officials decided by trial courts of limited jurisdiction. [Emphasis and underscoring supplied]

Thus, the competence of the COMELEC to rule on these cases at the first instance needs no further elaboration.

C.2(b)(ii)(b) Finality of the 2010 Disqualification Rulings.

Some aspects of finality of the disqualification trilogy rulings have been discussed above^[131] in terms of when COMELEC judgments become final and the recourses available to assail these judgments. But separately from these questions is the question of the effects of the finality of judgments.

Once a judgment attains finality, it becomes immutable and unalterable. It may not be changed, altered or modified in any way even if the modification is for the purpose of correcting an erroneous conclusion of fact or law. This is the “doctrine of finality of judgments” which binds the immediate parties and their privies in personal judgments; the whole world in judgments in rem; and even the highest court of the land as to their binding effect.^[132]

This doctrine is grounded on fundamental considerations of public policy and sound practice and that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law; otherwise, there would be no end to litigations, thus setting to naught the main role of courts, which is, to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.^[133]

A final judgment vests in the prevailing party a right recognized and protected by law under the due process clause of the Constitution. A final judgment is a vested interest and it is only proper and equitable that the government should recognize and protect this right. Furthermore, an individual cannot be deprived of this right arbitrarily without causing injustice.^[134]

Just as the losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case.^[135]

In the present case, the COMELEC’s final rulings in the Pamatong, Pormento and Mary Lou Estrada petitions had been made executory through the inclusion of Erap as a candidate not only as a President in the 2010 elections but as Mayor in the 2013 elections.

Thus, the COMELEC’s 2010 final ruling in Pamatong and Pormento had been made executory twice not only with respect to the interest of Erap, the winning party, through the inclusion of his name as a candidate, but more

importantly, the public, by allowing the electorate to vote for him as a presidential candidate in 2010 and as a mayoralty candidate in 2013.

The difference of this case from the usual disqualification cases is that the 2010 unalterable COMELEC ruling on the Erap pardon involved the issue of his political status binding on the whole world and has made his candidacy in the 2013 elections and other future elections valid and immune from another petition for disqualification based on his conviction for plunder. This topic will be discussed at length below.

C.2(b)(ii)(c) Judgment on the Merits.

A judgment is on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections.[136]

In Pamatong's petition to cancel and deny due course to Estrada's CoC[137] for the position of President in the 2010 elections, the issue of pardon was clearly raised and argued by the parties, resulting in the COMELEC resolution quoted above, specifically ruling that the Erap pardon was absolute and not conditional, entitling him the right to vote and to be voted upon. Not being conditional simply meant that it was not based on Erap's promise not to run for any public office.[138]

In Pormento (which was consolidated with Mary Lou Estrada), the petitioner likewise sought to prevent Estrada from running as President in the 2010 elections. Estrada re-pleaded in his answer the defenses that he raised in Pamatong and added the argument that the grant of executive clemency in his favor removed all legal impediments that may bar his candidacy for the presidency.[139]

That pardon was not an issue specified by the COMELEC when it defined the issues common to petitioners Pormento and Mary Lou Estrada is of no moment since COMELEC only outlined the issues that petitioners Pormento and Mary Lou Estrada commonly shared. The matter of pardon was raised as a defense by Estrada and this was duly noted by the COMELEC in its resolution.[140] Under these circumstances, what assumes importance are the terms of the COMELEC resolution itself which expressly discussed and ruled that the Erap pardon was absolute and had the effect of restoring his right to vote and be voted upon.

In fact, even if petitioners Pormento and Mary Lou Estrada did not fully argue the pardon issue that Erap raised, it must be appreciated that this issue was indisputably fully argued, ruled upon and became final in Pamatong which was one of the 2010 trilogy of disqualification cases. This finality could not but have an effect on the Pormento and Mary Lou Estrada rulings which carried the same rulings on pardon as Pamatong. The Pormento and Mary Lou Estrada rulings on pardon, which themselves lapsed to finality can, at the very least, be read as a recognition of the final judgment on the pardon in issue in Pamatong, as well as the official final stand of COMELEC on the issue of the Erap pardon.

These antecedent proceedings, the parties' arguments in their respective pleadings, and the COMELEC rulings in Pamatong [SPA 09-24 (DC)] and in Pormento [SPA 09-28] clearly show that the COMELEC rulings in these cases on the issue of pardon were decisions on the merits that can be cited as authorities in future cases.

C.2(b)(ii)(d) Identity of Parties, Subject Matter and Cause of Action.

Identity of parties

Two kinds of judgments exist with respect to the parties to the case. The first are the parties in proceedings in personam where the judgments are enforceable only between the parties and their successors in interests, but not against strangers thereto. The second type are the judgments in proceedings where the object of the suit is to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established,

and anyone in the world who has a right to be heard on the strength of alleged facts which, if true, show an inconsistent interest; the proceeding is in rem and the judgment is a judgment in rem.[141]

This rule is embodied under Section 47, Rule 39 which provides the effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order. In paragraph 47(a), the rules provide that in case of a judgment or final order xxx in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration or the condition, status or relationship of the person x x x.[142]

In the present case, the 2010 COMELEC final rulings that Erap was qualified to run for public office, after consideration of the issues of presidential re-election and the effect of his pardon for the crime of plunder, constituted a judgment in rem as it was a judgment or final order on the political status of Erap to run for and to hold public office.

In other words, a declaration of the disqualification or qualification of a candidate binds the whole world as the final ruling of the COMELEC regarding Erap's perpetual absolute disqualification and pardon had already become conclusive. The 2010 final rulings of the COMELEC thus bar Risos-Vidal in 2013 from raising the same issue in view of the nature of the 2010 rulings as judgments in rem.

I also reiterate my previous discussion that in determining whether res judicata exists, the Court had previously ruled that absolute identity of parties is not required but substantial identity, such that the parties in the first and second cases share the same or a community of interest. As discussed above, this requisite is present in the 2010 disqualification cases and the present Risos-Vidal case.

Identity of causes of action and subject matters

I discuss first the element of identity of causes of action because, in the process, the element of identity of subject matters would be likewise covered. On the element of identity of causes of action between the first and second cases, J. Leonen asserts that the 2010 disqualification cases filed by Pormento and Mary Lou Estrada were based on causes of action that were different from those in the present case.

According to J. Leonen, the 2010 cases were anchored on the constitutional prohibition against a president's re-election and the additional ground that Erap was a nuisance candidate. The present case is anchored on Erap's conviction for plunder which carried with it the accessory penalty of perpetual absolute disqualification. The present case is additionally based on Section 40 of the LGC as well as Section 12 of the OEC. This is clear from the COMELEC's recital of issues.[143]

I disagree with J. Leonen's positions and short-sighted view of the issues and I maintain that there are identical subject matters and causes of actions, especially for purposes of complying with the requirements of res judicata by way of bar by prior judgment.

At this juncture, I reiterate my disagreement with J. Leonen in strictly applying the requisites for the application of res judicata through bar by prior judgment. The Court itself, in numerous cases, did not strictly apply the requirement that there must be absolute identity of causes of action. In fact, the Court's rulings on this particular element leaned towards substantial identity of causes of action and its determination is arrived at not on the basis of the facial value of the cases but after an in-depth analysis of each case.

The reason why substantial identity of causes of action is permitted is to preclude a situation where a party could easily escape the operation of res judicata by changing the form of the action or the relief sought. The difference in form and nature of the two actions is also immaterial and is not a reason to exempt these cases from the effects

of res judicata.

The philosophy behind this rule prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. In this way, there should be an end to litigation by the same parties and their privies over a subject, once the issue involving the subject is fully and fairly adjudicated.[144]

In light of the jurisprudence on res judicata by way of bar by prior judgment, it is my view that the COMELEC did not gravely abuse its discretion in ruling that the issue of Erap's pardon and its effects on his right to run for elective public office had already been settled in the 2010 disqualification cases.

In our jurisdiction, the Court uses various tests in determining whether or not there is identity of causes of action in the first and second cases. One of these tests is the "absence of inconsistency test" where it is determined whether or not the judgment sought will be inconsistent with the prior judgment. If inconsistency is not shown, the prior judgment shall not constitute a bar to subsequent actions.[145]

The second and more common approach in ascertaining identity of causes of action is the "same evidence test," where the criterion is determined by the question: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not.[146]

Applying these tests, it is readily apparent that there were identical causes of action in the 2010 disqualification cases against Erap and the present Risos-Vidal case.

Using the absence of inconsistency test, the 2010 final COMELEC rulings that Erap was qualified to run for Presidency, an elective public office, would be inconsistent with the ruling being sought in the present case which is, essentially, that Erap's pardon did not remove his perpetual absolute disqualification to run for elective public office, this time as Mayor of the City of Manila.

In short, Erap's pardon and its effects on his perpetual absolute disqualification brought about by his conviction affect his qualification to run for all elective public offices. Thus the 2010 rulings cannot be limited or linked only to the issue of his qualification to run as President of the Philippines but to any elective public position that he may aspire for in the future.

Applying the "same evidence test," suffice it to say that the Risos-Vidal's petition rests and falls on Erap's pardon and its effects on his qualification to run for elective public office. Erap's pardon is the same evidence necessary for the COMELEC to resolve in the 2010 disqualification cases the issue of whether or not Erap's pardon removed his disqualification to run for elective public office, thus qualifying him to run for Presidency.

It must be recalled that Risos-Vidal relies on Section 40[147] of the LGC and Section 12[148] of the OEC, specifically relating to the disqualification ground of a person's conviction for a crime involving moral turpitude, in this case, plunder. However, if we are to look closely at these provisions,[149] Erap would not have been disqualified under these provisions because he had already served the 2-year prohibitive period under Section 40 of the LGC.[150] The real main issue of the Risos-Vidal petition is the perpetual absolute disqualification imposed on Erap as an accessory penalty for his conviction for a crime involving moral turpitude; and that his pardon did not remit this disqualification. This issue was obviously directly ruled upon by the COMELEC in the 2010 disqualification cases. Hence, applying the same evidence test, there is identity of causes of action between the 2010 and the Risos-Vidal cases. There was likewise identity of subject matters, specifically the qualification of Erap to run for public office in relation to his pardon.

As a side note, I observe that in the 2010 cases, had the COMELEC ruled that Erap had been disqualified to run for elective public office despite his pardon, the issue of the constitutional ban against his re-election would have become moot and academic as Erap would never be qualified in the first place to run for an elective office. Therefore, the ground for Erap's disqualification based on his perpetual absolute disqualification in relation to his pardon, which were raised by the parties in 2010, were material and necessary for the resolution of the re-election issue. Otherwise, to simply disregard the pardon issue and proceed immediately to the issue on the constitutional ban on re-election is not only absurd but would have been the height of legal ignorance. Fortunately, the COMELEC correctly ruled on the pardon issue directly and did not gravely abuse its discretion in doing so.

Since the COMELEC had already decided the issue of Erap's pardon in the past, it did not act with grave abuse of discretion when it chose not to reverse its prior rulings. Its past decisions, which became final and executory, addressed this issue on the merits. This, and the substantial causes of action, subject matters, and substantial identity of the parties in the 2010 and 2013 cases, sufficiently justified the COMELEC from keeping the discussion of the issue of Erap's pardon in the 2013 disqualification case.

3. Grave Abuse of Discretion, the 2010 Disqualification Trilogy, and COMELEC's Risos-Vidal Ruling.

In light of the above discussions, the COMELEC did not gravely abuse its discretion in its Resolution of April 1, 2013 dismissing the Risos-Vidal petition for lack of merit. In fact, the COMELEC would have gravely abused its discretion had it granted the petition in light of the 2010 trilogy of disqualification cases and the finality of its previous final rulings that the third Whereas Clause of Erap's pardon did not affect at all the restoration of his civil and political rights, including his right to vote and to be voted upon.

Whatever might be said of the trilogy of cases, the reality is that the issue of pardon was brought to the forefront of the argued issues when the parties raised it in all the disqualification cases against Erap and the COMELEC ruled on the issue. That the pardon issue was overshadowed by the presidential re-election issue, not only in the COMELEC, but all the way to this Court, may be an adjudicatory defect, but certainly is not imperfection on the part of Erap for which he should suffer.

To be sure, the COMELEC resolution is not a model resolution that is free from imperfections; it cannot serve as a model for legal drafting or for legal reasoning. But whatever these imperfections might be, they could not – as above explained – have gone beyond errors of law, into grave abuse of discretion. Having been rulings twice-implemented in 2010 and 2013 elections, these past rulings cannot and should not now be repudiated without committing fraud against the electorate who cast their vote and showed their preference for Erap without any notice that their votes ran the risk of being declared stray.

For all the above reasons, I vote to dismiss the Risos-Vidal petition for lack of merit.

[1] Section 2, Republic Act No. 7080.

[2] Resolution of the COMELEC dated January 20, 2010 was attached as Annex 4 to Annex H of the Petitioner's Memorandum.

[3] See page 8 of the COMELEC, Second Division Resolution dated January 20, 2010 in SPA No. 09-024(DC) entitled *Rev. Elly Velez B. Lao Pamatong, Esq. v. Joseph Ejercito Estrada and Gloria Macapagal Arroyo*. This Resolution was attached as Exhibit "4" to Annex "E" of the Memorandum that Petitioner Risos-Vidal submitted to the Court.

[4] COMELEC, Second Division Resolution on SPA No. 09-028 (DC), attached as Annex "O" to Memorandum

of Intervenor Lim.

[5] A. At page 22 of the COMELEC Resolution dated January 20, 2010 in the Pamatong petition [SPA No. 09-024 (DC)], the COMELEC Second Division ruled that:

“Furthermore, there is absolutely no indication that the executive clemency exercised by President Arroyo to pardon Former President Estrada was a mere conditional pardon. It clearly stated that the former president is “restored to his civil and political rights” and there is nothing in the same which limits the restoration. The only thing stated therein that may have some bearing on the supposed conditions is that statement in the whereas clause that contained the following: Whereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office, but that is not a condition but is merely part of a preliminary statement. It cannot therefore serve to restrict the operation of or prevail over the explicit statement in the executive clemency which restored all of Estrada’s civil and political rights, including the “right to vote and to be voted for a public office,” including the position of the Presidency.

This executive clemency granted to the former President being absolute and unconditional and having been accepted by him, the same can no longer be revoked.”

B. At pages 23-24 of the of the COMELEC Resolution dated January 20, 2010 in the Pormento and Mary Lou petitions [SPA Nos. 09-028 (DC) and 09-104 (DC)], the COMELEC Second Division ruled that:

“Furthermore, there is absolutely no indication that the executive clemency exercised by President Arroyo to pardon Former President Estrada was a mere conditional pardon. It clearly stated that the former president is “restored to his civil and political rights” and there is nothing in the same which limits the restoration. The only thing stated therein that may have some bearing on the supposed conditions is that statement in the whereas clause thereof that contained the following: “Whereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office”, but that is not really a condition but is merely part of a preliminary statement, referring to what respondent Estrada had said publicly. There is nothing stated in the dispositive part that it was conditioned upon said respondent’s purported public commitment. His public statement cannot, therefore, restrict the operation of, or prevail over, the explicit statement in the executive clemency which restored all of Estrada’s civil and political rights, including the “right to vote and to be voted for a public office,” including to the position of the Presidency. This executive clemency granted to the former President being absolute and unconditional and having been accepted by him, the same can no longer be revoked or be made subject to a condition.

[6] Id.

[7] The COMELEC en banc denied the motions for reconsideration of Pormento and Mary Lou Estrada in its Resolutions dated May 4, 2010 and April 27, 2010, respectively. These resolutions were attached as Exhibits “5” and “6”, respectively, to Annex “E” of Petitioner Risos-Vidal’s Memorandum that she submitted to the Court.

[8] See Exhibits “5” and “6” attached to Annex “E” of Petitioner Risos-Vidal’s Memorandum that she submitted to the Court.

[9] They are final and non-appealable pursuant to Section 3, Rule 37 of the COMELEC Rules of Procedure; they are no longer assailable because the period to question them before the Supreme Court had lapsed pursuant to Section A(7), Article IX, 1987 Constitution

[10] Pursuant to the Congress’ Joint Public Session, Resolution of Both Houses No. 01 entitled, Resolution of Both Houses Approving the Report of the Joint Committee, Declaring the Results of the National Elections Held on May 10, 2010, For the Offices of President and Vice President, and Proclaiming the Duly Elected President

and Vice President of the Republic of the Philippines.

[11] Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; [Emphasis supplied]

[12] Sec. 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.

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. [Emphasis supplied]

[13] See Exhibit “4” attached to Annex “E” of Petitioner Risos-Vidal’s Memorandum that she submitted to the Court.

[14] See Exhibit “5” attached to Annex “E” of Petitioner Risos-Vidal’s Memorandum that she submitted to the Court.

[15] See Exhibit “6” attached to Annex “E” of Petitioner Risos-Vidal’s Memorandum that she submitted to the Court.

[16] April 23, 2013.

[17] Filed on April 30, 2013.

[18] See the COMELEC Provincial Canvass Report attached to the Petitioner’s Memorandum as Annex “L.”

[19] 177 Phil. 205, 222, February 8, 1979.

[20] Sec. 2, first paragraph, Article X.

[21] Supra note 19, at 223.

[22] Id.

[23] Id.

[24] Fr. Bernas: The decision I cited was precisely an interpretation of the clause in the provisions on the COMELEC which says: “Any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari...” In interpreting that provision in the case of Aratuc, the Supreme Court said:

We hold therefore that under the existing constitutional and statutory provisions, the certiorari jurisdiction of the Court over orders, rulings and decision of the COMELEC is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process. Does that express the sense of the Committee?

Mr. Regalado. That was the view of Justice Barredo in the Aratuc case while he was the ponente xxx In subsequent decisions wherein Chief Justice Teehankee concurred, he believed that the mode of review on

certiorari under Rule XLV [should be LXV] is to be understood as including acts of the Constitutional Commissions, without jurisdiction or acting in excess of jurisdiction.

Fr. Bernas. This seems to be the same thing. If it is without jurisdiction or in excess of jurisdiction, there is grave abuse of discretion.

Mr. Regalado. No, Commissioner. Grave abuse of discretion may be equivalent to lack of jurisdiction, if it was done in a capricious or whimsical manner. But excess of jurisdiction is a little different, meaning, that the Supreme Court had jurisdiction but it overstepped the bounds of jurisdiction in the exercise thereof. That is what Justice Teehankee also pointed out. Grave abuse of discretion, I agree, results in lack of jurisdiction, but excess of jurisdiction presupposes that the Court, while with jurisdiction just overstepped the permissible bounds in the exercise thereof.

Fr. Bernas: So, for purposes of the record now, what is the intention of the Committee? What are the grounds for certiorari?

Mr. Regalado. The Committee which refers specifically to technical term of review by certiorari would be relying on the provisions of Rule XLV [Should be LXV] of the Rules of Court that laid down the three grounds. (The Intent of the 1986 Constitution Writers, 1995 Ed., Fr. Joaquin Bernas, SJ).

[25] Virata v. Sandiganbayan, G.R. No. 106527, April 6, 1993, 221 SCRA 52, 60-61.

[26] Caballes v. CA, 492 Phil 410, 417-418, February 23, 2005.

[27] Section A(7), Article IX, 1987 Constitution; Section 3, Rule 37 of the COMELEC Rules of Procedure.

[28] Supra note 10.

[29] See page 45 of Memorandum for Intervenor.

[30] Id. at 22-23.

[31] Id. at 46-55.

[32] 677 SCRA 232, 241, July 18, 2012.

[33] Id. at 240-241.

[34] Id. at 241, citing Falcasantos v. Falcasantos, L-4627, May 13, 1952.

[35] Id., citing Vigan Electric Light Co., Inc. v. Arciaga, L-29207 and L-29222, July 31, 1974.

[36] Id., L-23842, Mar. 13, 1975.

[37] Supra note 37.

[38] Id., citing Director of Lands v. CA, et al., L-45168, Sept. 25, 1979.

[39] Id.

[40] Id.

[41] Id. at 241-243.

[42] Supra note 33.

[43] See Esteves v. Sarmiento et al., 591 Phil. 620, 625 (2008).

- [44] Section 12, Article I and Section 68, Article IX of the OEC; Section 6, RA 6646.
- [45] Supra note 35, at 240.
- [46] G.R. No. 195649, April 16, 2013, 696 SCRA 420.
- [47] G.R. No. 195229, October 9, 2012, 683 SCRA 1.
- [48] *Monsanto v. Factoran*, 252 Phil. 192, 198-199 (1989).
- [49] The ruling in *Guarin v. US*, 30 Phil. 85, 87 (1915), accordingly adapted to the terms of the 1987 Constitution.
- [50] 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.
- [51] 229 Phil. 920, 937-938 (1991).
- [52] *Obra v. Spouses Badua*, 556 Phil. 456, 458 (2007).
- [53] *Id.* at 461.
- [54] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001).
- [55] G.R. No. 198423, 684 SCRA 344, 352, October 23, 2012.
- [56] *Id.*
- [57] G.R. No. 160610, August 14, 2009, 596 SCRA 77, 89-90.
- [58] *Id.*
- [59] The pardon reads in part that “The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.”
- [60] Rule 1, Section 2 paragraph (p) of the Revised Rules and Regulations of the Board of Pardons and Parole; This definition is also found in the 2006 Revised Manual of the BPP.
- [61] Under the Department of Justice pursuant to the Administrative Code, Book IV, Title III, Chapter I, Section 4(6).
- [62] 2006 Revised Manual On Parole And Executive Clemency.
- [63] Rule 1, Section 2 paragraph (p) of the Revised Rules and Regulations of the Board of Pardons and Parole; This definition is also found in the 2006 Revised Manual of the BPP.
- [64] Rule 1, Section 2 paragraph (q) of the Revised Rules and Regulations of the Board of Pardons and Parole; This definition is also found in the 2006 Revised Manual of the BPP.
- [65] Under Section 3(e) of the 2006 Revised Manual on Parole and Executive Clemency, the BPP could recommend for pardon [p]risoners who are 70 years old and above and who have served at least 5 years of their sentence or those whose continued imprisonment is inimical to their health.
- [66] Presumably from Court and Department of Justice records.

[67] Source and circumstances unknown.

[68] G.R. No. 156087, May 8, 2009, 587 SCRA 388, 410.

[69] Id.

[70] The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of April 2014[update], the Covenant has 74 signatories and 168 parties. The ICCPR is part of the Declaration on the Granting of Independence to Colonial Countries and Peoples, International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR)

The Philippines signed this treaty on December 19, 1966 and ratified it on October 23, 1986. [Source: http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights]

[71] The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948 at the Palais de Chaillot, Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. The Declaration consists of thirty articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions, and other laws. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966, the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights. In 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

The Declaration was commissioned in 1946 and was drafted over two years by the Commission on Human Rights. The Philippine representative was part of the Commission; the Philippines voted in favor of this Declaration. (Source: http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights)

[72] G.R. No. 100150, January 5, 1994, 229 SCRA 117, 132-133.

[73] Id.

[74] Id.

[75] Civil rights include the rights of property, marriage, equal protection of the laws, freedom of contract, etc. Or, as otherwise defined civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action. Also quite often mentioned are the guarantees against involuntary servitude, religious persecution, unreasonable searches and seizures, and imprisonment for debt.

Political rights refer to the right to participate, directly or indirectly, in the establishment or administration of government, the right of suffrage, the right to hold public office, the right of petition and, in general, the rights appurtenant to citizenship vis-a-vis the management of government.

[76] See Articles 40 to 45 of the Revised Penal Code on penalties in which accessory penalties are inherent.

[77] Article 41, Revised Penal Code.

[78] Pardon; its effect. - A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

[79] Reclusion perpetua and reclusion temporal; Their accessory penalties. - The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[80] The Revised Penal Code, Act No. 3815 was passed on December 8, 1930 and become effective on January 1, 1932. It has undergone a lot of amendments but Articles 36 and 41 are provisions that have largely been left intact.

[81] See: discussions and footnotes at pp. 16-18 and 26-27.

[82] Teehankee v. Rovira et al., 75 Phil. 634, 643 (1945).

[83] 71 Phil. 34 (1940).

[84] 72 Phil. 441 (1940).

[85] 71 U.S. 833 (1866).

[86] Id. at 41.

[87] Id.

[88] 336 Phil. 344 (1997).

[89] 395 Phil. 690 (2000).

[90] 82 Phil. 642 (1949).

[91] G.R. No. 205033, June 18, 2013, 698 SCRA 742 (2013).

[92] Supra note 48, at 202.

[93] Id. at 204.

[94] Id. at 201.

[95] Id. at 199-204.

[96] In the Court's July 30, 1996 resolution, it ruled that the conditional pardons granted in this case to accused-appellants William Casido and Franklin Alcorin are void for having been extended during the pendency of their instant appeal. However, subsequent to this, the applications for amnesty of accused-appellants were granted by the National Amnesty Commission on February 22, 1996. Issue: Whether or not Casido and Alcorin may now be released on the basis of the amnesty granted to them.

[97] Accused-appellant Jose Patriarca is a member of the New People's Army. He was convicted of murder for killing persons in pursuit of his group's political belief. Subsequently, accused-appellant applied for amnesty under Proclamation No. 724 amending Proclamation No. 347, dated March 25, 1994, entitled "Granting Amnesty to Rebels, Insurgents, and All Other Persons Who Have or May Have Committed Crimes Against Public Order,

Other Crimes Committed in Furtherance of Political Ends, and Violations of the Article of War, and Creating a National Amnesty Commission." His application was favorably granted by the National Amnesty Board. Issue: Whether or not Patriarca is entitled to amnesty.

[98] Petitioners Norberto Jimenez and Loreto Barrioquinto were charged with the crime of murder. Subsequently, Proclamation No. 8, dated September 7, 1946, which grants amnesty in favor of all persons who may be charged with an act penalized under the Revised Penal Code in furtherance of the resistance to the Japanese forces or against persons aiding in the war efforts of the enemy.

After a preliminary hearing had started, the Amnesty Commission issued an order returning the cases of the petitioners to the Court of First Instance of Zamboanga, without deciding whether or not they are entitled to the benefits of the said Amnesty Proclamation, on the ground that inasmuch as neither Barrioquinto nor Jimenez have admitted having committed the offense, because Barrioquinto alleged that it was Hipolito Tolentino who shot and killed the victim, they cannot invoke the benefits of amnesty. Issue: Whether or not petitioners may not be covered by the amnesty because they have not pleaded guilty to the offense charged.

[99] Supra note 88, at 351-352.

[100] Supra note 89, at 699.

[101] As cited in Barrioquinto v. Fernandez, supra note 94, at 646-647.

[102] Supra note 91, at 759-760.

[103] Sec. 40. Disqualifications. – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence; (Emphasis and underscoring supplied)

[104] Art. 30. Effects of the penalties of perpetual or temporary absolute disqualification. - The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this Article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held. (Emphasis and underscoring supplied)

[105] Supra note 91, at 762-763.

[106] Vol. II., Phil., 466, 470-471, October 21, 1908.

[107] An Act Providing For The Diminution Of Sentences Imposed Upon Prisoners Convicted Of Any Offense And Sentenced For A Definite Term Of More Than Thirty Days And Less Than Life In Consideration Of Good Conduct And Diligence.

[108] *Bolos v. Bolos*, G.R. No. 186400 , October 20, 2010, 634 SCRA 429, 437.

[109] G. R. No. 187478, December 21, 2009, 608 SCRA 733, 753.

[110] G.R. No. 120295, June 28, 1996, 257 SCRA 727, 770-771.

[111] 400 Phil. 551, 567 (2000).

[112] G.R. No. 132242 , July 27, 1999, 311 SCRA 215, 222 (1999); See also *Punzalan v. COMELEC*, G.R. No. 126669, April 27, 1998, 289 SCRA 702, 720.

[113] 387 Phil. 491, 516 (2000).

[114] 443 Phil. 649, 654-655 (2003).

[115] *Id.*

[116] *Id.*

[117] See pp. 4-7.

[118] See page 8 of the COMELEC, Second Division Resolution dated January 20, 2010 in SPA No. 09-024(DC) entitled *Rev. Elly Velez B. Lao Pamatong, Esq v. Joseph Ejercito Estrada and Gloria Macapagal Arroyo*. This Resolution was attached as Exhibit “4” to Annex “E” of the Memorandum that Petitioner Risos-Vidal submitted to the Court.

[119] *Id.*

[120] *Id.* at 22.

[121] See pp. 5-6 of the COMELEC, Second Division Resolution on SPA No. 09-028 (DC), attached as Annex “O” to Memorandum of Intervenor Lim.

[122] The original grounds in SPA 09-024 as cited in Erap’s Answer in Pamatong’s case did not include the issue of pardon which Pamatong later added in his Position Paper.

[123] *Supra* notes 2, at 7 and 4, at 7-8.

[124] Section 3, Rule 37 of the COMELEC Rules of Procedure states:

Decisions Final After Five Days - Decisions in pre-proclamation cases and petitions to deny due course to or cancel certificates of candidacy, to declare a candidate as nuisance candidate or to disqualify a candidate, and to postpone or suspend elections shall become final and executory after the lapse of five (5) days from their promulgation, unless restrained by the Supreme Court.

[125] Section A(7), Article IX, 1987 Constitution.

[126] *Id.*; and Section 3, Rule 64 which provides that the petition for certiorari shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[127] See pp. 5-6 of the COMELEC, Second Division Resolution on SPA No. 09-028 (DC), attached as Annex “O” to Memorandum of Intervenor Lim.

[128] See page 2 of the COMELEC's Resolution dated April 1, 2013 in SPA 13-211 (DC) entitled Atty. Alicia Risos-Vidal v. Joseph Ejercito Estrada.

[129] Sec. 2. Who May File Petition for Disqualification. - Any citizen of voting age, or duly registered political party, organization or coalition of political parties may file with the Law Department of the Commission a petition to disqualify a candidate on grounds provided by law.

[130] See Spouses Felipe and Layos v. Fil-Estate Golf, 583 Phil. 72, 106 (2008); Valencia v. RTC, 262 Phil. 938, 947-948 (1990).

[131] See page 5.

[132] GSIS v. Group Management Corp., G.R. No. 167000, June 8, 2011, 651 SCRA 279, 305.

[133] Id.

[134] Celendro v. CA, 369 Phil. 1102, 1111 (1999).

[135] Id.

[136] Meralco v. Philippine Consumers Foundation, Inc., 425 Phil. 65, 79 (2002).

[137] SPA 09-24-DC.

[138] Resolution of the COMELEC Second Division dated January 20, 2010 in SPA No. 09-024 (DC) [Pamatong petition]; p.8 of the Resolution; attached as Exhibit 4 to Annex H of the Petitioner's Memorandum

[139] COMELEC Second Division Resolution dated January 20, 2010 in SPA No. 09-028 (DC) [Pormento petition] and SPA No. 09-104 [Mary Lou Estrada petition]; pp. 5-6 of the Resolution; attached as Annex "O" to Memorandum of Intervenor Lim.

[140] See pp. 5-6 of the COMELEC, Second Division Resolution on SPA No. 09-028 (DC), attached as Annex "O" to Memorandum of Intervenor Lim.

[141] Feria and Noche, Civil Procedure Annotated, Vol. II, p. 270.

[142] PCI Leasing and Finance, Inc. v. Spouses Dai, 560 Phil. 84. 94-95 (2007).

[143] Id.

[144] Pilar Development Corporation v. CA et al., G.R. No. 155943, August 19, 2013.

[145] Spouses Antonio v. Vda de Monje, G.R. No. 149624, September 29, 2010, 631 SCRA 471, 482.

[146] Id.

[147] Section 40. Disqualifications. - The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

x x x x

[148] Sec. 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.

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

[149] Supra notes 147 and 148.

[150] See *Magno v. COMELEC*, 439 Phil. 339, 347-348 (2002) where the Court held that the 2-year prohibitive period under the LGC prevails over the 5-year prohibitive period under Section 12 of the OEC.

CONCURRING OPINION

MENDOZA, J.:

At first glance, this case presents itself as an ordinary election case involving the issue of who is the rightful winner in the 2013 mayoralty elections in the City of Manila. The matter, however, is engrossed in a deeper constitutional conundrum that affects the exercise of one of the most benevolent powers of the President—the power to extend executive clemency in the form of pardon. Undoubtedly, the Court’s ruling on this case would shape the parameters surrounding the future exercise of the said power, thus, requiring a pragmatic stance that would equal the theoretical and practical purpose of the pardoning power, that is, the realization of checks and balances in government and the relief given to the pardonee.

The undisputed facts as culled from the records:

In its September 12, 2007 Decision, the Sandiganbayan convicted respondent former President Joseph Ejercito Estrada (Estrada) of plunder. The fallo of the decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in Criminal Case No. 26558 finding the accused, Former President Joseph Ejercito Estrada, GUILTY beyond reasonable doubt of the crime of PLUNDER, defined in and penalized by Republic Act No. 7080, as amended. On the other hand, for failure of the prosecution to prove and establish their guilt beyond reasonable doubt, the Court finds the accused Jose “Jinggoy” Estrada and Atty. Edward S. Serapio NOT GUILTY of the crime of plunder and, accordingly, the Court hereby orders their ACQUITTAL.

The penalty imposable for the crime of plunder under Republic Act No. 7080, as amended by Republic Act No. 7659, is Reclusion Perpetua to Death. There being no aggravating or mitigating circumstances, however, the lesser penalty shall be applied in accordance with Article 63 of the Revised Penal Code. Accordingly, the accused Former President Joseph Ejercito Estrada is hereby sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.

The period within which accused Former President Joseph Ejercito Estrada has been under detention shall be credited to him in full as long as he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the government of the following:

(1) The total amount of Five Hundred Forty Two Million Seven Hundred Ninety One Thousand Pesos

(P545,291,000.00), with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (P200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty Nine Million Pesos (P189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as Boracay Mansion located at #100 11th Street, New Manila, Quezon City.

The cash bonds posted by accused Jose Jinggoy Estrada and Atty. Edward S. Serapio are hereby ordered cancelled and released to the said accused or their duly authorized representatives upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures. Likewise, the hold-departure orders issued against the said accused are hereby recalled and declared functus officio.

SO ORDERED.

On October 25, 2007, then President Gloria Macapagal-Arroyo (PGMA) granted executive clemency to Estrada. The text of the said pardon is hereunder replicated:

MALACANAN PALACE
MANILA

By the President of the Philippines

PARDON

Whereas, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

Whereas, Joseph Ejercito Estrada has been under detention for six and a half years,

Whereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,

In view hereof and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to Joseph Ejercito Estrada, convicted by the Sandiganbayan of plunder and imposed a penalty of reclusion perpetua. He is hereby restored to his civil and political rights.

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.

Given under my hand at the City of Manila,
this 25[th] day of October, in the year of
Our Lord, two thousand and seven.

Gloria M. Arroyo (sgd.)

By the President:

IGNACIO R. BUNYE (sgd.)
Acting Executive Secretary

[Emphasis supplied]

The next day, Estrada accepted the pardon as evidenced by a handwritten notation in the same document.

Subsequently, Estrada undertook his second bid for the presidency during the 2010 elections. This candidacy hurdled two (2) disqualification cases filed by Atty. Evilio C. Pormento and Mary Lou B. Estrada (2010 disqualification cases), when these were denied for lack of merit by the Commission on Elections (COMELEC), Second Division, and the COMELEC En Banc in its respective resolutions, dated January 20, 2010[1] and April 27, 2010.[2] The COMELEC was of the position that Estrada was eligible to run for president on the ground that the constitutional prohibition on re-election[3] applies to an incumbent president.

Upon elevation to the Court, however, the opportunity to resolve the said constitutional issue was arrested by mootness, with Estrada having lost the elections to President Benigno Aquino.[4]

Undaunted by his defeat in the race for national office, Estrada thereafter sought the position of mayor in no less than the City of Manila. He filed his certificate of candidacy on October 2, 2012.

Petitioner Atty. Alicia Risos-Vidal (petitioner) invoked Estrada's disqualification from running for public office, this time on the ground that his candidacy was a violation of the pardon extended by PGMA. She filed a petition for disqualification with the COMELEC[5] pursuant to Section 12 of Batas Pambansa Blg. 881 (Omnibus Election Code),[6] grounded on a sole argument, viz:

RESPONDENT IS DISQUALIFIED TO RUN FOR PUBLIC OFFICE BECUSE OF HIS CONVICTION FOR PLUNDER BY THE SANDIGANBAYAN IN CRIMINAL CASE NO. 26558 ENTITLED "PEOPLE OF THE PHILIPPINES VS. JOSEPH EJERCITO ESTRADA" SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA WITH PERPETUAL ABSOLUTE DISQUALIFICATION.

In the main, the petitioner argued that Estrada was still suffering from the accessory penalties of civil interdiction and perpetual disqualification because the pardon granted to him failed to expressly restore his right to suffrage and to run for public office as provided under Articles 36 and 41 of the Revised Penal Code. Furthermore, the "whereas clause" in the pardon which stated that, "Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office" would indicate a condition that Estrada must abide by under pain of recommitment to prison in the event of violation thereof. The petitioner likewise finds support in the concurring opinion of Justice Padilla in *Monsanto v. Factoran*,[7] stated in this wise:

An examination of the presidential pardon in question shows that, while petitioner was granted "an absolute and unconditional pardon and restored to full civil and political rights", yet, nothing therein expressly provides that the right to hold public office was thereby restored to the petitioner. In view of the express exclusion by Art. 36, RPC of the right to hold public office, notwithstanding a pardon unless the right is expressly restored by the pardon, it is my considered opinion that, to the extent that the pardon granted to the petitioner did not expressly restore the right to hold public office as an effect of such pardon, that right must be kept away from the petitioner.

After an exchange of pleadings, the COMELEC Second Division issued its April 1, 2013 Resolution dismissing the petition for lack of merit.[8] The dismissal was grounded on its resolution of the 2010 disqualification cases where it found that the pardon granted to Estrada was absolute and unconditional, hence, entitling him to run for public office. The dismissal was affirmed over petitioner's motion for reconsideration in the April 23, 2013 Resolution of the COMELEC En Banc.[9]

Impervious to her cause, the petitioner comes to this Court, ascribing grave abuse of discretion on the part of the COMELEC in declining to disqualify Estrada *motu proprio*, based on the following grounds cited by it: 1] the issues raised in the petition have already been passed upon in the past; 2] Estrada's pardon was not conditional; 3] Estrada is not disqualified to run as mayor despite Section 40 of the Local Government Code (LGC); and 4]

Estrada's pardon restored his right to suffrage and remitted his perpetual disqualification from seeking public office.

During the pendency of the petition, local elections were conducted on May 13, 2013, yielding a victory for Estrada over his opponents including then incumbent Mayor Alfredo S. Lim (Lim). Consequently, the latter moved to intervene in the petition, which was granted by the Court in its June 25, 2013 Resolution.[10] Lim supports petitioner's theory that Estrada remains to be disqualified to hold public office as his pardon did not expressly remit his perpetual disqualification, and, pursuant to the Court's ruling in *Jalosjos v. COMELEC*,[11] he must be declared as the rightful mayor of the City of Manila.

After an exchange of pleadings,[12] the parties were required to submit their respective memoranda. The parties complied on different dates.[13]

To my mind, the following queries and premises, which are crafted in a clear-cut and logical sequence, serve as guideposts for the Court in order to arrive at conclusions that are consonant with prevailing law and jurisprudence:

- Was the executive pardon extended to Estrada conditional or absolute?
- What were the effects of the pardon, particularly the statement, "[h]e is hereby restored to his civil and political rights"? Does this include the restoration of his right to suffrage and to run for public office?
- Given that the nature of pardon, whether absolute or conditional, does not imply the automatic obliteration of the pardonee's guilt, is Estrada qualified to run for and hold a mayoralty position?

I. Estrada's Pardon Was Absolute

After admittedly having failed to argue on this before the COMELEC, the petitioner expressly elevated this issue for the resolution of the Court. Her insistence on the conditional nature of Estrada's pardon is anchored on the latter's expressed acceptance of the same. In her words, this acceptance became "the fundamental basis and indicium of the conditional nature of the pardon." [14] She contends that had PGMA intended to issue an absolute pardon, she would have not required Estrada's acceptance thereof. Having accepted its terms with a commitment of strict compliance, Estrada should be deemed to have breached the "contract" when he ran for Mayor.

Amidst this argument, the primordial question continues to nag: was the pardon bestowed on Estrada conditional or absolute? For the following reasons, I find that Estrada's pardon was absolute in nature:

First. I am of the view that the acceptance confers effectivity in both absolute and conditional pardon.

Pardon is defined as "an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the Court. ... A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance." [15]

The fact of Estrada's acceptance of the pardon, by affixing his signature therein, is an insufficient indication of its conditional nature. Petitioner's reliance on *Cabantag v. Wolf*, [16] where the Court ruled that a conditional pardon has no force until accepted by the condemned because the condition may be less acceptable to him than the original punishment and may in fact be more onerous, is misplaced. It merely stated that a conditional pardon must be accepted in the exercise of the pardonee's right to choose whether to accept or reject the terms of the pardon. It does not operate in the manner suggested by petitioner. It does not work the other way around.

An "acceptance" does not classify a pardon as conditional just by the mere reception and the placing of an

inscription thereon. I am not prepared to ignore the very intention and content of a pardon as standards to determine its nature, as against the mere expediency of its delivery and acceptance. I am much more amenable to the rule consistent with the benevolent nature of pardon: that it is an act of forgiveness predicated on an admission of guilt. To be effective, therefore, this admission of past wrongdoing must be manifested by the acceptance of a pardon, absolute or conditional.

Further, the significance of “acceptance” is more apparent in cases of “commutation,” which is the substitution of a lighter punishment for a heavier one. William F. Duker elucidates:

Although for a pardon to be effective it usually must be accepted, commutation is effective without acceptance. In *Chapman v. Scott*, the President granted a commutation to “time-served” to a convict so that he would be available for prosecution in a state court on a capital case. The convict refused the commutation and argued that it was not effective until accepted, but the court held that a commutation did not require acceptance:

Although power to commute is logically derivable from power to pardon, commutation is essentially different from pardon. Pardon exempts from punishment, bears no relation to term of punishment, and must be accepted, or it is nugatory. Commutation merely substitutes lighter for heavier punishment. It removes no stain, restores no civil privileges, and may be effected without the consent and against the will of the prisoner.[17]

As applied to Estrada’s case, his acceptance of the pardon does not necessarily negate its absolute nature. The more appropriate test to apply in the determination of the subject pardon’s character is the grantor’s intention as revealed in the four corners of the document.

Second. The controversial perambulatory clause which states, “Whereas, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,” should not be considered as a restriction on Estrada’s pardon.

Primarily, rules on statutory construction provide that whereas clauses, do not form part of a statute, strictly speaking; they are not part of the operative language of the statute.[18] While they may be helpful to the extent that they articulate the general purpose or reason underlying a new enactment, reliance on whereas clauses as aids in construing statutes is not justified when their interpretation “control the specific terms of the statute.”[19]

As applied in Estrada’s case, the subject whereas clause does not purport to control or modify the unequivocal terms found in the pardon’s body. In this sense, the “whereas clauses” in Estrada’s pardon cannot adversely affect the ultimate command which it evokes, that is, executive clemency is granted to Estrada absent any condition.

A conditional pardon basically imposes a condition. I take this to mean that it must either stipulate a circumstance, a situation, or a requisite that must come into pass or express a restriction that must not ensue. I find none in this case. The plain language of the pardon extended to Estrada does not set forth any of these. It was couched in a straightforward conferment of pardon, to wit:

I hereby grant executive clemency to Joseph Ejercito Estrada, convicted by the Sandiganbayan of plunder and imposed a penalty of reclusion perpetua.

Had PGMA intended to impress a condition on Estrada, the same would have been clearly stated as a requirement of, or restriction to, the above conferment. I am inclined to posit that the extension of a conditional pardon to her political rival is a matter that PGMA would have regarded with solemnity and tact. After all, the pardoning power is a pervasive means to bluntly overrule the force and effect, not only of a court’s judgment of conviction, but the punitive aspect of criminal laws. As it turned out, no direct showing suggests that the pardon was conditional.

For a condition to be operative, the condition must appear on the face of the document. The conditions must be

clear and specific. The reason is that the conditions attached to a pardon should be definite and specific as to inform the person pardoned of what would be required.[20] As no condition was patently evinced in the document, the Court is at no liberty to shape one, only because the plain meaning of the pardon's text is unacceptable for some waylaid and extraneous reasons. That the executive clemency given to Estrada was unaccompanied by any condition is clearly visible in the text of the pardon. The Court must simply read the pardon as it is written. There is no necessity to resort to construction. I choose to heed the warning enunciated in *Yangco v. Court of First Instance of Manila*:

. . . [w]here language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting the words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its interpretation and construction.[21]

Suffice it to say, a statement describing Estrada's previous commitment not to seek any elective office cannot operate as a condition for his pardon, sans any indication that it was intended to be so. In light of the clear absence of any condition in the pardon, no ambiguity warrants interpretation by the Court. At the most, the subject *whereas* clause depicts the state of affairs at the time when the pardon was granted. It should not be considered as part and parcel of the entire act as it serves neither the ability to enlarge or confer powers nor the authority to control the words of the act.

Third. The pardoning power is granted exclusively to the President amidst the constitutional scheme of checks and balances. While it is most ideal that the executive strictly adheres to this end, it is undeniable that the pardoning power is still dependent on the grantor's measure of wisdom and sense of public policy. This reality invites, if not bolsters, the application of the political question doctrine. The only weapon, which the Court has freedom to wield, is the exercise of judicial power against a blatant violation of the Constitution. When unavailing, the Court is constrained to curb its own rebuking power and to uphold the acumen of a co-equal branch. It would do the Court well to remember that neither the Congress nor the courts can question the motives of the President in the use of the power.[22]

Hence, in determining the nature of Estrada's pardon, the Court must undertake a tempered disposition and avoid a strained analysis of the obvious. Where there is no ostensible condition stated in the body of the pardon, to envisage one by way of statutory construction is an inexcusable judicial encroachment.

The absolute nature of Estrada's pardon now begets a more astute query: what rights were restored in his favor?

II. Estrada's Civil and Political Rights Restored

In this particular issue, the ponencia deserves my full agreement in finding that the third preambular clause of Estrada's pardon does not militate against the conclusion that Estrada's rights to suffrage and to seek public office have been restored. Further, the subject pardon had substantially complied with the statutory requirements laid down in Articles 36 and 41 of the RPC. The authority of the said provisions of law was reinforced by the ruling of the Court in *Monsanto v. Factoran*. A deeper analysis of *Monsanto*, however, reveals that its repercussions actually favor Estrada.

Consider these points:

- Monsanto involved an absolute pardon, from which, Estrada likewise benefits.
- The issue in Monsanto involved the propriety of an automatic reinstatement to public office. In refutation of the Garland cases, the Court maintained that while an absolute pardon remits all the penal consequences of a criminal indictment if only to give meaning to the fiat that a pardon, being a presidential prerogative ... it, however, rejected the “fictitious belief that pardon blots out the guilt of an individual and that once he is absolved, he should be treated as if he were innocent.”
- Monsanto’s absolute disqualification or ineligibility from public office was considered to have formed part of the punishment prescribed against her. Ultimately, when her guilt and punishment were expunged by her pardon, this particular disability was likewise removed.
- Noteworthy is the observation of the Court that she may apply for reappointment to the office, but in the appraisal of her suitability to a public post, the facts constituting her past offense should be taken into account to determine whether she could once again serve in a public office.

After serious reflection, I am convinced that the foregoing pronouncement parallels that which should apply to Estrada.

In Monsanto, the Court declared that the absolute pardon granted to her by the President effectively expunged her disqualification or ineligibility to hold public office because this formed part of the penalty against her. As in the foregoing discussion on the absolute nature of Estrada’s pardon, there is no question that his pardon likewise remitted the punishment previously imposed in his conviction for plunder. As such, he was released from incarceration and thereafter regained his liberty of movement, albeit ordered to abide by the forfeiture of his properties as listed in the judgment of the Sandiganbayan. More significantly, there was no categorical statement impressed in Monsanto that banned her from holding public office again. All that it withheld was an automatic reinstatement to her previous office and her entitlement to backpay. In other words, Monsanto may hold public office provided that there is favorable action on her application.

While I generally acquiesce with the scholarly opinions of Justices Padilla and Feliciano in Monsanto, I find it difficult to apply their respective observations (that based on Article 36 of the RPC, it was clear that the pardon extended by the President did not per se entitle Monsanto to again hold public office or to suffrage because nothing therein expressly provided the restoration of the said rights with specificity) precisely because this was not adopted in the majority decision. There is a stark difference between the positions taken by the concurring justices from the very holding of the majority. The former entirely and perpetually denied Monsanto of her right to hold public office, while the latter merely disallowed an automatic reinstatement but permitted her to undergo re-application with the only caveat that her pardon did not place her in a state of complete innocence. In other words, her past conviction should be considered as forming part of her credentials in her re-application for public office. Between these two conclusions, I choose with steadfast belief that the holding pronounced in the majority decision should prevail. The strict interpretation of Article 36 as advocated in the concurring opinion was not adopted in the main decision, hence, rendering the same as mere obiter dictum which has no controlling effect.

While I do not subscribe to Estrada’s theory that Articles 36 and 41 of the RPC have the effect of abridging and diminishing the power of the President, I also remain unconvinced that the said provisions of law should apply to his case because the strict interpretation of these provisions were not encapsulated in jurisprudence, particularly Monsanto. Therefore, the statement, “He is hereby restored to his civil and political rights,” as found in the subject pardon does not fall short of producing the effect of wiping away the penalties being suffered by the pardonee. As things stand now, an absolute and full pardon erases both the principal and accessory penalties meted against him, thereby allowing him to hold public office once again.

Corollary to this, I am of the opinion that PGMA's failure to use the term "full," apropos to the restoration of Estrada's rights does not denigrate its coverage. PGMA's omission to use such term in the case of Estrada may have been caused by reasons unknown to the Court. The Court cannot discount the possibility that this was borne out of plain inadvertence, considering the fact that the pardon was unaccompanied by a clear condition. Had it been PGMA's intention to restrict the rights restored to Estrada, she could have stated clear exceptions thereto, instead of employing a phrase, which, in its plain meaning, comprises the right to vote and to run for public office. Besides, the deprivation of these rights is a dangerous ground that the Court should not tread on, especially when the intention to restrict their exercise is impalpable.

Applying this to the case at bench, no ban from holding public office should be imposed on Estrada, because the absolute pardon given to him had effectively extinguished both the principal and accessory penalties brought forth by his conviction. Succinctly, Estrada's civil and political rights had been restored in full.

III. Estrada's Right to Run for Public Office Restored

Consistent with my view that Monsanto reflects the obliteration of Estrada's perpetual disqualification, I conclude that he now possesses the right to vote and to run for public office.

Lest it be misunderstood, this conclusion does not degenerate from the doctrine that a pardon only relieves a party from the punitive consequences of his past crimes, nothing more. Indeed, "a person adjudged guilty of an offense is a convicted criminal, though pardoned; he may be deserving of punishment, though left unpunished; and the law may regard him as more dangerous to society than one never found guilty of crime, though it places no restraints upon him following his conviction." [23] Estrada was not reborn into innocence by virtue of the forgiveness bestowed in by the pardon. The moral stain caused by his past crimes remains to be part of his person, then as now. In no way did his pardon serve as a stamp of incorruptibility. It is not a magic spell that superimposes virtuousness over guilt. His past conviction for plunder would forever form part of his person, whether as a private individual or a public officer.

Without squabble, plunder is a crime involving moral turpitude. Nevertheless, this fact alone negates a mechanical application of statutory provisions on disqualification. One thing is clear, in the exercise of her exclusive power to grant executive clemency, PGMA pardoned Estrada, thereby wiping away the penalties of his crime and entitling him the right to run for public office. Corollary to this, Estrada's fitness to hold public office is an issue that should not concern the Court. All that the Court can rule on is the availability of Estrada's right to seek public office. This ruling on his eligibility is not tantamount to a declaration that Estrada befits a person wholly deserving of the people's trust. The Manileños' decision alone can mould the city's journey to either development or decline. Indeed, election expresses the sovereign will of the people consistent with the principle of *vox populi est suprema lex*. This is the beauty of democracy which the Court must endeavour to protect at all cost. As Abraham Lincoln put it with both guile and eloquence,

Elections belong to the people. It's their decision. If they decide to turn their back on the fire and burn their behinds, then they will just have to sit on their blisters.

For the foregoing reasons, I vote to CONCUR with the majority opinion.

[1] Rollo. pp. 1009-1034.

[2] *Id.* at 1035-1054.

[3] Section 4, Article VII 1987 Constitution.

[4] Atty. Evillo C. Pormento v. Joseph “Erap” Ejercito Estrada and Commission on Elections, G.R. No. 191988, August 31, 2010, 629 SCRA 530.

[5] Rollo, pp. 267-285.

[6] Docketed as SPA N, 13-211 (DC).

[7] 252 Phil. 192, 206-207 (1989).

[8] Rollo, pp. 39-46.

[9] Id. at 49-50.

[10] Id. at 438.

[11] G.R. No. 193237, October 9, 2012, 683 SCRA 1.

[12] Estrada filed his comment to Lim’s petition-in-intervention on July 15, 2013; the COMELEC, through the Office of the Solicitor General (OSG) filed its consolidated comment on July 29, 2013; Estrada filed his comment to the petition on August 6, 2013; Lim filed his reply to Estrada’s comment on August 23, 2013; Petitioner filed her reply to Estrada’s comment to the petition on August 27, 2013; Petitioner filed her reply to the COMELEC’s consolidated comment on December 13, 2013.

[13] Lim on May 27, 2014; Petitioner on June 2, 2014; Estrada on June 16, 2014 and the COMELEC on June 26, 2014.

[14] Rollo, p. 12.

[15] 252 Phil 192, 198-199 (1989).

[16] G.R. No. 3080, May 5, 1906.

[17] William and Mary Law Review, The President's Power to Pardon: A Constitutional History by William F. Duker, Volume 18, Issue 3, Article 3.

[18] Llamado v. CA and Gaw, 256 Phil 328, 339 (1989) citing Yazoo & Mississippi Valley R. Co. v. Thomas, 132 US 174 (1889); 33 L Ed 302.

[19] Llamado v. CA and Gaw, 256 Phil 328, 339 (1989).

[20] Ex Parte Reno, 66 Mo. 266, 269 (Mo. 1877).

[21] 29 Phil. at 188 (1915).

[22] William and Mary Law Review, The President's Power to Pardon: A Constitutional History by William F. Duker, Volume 18, Issue 3, Article 3.

[23] Monsanto v. Factoran, 252 Phil 192, 201 (1989) citing State v. Cullen, 127 P. 2d 257, cited in 67 C.J.S. 577, note 18.

DISSENTING OPINION

LEONEN, J.:

This case has distressing consequences on the Rule of Law. By reading an ambiguity in favor of a convicted public officer, impunity is tolerated.

I dissent.

Joseph Ejercito Estrada, former President of the Republic of the Philippines, was found guilty beyond reasonable doubt of the crime of plunder. A heinous crime of the highest order, the law penalizing plunder — Republic Act No. 7080 — made possible the imposition of the supreme penalty of death upon public officers who amass ill-gotten wealth on a grand scale through a combination or series of acts.[1] Though an intervening statute[2] now prevents the imposition of the penalty of death, our laws have no less abhorrence for this crime.

Joseph Ejercito Estrada, former President of the Republic of the Philippines, was pardoned shortly after he had been convicted. This case presents to this court a dilemma engendered by ambiguities in the pardon extended to him.

The court must decide on whether these ambiguities shall be interpreted to benefit a convicted former President, shown to have amassed ill-gotten wealth on a grand scale and to have betrayed the trust given to him through the investiture of the highest office in the land; or to benefit the public which reposes its trust on elected public officials. Many other public officials have been found liable for graft and corrupt practices of far lesser scales than those for which Joseph Ejercito Estrada had been convicted. They now languish in jails, deprived of liberties and entitlements. This case is not about their pardon. They continue to suffer the penalties that their convictions entail, unlike the former President of the Republic of the Philippines.

This case, in short, will affect the public's attitude to the Rule of Law and the possibilities for immunity for very influential public officials.

Not having been unequivocally restored to a status worthy of being a repository of the public trust, there is no reason to lavish Joseph Ejercito Estrada by facilitating his reversion to elective public office. Thus, I dissent from the majority decision.

I

Through a petition for certiorari, Atty. Alicia Risos-Vidal (Risos-Vidal) prays that the assailed resolutions[3] dated April 1, 2013 of the Second Division of public respondent Commission on Elections (COMELEC), and April 23, 2013 of COMELEC, sitting En Banc, be annulled and set aside. In addition, she prays that a new judgment be entered disqualifying private respondent Joseph Ejercito Estrada (Estrada) from running as Mayor of the City of Manila, and cancelling the certificate of candidacy he filed in connection with the May 13, 2013 election for the position of Mayor of the City of Manila.[4]

The assailed April 1, 2013 resolution dismissed the petition for disqualification filed by Risos-Vidal and docketed as SPA No. 13-211 (DC). The assailed April 23, 2013 resolution denied her motion for reconsideration.

A motion for leave to intervene[5] was filed by Estrada's opponent in the mayoralty race, Alfredo S. Lim (Lim). Attached to Lim's motion was his petition-in-intervention.[6] Lim's motion was granted by the court in the resolution[7] dated June 25, 2013.

II

Statement of the antecedents

On April 4, 2001, the Office of the Ombudsman filed against private respondent, Joseph Ejercito Estrada, former President of the Republic of the Philippines, and several other accused,[8] an information for plunder, penalized by Republic Act No. 7080, as amended by Republic Act No. 7659. This case was filed before the Sandiganbayan and docketed as Criminal Case No. 26558.

In the decision[9] dated September 12, 2007, the Sandiganbayan, Special Division, convicted Estrada of the crime of plunder. He was sentenced to suffer “the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.”[10]

The dispositive portion of this decision reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in Criminal Case No. 26558 finding the accused, Former President Joseph Ejercito Estrada, GUILTY beyond reasonable doubt of the crime of PLUNDER defined in and penalized by Republic Act No. 7080, as amended. On the other hand, for failure of the prosecution to prove and establish their guilt beyond reasonable doubt, the Court finds the accused Jose “Jinggoy” Estrada and Atty. Edward S. Serapio NOT GUILTY of the crime of plunder, and accordingly, the Court hereby orders their ACQUITTAL.

The penalty imposable for the crime of plunder under Republic Act No. 7080,[11] as amended by Republic Act No. 7659,[12] is Reclusion Perpetua to Death. There being no aggravating or mitigating circumstances, however, the lesser penalty shall be applied in accordance with Article 63 of the Revised Penal Code.[13] Accordingly, the accused Former President Joseph Ejercito Estrada is hereby sentenced to suffer the penalty of Reclusion Perpetua and the accessory penalties of civil interdiction during the period of sentence and perpetual absolute disqualification.

The period within which accused Former President Joseph Ejercito Estrada has been under detention shall be credited to him in full as long as he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the government of the following:

(1) The total amount of Five Hundred Forty Two Million Seven Ninety One Thousand Pesos (?545,291,000.00)[14] with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (?200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.

(2) The amount of One Hundred Eighty Nine Million Pesos (P189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as “Boracay Mansion” located at #100 11th Street, New Manila, Quezon City.

The cash bonds posted by accused Jose “Jinggoy” Estrada and Atty. Edward S. Serapio are hereby ordered cancelled and released to the said accused or their duly authorized representatives upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures. Likewise, the hold-departure orders issued against the said accused are hereby recalled and declared functus officio.

SO ORDERED.[15] (Emphasis and citations supplied)

On October 25, 2007, then President Gloria Macapagal-Arroyo granted pardon to Estrada. The complete text of

this pardon reads:

MALACAÑAN PALACE
MANILA

By the President of the Philippines

PARDON

WHEREAS, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

WHEREAS, Joseph Ejercito Estrada has been under detention for six and a half years,

WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office,

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights.

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.

Given under my hand at the City of Manila,
this 25[th] Day of October, in the year of
Our Lord, two thousand and seven.

Gloria M. Arroyo (sgd.)

By the President:

IGNACIO R. BUNYE (sgd.)
Acting Executive Secretary[16]

On October 26, 2007, Estrada accepted the entire pardon without qualifications. This acceptance is evidenced by a handwritten notation on the pardon, which reads:

Received & accepted

Joseph E. Estrada (sgd.)

DATE: 26 Oct. '07

TIME: 3:35 P.M.[17]

On October 2, 2012, Estrada filed his certificate of candidacy[18] for the position of Mayor of the City of Manila.

On January 14, 2013, Riso-Vidal, a resident and registered voter of the City of Manila, filed before public respondent COMELEC a petition for disqualification[19] against Estrada. This petition, docketed as SPA No. 13-211 (DC), was filed pursuant to Section 40 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (the Local Government Code),[20] in relation to Section 12 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code.[21] It sought to disqualify Estrada from running for Mayor of the City of Manila on account of his conviction for plunder and having been sentenced to suffer the penalty of reclusion perpetua, and the accessory penalties of civil interdiction and perpetual absolute disqualification.[22]

Estrada filed his answer[23] on January 24, 2013.

On April 1, 2013, the COMELEC Second Division issued the first assailed resolution dismissing Risos-Vidal's petition for lack of merit.

In this resolution, the COMELEC Second Division noted that in 2010, following Estrada's filing of a certificate of candidacy for President of the Philippines, two disqualification cases — SPA No. 09-028 (DC) and SPA No. 09-104 (DC) — were filed against him. It added that, in deciding these disqualification cases — first, through the resolution dated January 20, 2010 of the COMELEC Second Division and, second, through the resolution of the COMELEC En Banc dated May 4, 2010 — the Commission on Elections had already ruled that the pardon granted to Estrada was absolute and unconditional and, hence, did not prevent him from running for public office. Thus, the matter of Estrada's qualification, in relation to the efficacy of the penalties imposed on him on account of his conviction for plunder, "ha[d] been passed upon and ruled out by this Commission way back in 2010." [24]

In the resolution dated April 23, 2013, the COMELEC En Banc denied Risos-Vidal's motion for reconsideration.

On April 30, 2013, Risos-Vidal filed the present petition.[25] Risos-Vidal ascribed grave abuse of discretion amounting to lack or excess of jurisdiction on COMELEC in not disqualifying Estrada. She assailed COMELEC's refusal to grant her petition on account of its having supposedly ruled on the same issues in the disqualification cases filed in connection with Estrada's 2010 bid for the presidency.[26] She asserted that Estrada's pardon was conditional and served neither to restore his rights "to vote, be voted upon and to hold public office"[27] nor to remit the accessory penalty of perpetual absolute disqualification.[28] She added that, for having been convicted of plunder, a crime involving moral turpitude, Estrada was barred from running for Mayor by Section 40 of the Local Government Code.[29] Insisting that the grounds for disqualifying Estrada were so manifest, she faulted COMELEC for not having disqualified *motu proprio*. [30]

In the meantime, elections were conducted on May 13, 2013. Per COMELEC's "Certificate of Canvass of Votes and Proclamation of Winning Candidates for National Capital Region – Manila" dated May 17, 2013,[31] Estrada was noted to have obtained 349,770 votes.[32] His opponent in the mayoralty race, Lim, obtained 313,764 votes,[33] giving the lead to Estrada. Estrada was, thus, proclaimed as the "duly elected"[34] city mayor.

On June 7, 2013, Lim filed a motion for leave to intervene[35] to which was attached his petition-in-intervention.[36] He argued that, regardless of whether the pardon granted to Estrada was absolute or conditional, it did not expressly restore his right of suffrage and his right to hold public office, and it did not remit his perpetual absolute disqualification as required by Articles 36[37] and 41[38] of the Revised Penal Code. Thus, he remained ineligible for election into public office.[39] He added that, per this court's decision in *Dominador Jalosjos, Jr. v. COMELEC*, [40] he had the "right to be declared and proclaimed mayor of Manila upon the declaration of respondent Estrada's disqualification." [41]

In the resolution[42] dated June 25, 2013, this court granted Lim's motion for leave to intervene and required respondents to file their comments on Lim's petition-in-intervention in addition to filing their comment on Risos-Vidal's petition.

On July 15, 2013, Estrada filed his comment on Lim's petition-in-intervention.[43] He argued that Lim lacked "legal standing to prosecute this case," [44] that the pardon granted to him restored his right to seek public office,[45] and that Articles 36 and 41 of the Revised Penal Code are not only unconstitutional, as they diminish the pardoning power of the President,[46] but have also been repealed by subsequent election laws (e.g., Section 94 of Commonwealth Act No. 357[47] and Section 12 of the Omnibus Election Code[48]), which recognize "plenary pardon[s]." He added that Risos-Vidal's assertions that President Gloria Macapagal-Arroyo could not

have intended for Estrada's pardon to be absolute as they were "political rivals"[49] is a factual issue that required the "remand"[50] of the case to the Court of Appeals or the reception of evidence through oral arguments.[51]

On July 29, 2013, public respondent COMELEC, through the Office of the Solicitor General (OSG) filed its consolidated comment.[52] It noted that the effects of the pardon granted to Estrada had already been ruled upon by COMELEC in connection with disqualification cases filed against him on the occasion of his 2010 bid for the presidency.[53] It added that Estrada's rights to vote and be voted for had indeed been restored and his perpetual disqualification remitted by the pardon granted to him.

On August 6, 2013, Estrada filed his comment[54] on Risos-Vidal's petition. In addition to arguing that he was granted an absolute pardon which rendered him eligible to run and be voted as mayor, Estrada argued that the present case involves the same issues as those in the 2010 disqualification cases filed against him, that "the findings of fact of the public respondent COMELEC relative to the absoluteness of the pardon, the effects thereof and the eligibility of the Private Respondent Estrada are binding and conclusive"[55] on this court, and that the allegations made by Risos-Vidal are insufficient to disturb the assailed resolutions.[56] He added that Risos-Vidal's petition before the COMELEC was filed out of time, it being, in reality, a petition to deny due course to or to cancel his certificate of candidacy, and not a petition for disqualification.[57] He also asserted that Dominador Jalosjos, Jr. was inapplicable to the present case.[58] Finally, he claimed that his disqualification would mean the disenfranchisement of the voters who elected him.[59]

On August 23, 2013, Lim filed his reply to Estrada's comment on his petition-in-intervention and to COMELEC's consolidated comment.[60] On August 27, 2013, Risos-Vidal filed her reply[61] to Estrada's comment on her petition. On December 13, 2013, Risos-Vidal filed her reply[62] to COMELEC's consolidated comment.

In the resolution dated April 22, 2014, the petition and petition-in-intervention were given due course and the parties required to submit their memoranda. The parties complied: Lim on May 27, 2014,[63] Risos-Vidal on June 2, 2014,[64] Estrada on June 16, 2014;[65] and COMELEC on June 26, 2014.[66]

III

Statement of issues

For resolution are the following issues:

A. Procedural issues

- Whether the petition filed by petitioner Atty. Alicia Risos-Vidal before the COMELEC was filed on time;
- Whether petitioner-intervenor Alfredo S. Lim may intervene in this case; and
- Whether COMELEC's rulings in the disqualification cases filed against private respondent Joseph Ejercito Estrada in connection with his 2010 bid for the presidency bar the consideration of the petition filed by petitioner Atty. Alicia Risos-Vidal before the COMELEC, as well as the present petition for certiorari.

B. Substantive issues

- Whether private respondent Joseph Ejercito Estrada was qualified to run for Mayor of the City of Manila; and
- Assuming private respondent Joseph Ejercito Estrada was not qualified, whether petitioner-intervenor Alfredo S. Lim should be declared Mayor of the City of Manila.

At the core of this case is the issue of whether Estrada was qualified to run for Mayor of the City of Manila. Estrada, however, has invoked several procedural issues that, if decided in his favor, would effectively impede this court's having to rule on the substantive issue of his qualification. All of these procedural obstacles lack merit and should not prevent this court from ruling on Estrada's qualification.

IV

The petition filed by petitioner Atty. Alicia Risos-Vidal with COMELEC was filed on time

Estrada argues that the petition filed by Risos-Vidal before the COMELEC should be treated as a petition to deny due course to or to cancel a certificate of candidacy (CoC) under Section 78 of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code[67] (Section 78 petition). He claims that the petition effectively assailed the falsity of a representation he made in his CoC — that is, that he was eligible for the office he sought to be elected to — and, therefore, invoked a ground for a Section 78 petition, rather than a ground for a petition for disqualification.

Estrada adds that Rule 23, Section 2 of COMELEC Resolution No. 9523[68] provides that a Section 78 petition must be filed within five (5) days from the last day for filing a CoC, but not later than 25 days from the time of the filing of the CoC specifically subject of the petition. He claims that, since Risos-Vidal's petition was all but a "camouflaged"[69] petition for disqualification, Rule 25, Section 3 of COMELEC Resolution No. 9523,[70] which allows for petitions for disqualification to be "filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation" finds no application. As Risos-Vidal's petition was filed before the COMELEC on January 14, 2013 — one hundred and four (104) days removed from October 2, 2012, when he filed his CoC — Estrada argues that Risos-Vidal's petition was belatedly filed and, hence, should have been summarily dismissed by COMELEC.

Estrada's assertion is erroneous.

This court's 2008 decision in *Fermin v. COMELEC*[71] allowed for an opportunity "to dichotomize, once and for all, two popular remedies to prevent a candidate from running for an elective position which are indiscriminately interchanged by the Bench and the Bar":[72] on the one hand, a petition to deny due course to or to cancel a certificate of candidacy under Section 78 of the Omnibus Election Code and, on the other, a petition for disqualification under Section 68 of the Omnibus Election Code (Section 68 petition).

The two remedies, and their distinctions, were discussed in the course of this court's characterization of the petition involved in *Fermin* — whether it was a Section 78 petition or a Section 68 petition — considering that such petition was anchored on an allegation that a candidate for Mayor was ineligible for failing to satisfy the requirement of residency of at least one (1) year immediately preceding the election. The problem of characterization is the same issue facing us at this juncture:

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the

winning candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. They are different remedies, based on different grounds, and resulting in different eventualities. . . .

The ground raised in the Dilangalen petition is that Fermin allegedly lacked one of the qualifications to be elected as mayor of Northern Kabuntalan, i.e., he had not established residence in the said locality for at least one year immediately preceding the election. Failure to meet the one-year residency requirement for the public office is not a ground for the "disqualification" of a candidate under Section 68. [Section 68] only refers to the commission of prohibited acts and the possession of a permanent resident status in a foreign country as grounds for disqualification, thus:

SEC. 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 a permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

Likewise, the other provisions of law referring to "disqualification" do not include the lack of the one-year residency qualification as a ground therefor, thus:

Section 12 of the OEC

SEC. 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.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service or sentence, unless within the same period he again becomes disqualified.

Section 40 of the Local Government Code (LGC)

SECTION 40. Disqualifications—The following persons are disqualified from running for any elective local position:

- (a) Those sentence by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;
- (b) Those removed from office as a result of an administrative case;
- (c) Those convicted by final judgment for violating the oath of allegiance to the Republic;
- (d) Those with dual citizenship;
- (e) Fugitive from justice in criminal or nonpolitical cases here or abroad;

- (f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and
- (g) The insane or feeble-minded.

Considering that the Dilangalen petition does not state any of these grounds for disqualification, it cannot be categorized as a "Section 68" petition.

To emphasize, a petition for disqualification, on the one hand, can be premised on Section 12 or 68 of the [Omnibus Election Code], or Section 40 of the [Local Government Code]. On the other hand, a petition to deny due course to or cancel a CoC can only be grounded on a statement of a material representation in the said certificate that is false. . . . [73] (Emphasis supplied, citations omitted)

The quoted discussion clearly establishes the distinction of when it is proper to resort to a Section 78 petition as against a petition for disqualification under Section 68 of the Omnibus Election Code: (1) a Section 78 petition is proper when a statement of a material representation in a certificate of candidacy is false; and (2) a Section 68 petition is proper when disqualification is sought on account of having committed electoral offenses and/or possession of status as a permanent resident in a foreign country.

Fermin, however, did not just touch on petitions for disqualification anchored on Section 68 of the Omnibus Election Code, but also on petitions for disqualification anchored on Section 12 of the Omnibus Election Code and on Section 40 of the Local Government Code. Fermin made the pronouncement that Section 12 of the Omnibus Election Code and Section 40 of the Local Government Code are equally valid grounds for a petition for disqualification. Nevertheless, Fermin was not categorical on when a petition for disqualification anchored on these statutory provisions may be resorted to vis-à-vis a Section 78 petition.

A subsequent case, *Aratea v. COMELEC*, [74] affirms that petitions for disqualification may be anchored on Section 12 of the Omnibus Election Code, and/or Section 40 of the Local Government Code, much as they can be anchored on Section 68 of the Omnibus Election Code: "A petition for disqualification can only be premised on a ground specified in Section 12 or 68 of the Omnibus Election Code or Section 40 of the Local Government Code." [75]

Likewise, Rule 25, Section 1 of COMELEC Resolution No. 9523 indicates that a petition for disqualification is based on legally (i.e., by Constitution or by statute) prescribed disqualifications. It provides:

Section 1. Grounds. — 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 to be suffering from any disqualification provided by law or the Constitution.

A Petition to Disqualify a Candidate invoking grounds for a Petition to Deny to or Cancel a Certificate of Candidacy or Petition to Declare a Candidate as a Nuisance Candidate, or a combination thereof, shall be summarily dismissed. (Emphasis supplied)

However, *Aratea* and COMELEC Resolution No. 9523, like *Fermin*, are uncategorical on the availability of petitions for disqualification anchored on Section 12 of the Omnibus Election Code and/or Section 40 of the Local Government Code vis-à-vis resort to Section 78 petitions. Any standing ambiguity was settled by this court's discussion in *Dominador Jalosjos, Jr. v. Commission on Elections*. [76]

In *Dominador Jalosjos, Jr.*, this court affirmed the COMELEC's grant of a Section 78 petition and sustained the cancellation of the certificate of candidacy filed by *Dominador Jalosjos, Jr.* in his bid to be elected Mayor of Dapitan City, Zamboanga del Norte in the May 10, 2010 elections. This cancellation was premised on a finding that *Jalosjos, Jr.* made a material misrepresentation in his CoC in stating that he was eligible for election. *Jalosjos,*

Jr. had previously been convicted of robbery and sentenced to suffer the accessory penalty of perpetual special disqualification. In sustaining the cancellation of his CoC, this court reasoned:

The perpetual special disqualification against Jalosjos arising from his criminal conviction by final judgment is a material fact involving eligibility which is a proper ground for a petition under Section 78 of the Omnibus Election Code.

....

A false statement in a certificate of candidacy that a candidate is eligible to run for public office is a false material representation which is a ground for a petition under Section 78 of the same Code. . . .

....

Section 74 requires the candidate to state under oath in his certificate of candidacy "that he is eligible for said office." A candidate is eligible if he has a right to run for the public office. If a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.[77] (Citations omitted)

From these, it is clear that a false claim of eligibility made in a certificate of candidacy despite a prior conviction which carries with it the accessory penalty of disqualification is a ground for a Section 78 petition. Nevertheless, it is also a ground for a petition for disqualification. As explained in *Dominador Jalosjos, Jr.*:

What is indisputably clear is that the false material representation of Jalosjos is a ground for a petition under Section 78. However, since the false material representation arises from a crime penalized by *prisión mayor*, a petition under Section 12 of the Omnibus Election Code or Section 40 of the Local Government Code can also be properly filed. The petitioner has a choice whether to anchor his petition on Section 12 or Section 78 of the Omnibus Election Code, or on Section 40 of the Local Government Code. The law expressly provides multiple remedies and the choice of which remedy to adopt belongs to the petitioner.[78]

The concurrent availability of a Section 78 petition with a petition for disqualification should not be interpreted as diminishing the distinction between the two (2) remedies.

The pivotal consideration in a Section 78 petition is material misrepresentation relating to qualifications for elective public office. To "misrepresent" is "to describe (someone or something) in a false way especially in order to deceive someone." [79] It, therefore, connotes malevolent intent or bad faith that impels one to adulterate information. A Section 78 petition thus, squarely applies to instances in which a candidate is fully aware of a matter of fact that disqualifies him or her but conceals or otherwise falsely depicts that fact as to make it appear that he or she is qualified. A petition for disqualification, on the other hand, may apply in cases where a disqualification exists but, because of an attendant ambiguity (such as an unsettled legal question), a candidate acts in good faith and without any deliberate attempt to conceal or mislead.

Right at the onset, the petition filed by Risos-Vidal before the COMELEC on January 14, 2013 asserts that it was filed pursuant to Section 40 of the Local Government Code, "in relation to" [80] Section 12 of the Omnibus Election Code:

This is a petition pursuant to Sec. 40 of R.A. No. 7160, otherwise known as "The Local Government Code of 1991", in relation to Sec. 12 of BP Blg. 881, otherwise known as the "Omnibus Election Code of the Philippines", seeking to disqualify former President Joseph Ejercito Estrada from running for the mayoralty position in Manila in the coming May 13, 2013 elections, on the ground of his prior conviction of the crime of plunder by the Sandiganbayan and his having been sentenced to *reclusión perpetua* with the accessory penalties of civil interdiction and perpetual absolute disqualification.[81] (Emphasis supplied)

This petition posits that Estrada is disqualified from running as Mayor of the City of Manila, pursuant to Section 40 of the Local Government Code, as follows:

Sec. 40 of the LGC provides that a person sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by imprisonment of one (1) year or more is disqualified from running for any elective local position.

As earlier said, respondent was sentenced in Crim. Case No. 26558 to suffer the penalty of reclusion perpetua.

He was, however, granted pardon by former Pres. Gloria Macapagal-Arroyo, thus, did not serve his sentence in full.

Nonetheless, while the pardon did restore to him his civil and political rights, it did not restore to him his right to run for or hold public office or the right of suffrage because it was not expressly restored by the terms of the pardon. . . .[82]

This petition unambiguously anchors itself on statutorily prescribed disqualifications — under Section 40 of the Local Government Code, as well as Section 12 of the Omnibus Election Code — which jurisprudence has explicitly recognized as a valid basis for both a petition for disqualification and a Section 78 petition.

It follows that the petition was filed on time. The petition was filed on January 14, 2013, after the last day for filing of certificates of candidacy, and before the date of Estrada's proclamation as Mayor on May 17, 2013. This is within the period permitted by Rule 25, Section 3 of COMELEC Resolution No. 9523.

V

Alfredo S. Lim may intervene in the present petition for certiorari

Citing Section 44 of the Local Government Code[83] — on succession in case of permanent vacancies in the Office of the Mayor — and jurisprudence to the effect that “the candidate who obtains the second highest number of votes may not be proclaimed winner in case the winning candidate is disqualified,”[84] Estrada claims that “the party who stands to benefit in the event of [his] disqualification is none other than the duly elected Vice-Mayor of the City of Manila, Isko Moreno.”[85] Thus, he asserts that “it is clear that Lim has NO LEGAL STANDING to institute his Petition-In-Intervention.”[86]

In the first place, Estrada is erroneously invoking the concept of “legal standing.” What Estrada is really questioning is whether Lim is a real party in interest.

The distinction between the rule on standing and real party in interest was extensively discussed by this court in *Kilosbayan v. Morato*: [87]

Not only is petitioners' standing a legal issue that may be determined again in this case. It is, strictly speaking, not even the issue in this case, since standing is a concept in constitutional law and here no constitutional question is actually involved. The issue in this case is whether petitioners are the "real parties in interest" within the meaning of Rule 3, §2 of the Rules of Court which requires that "Every action must be prosecuted and defended in the name of the real party in interest."

The difference between the rule on standing and real party in interest has been noted by authorities thus: "It is important to note . . . that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party in interest or has capacity to sue. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas. (FRIEDENTHAL, KANE AND MILLER, CIVIL

PROCEDURE 328 (1985))

Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." (Baker v. Carr, 369 U.S. 186, 7 L.Ed. 2d 633 (1962))

....

On the other hand, the question as to "real party in interest" is whether he is "the party who would be benefitted or injured by the judgment, or the `party entitled to the avails of the suit.'" (Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125, 131 (1951))[88] (Emphasis supplied)

In seeking to intervene, Lim has made no pretensions of acting as a representative of the general public and, thus, advancing the public interest. He merely prays that he be declared the elected Mayor of the City of Manila following a declaration that Estrada was disqualified to run for the same post. Though what is involved is a public office, what Lim seeks to enforce is, fundamentally, a (supposed) right accruing to him personally to assume an office.

Lim has enough interest at stake in this case as would enable him to intervene.

Rule 19, Section 1 of the 1997 Rules of Civil Procedure provides for who may intervene in a pending court action:

Section 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. (Emphasis supplied)

The requirement of "legal interest" was discussed in *Magsaysay-Labrador v. Court of Appeals*,[89] as follows:

The interest which entitles a person to intervene in a suit between other parties must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. Otherwise, if persons not parties of the action could be allowed to intervene, proceedings will become unnecessarily complicated, expensive and interminable. And this is not the policy of the law.

The words "an interest in the subject" mean a direct interest in the cause of action as pleaded, and which would put the intervenor in a legal position to litigate a fact alleged in the complaint, without the establishment of which plaintiff could not recover.[90] (Emphasis supplied)

It is true that the principal matter for resolution in this case is whether Estrada, based on circumstances personally applying to him, was qualified to run for Mayor of the City of Manila. Nevertheless, the logical consequence of a decision adverse to Estrada is the need to identify who shall, henceforth, assume the position of Mayor.

Lim claims that he is entitled to replace Estrada. In support of this, he cites a decision of this court[91] and claims that, as a disqualified candidate, the votes cast for Estrada should be deemed stray votes. This would result in Lim being the qualified candidate obtaining the highest number of votes, which would, in turn, entitle him to being proclaimed the elected Mayor of the City of Manila.

It is worth emphasizing that “[t]he purpose of intervention is to enable a stranger to an action to become a party in order for him to protect his interest and for the court to settle all conflicting claims. Intervention is allowed to avoid multiplicity of suits more than on due process considerations.”[92] Lim’s intervention serves this purpose. It enables the resolution of an issue which is corollary to one of the two ways by which this court may decide on the issue of Estrada’s disqualification.

VI

This case is not barred by COMELEC’s rulings in the disqualification cases filed against Estrada in connection with his 2010 bid for the presidency

a. Estrada’s theory: case is barred by res judicata

Estrada avers that in 2010, in connection with what was then his second bid for the presidency of the Republic, two (2) disqualification cases were filed against him: one, by a certain Atty. Evilio C. Pormento, docketed as SPA No. 09-028 (DC); and two, by a certain Mary Lou B. Estrada, docketed as SPA No. 09-104 (DC). In the resolution dated January 20, 2010,[93] the COMELEC Second Division denied these disqualification petitions for lack of merit and upheld Estrada’s qualification to run for President. In the resolution dated April 27, 2010,[94] the COMELEC En Banc denied Mary Lou B. Estrada’s motion for reconsideration. In another resolution dated May 4, 2010, the COMELEC En Banc denied Pormento’s motion for reconsideration.[95]

Estrada claims that “[t]he issue surrounding the character of [his] pardon and eligibility to seek public elective office was already extensively dealt with and passed upon”[96] in these disqualification cases. He asserts that as these cases involved and resolved “the same or identical issues,”[97] the present case is now barred by res judicata.

Estrada draws particular attention to the following pronouncement of the COMELEC Second Division in its January 20, 2010 resolution:

Furthermore, there is absolutely no indication that the executive clemency exercised by President Arroyo to pardon Former President Estrada was a mere conditional pardon. It clearly stated that the former president is “restored to his civil and political rights” and there is nothing in the same which limits this restoration. The only therein stated that may have some bearing on the supposed conditions is that statement in the whereas clause thereof that contained the following: “WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or office”, but that is not really a condition but is merely part of a preliminary statement, referring to what respondent Estrada had said publicly. There is nothing stated in the dispositive part that it was conditioned upon said respondent’s purported public commitment. His public statement cannot, therefore, serve to restrict the operation of, or prevail over the explicit statement in the executive clemency which restored all of Estrada’s civil and political rights, including “the right to vote and to be voted for a public office,” including to the position of the Presidency. This executive clemency granted to the former President being absolute and unconditional and having been accepted by him, the same can no longer be revoked or be made subject to a condition.[98]

b. The 2010 disqualification cases and Riso-Vidal’s petition are anchored on different causes of action and, hence, involve different issues and subject matters

Res judicata was discussed in *Pryce Corporation v. China Banking Corporation*[99] as follows:

According to the doctrine of res judicata, “a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.”

The elements for res judicata to apply are as follows: (a) the former judgment was final; (b) the court that rendered it had jurisdiction over the subject matter and the parties; (c) the judgment was based on the merits; and (d) between the first and the second actions, there was an identity of parties, subject matters, and causes of action.

Res judicata embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment.

Bar by prior judgment exists "when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action."

On the other hand, the concept of conclusiveness of judgment finds application "when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction." This principle only needs identity of parties and issues to apply.[100]

The 2010 disqualification cases filed against Estrada in connection with his 2010 bid for the presidency do not bar the present case on account of res judicata.

For one, the 2010 disqualification cases filed by Atty. Evilio C. Pormento and Mary Lou B. Estrada involved issues and were anchored on causes of action that are markedly different from those in the present case. These cases were anchored on the constitutional prohibition against a President's re-election, as provided by Article VII, Section 4 of the 1987 Constitution,[101] and the additional ground that Estrada was a nuisance candidate. To the contrary, the present case is anchored on Estrada's conviction for plunder which carried with it the accessory penalty of perpetual absolute disqualification and invokes Section 40 of the Local Government Code, as well as Section 12 of the Omnibus Election Code.

The COMELEC Second Division, summarizing the circumstances of the petition for disqualification subject of SPA No. 09-028 (DC), filed by Atty. Evilio C. Pormento, stated:

Petitioner Evilio C. Pormento filed the first case against Respondent Joseph Ejercito Estrada on December 05, 2009. It was properly titled an "Urgent Petition for Disqualification as Presidential Candidate". This Petition is premised on the specific provision of Article VII, section 4 of the 1987 Constitution a portion of which stated that: xxx the President shall not be eligible for any re-election."[102] (Emphasis in the original)

On the other hand, summarizing the circumstances of the petition filed by Mary Lou B. Estrada, the COMELEC Second Division stated:

The second of the above-entitled cases was filed on December 12, 2009, by Petitioner Mary Lou Estrada alleging that the name of Joseph M. Ejercito Estrada might cause confusion to her prejudice. She filed a "Petition to Disqualify Estrada Ejercito Joseph M. From running as President due to Constitutional Disqualification and Creating Confusion to the Prejudice of Estrada, Mary Lou B" and prayed for the disqualification of the Respondent and to have his Certificate of Candidacy (COC) cancelled. She also made reference to the Respondent being a "Nuisance Candidate".[103] (Emphasis supplied)

That these disqualification cases involved issues and invoked causes of action that are different from those in this case is evident in the recital of issues in the COMELEC Second Division's January 20, 2010 resolution:

THE ISSUES IN THE TWO CASES

(a) Whether or not Respondent Joseph Ejercito Estrada is qualified to be a candidate for the position of President of the Philippines in the forthcoming elections on May 10, 2010, despite the fact that he had previously been elected to, assumed and discharged the duties of, the same position;

(b) Whether or not, former President Estrada may be considered a nuisance candidate in view of the

Constitutional prohibition against any reelection of a former President who has previously elected and had assumed the same position.[104] (Emphasis supplied)

This, too, is evident, in the resolution's introductory paragraphs:

At the very core of the controversy involved in these two cases which stands like a stratospheric totem pole is the specific provision under Sec. 4 of Article VII of the 1987 Constitution which states:

....

This Commission (Second Division) is confronted with the dilemma of deciding a brewing controversy considering the above Constitutional provision which prohibits reelection of "the President"; that is, whether former President Joseph Ejercito "Erap" Estrada may or may not be allowed to run in the coming May 2010 elections for the same position of the President of the Republic of the Philippines?[105] (Emphasis supplied)

Whatever pronouncement the COMELEC Second Division made on the matter of Estrada's conviction for plunder and subsequent pardon was thus a superfluity. Ultimately, it was unnecessary to the resolution of the issues involved in the disqualification cases filed by Atty. Evilio C. Pormento and Mary Lou B. Estrada. It was nothing more than obiter dictum.

Another disqualification case filed in connection with Estrada's 2010 bid for the presidency, which, however, Estrada did not cite in his averments was Rev. Elly Velez B. Lao Pamatong, ESQ, petitioner, vs. Joseph Ejercito Estrada and Gloria Macapagal-Arroyo, SPA No. 09-024 (DC). This case was similarly focused on the constitutional prohibition against a President's re-election and on the allegation that Estrada was a nuisance candidate:

The bone of contention of this controversy revolves around the interpretation of the specific provisions of Sec. 4 of Article VII of the 1987 Constitution. . . .[106]

Its recital of issues reads:

From the foregoing, the Commission (Second Division) hereby rules on the following issues:

(a)

Can a former elected President be qualified to become a Presidential Candidate and be elected again to the same position he or she previously occupied?

(b)

May President Arroyo being a sitting President be allowed to run for any elected position such as a member of the House of Representatives?

(c)

Are President Arroyo and Former President Estrada nuisance candidates?[107]

That the 2010 disqualification cases were anchored on a constitutional provision relating to the executive branch of government, while the present case is anchored on the provisions of the Local Government Code on the disqualification of candidates for local elective offices, makes evident that the former entailed a different subject matter. While the 2010 disqualification cases relate to Estrada's bid for the presidency, the present case relates to his bid to become Mayor of the City of Manila.

c. There was no final judgment on the merits arising from the 2010 disqualification cases

Not only do the 2010 disqualification cases involve different issues, causes of action, and subject matters, but

these disqualification cases do not even have a final judgment on the merits to speak of.

Cabreza, Jr. v. Cabreza[108] explains the concept of a “judgment on the merits” as follows:

A judgment may be considered as one rendered on the merits “when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections”; or when the judgment is rendered “after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.”[109]

Following the denial of his motion for reconsideration by the COMELEC En Banc, Atty. Evilio C. Pormento sought relief from this court via a petition for certiorari, insisting that Estrada was barred by Article VII, Section 4 of the Constitution from making a second bid for the presidency. This petition was docketed as G.R. No. 191988 and entitled Atty. Evilio C. Pormento, petitioner, vs. Joseph “Erap” Ejercito Estrada and Commission on Elections, respondents.

As noted by this court in its August 31, 2010 resolution in Pormento v. Estrada,[110] the May 10, 2010 elections proceeded without Estrada having been removed from the list of candidates or otherwise being restricted in his candidacy as “under the Rules of Court, the filing of such petition would not stay the execution of the judgment, final order or resolution of the COMELEC that is sought to be reviewed[; moreover,] petitioner did not even pray for the issuance of a temporary restraining order or writ of preliminary injunction.”[111] Thus, Estrada was able to participate in the May 10, 2010 presidential elections. He, however, only obtained the second highest number of votes and was, thus, not proclaimed winner.

Not having been elected President for a second time, this court ruled that Atty. Evilio C. Pormento’s petition had become moot and academic. Thus, it was denied due course and dismissed:

Private respondent was not elected President the second time he ran. Since the issue on the proper interpretation of the phrase “any reelection” will be premised on a person’s second (whether immediate or not) election as President, there is no case or controversy to be resolved in this case. No live conflict of legal rights exists. There is in this case no definite, concrete, real or substantial controversy that touches on the legal relations of parties having adverse legal interests. No specific relief may conclusively be decreed upon by this Court in this case that will benefit any of the parties herein. As such, one of the essential requisites for the exercise of the power of judicial review, the existence of an actual case or controversy, is sorely lacking in this case.

As a rule, this Court may only adjudicate actual, ongoing controversies. The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable.

An action is considered “moot” when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.

Assuming an actual case or controversy existed prior to the proclamation of a President who has been duly elected in the May 10, 2010 elections, the same is no longer true today. Following the results of that elections, private respondent was not elected President for the second time. Thus, any discussion of his “reelection” will simply be hypothetical and speculative. It will serve no useful or practical purpose.

Accordingly, the petition is denied due course and is hereby DISMISSED.

SO ORDERED.[112] (Citations omitted)

From these, it is plain to see that the substance of Estrada's qualification (vis-à-vis Article VII, Section 4 of the 1987 Constitution) was not at all discussed. This court even explicitly stated that were it to make a pronouncement on that matter, this pronouncement would amount to nothing more than a non-binding opinion:

What is the proper interpretation of the following provision of Section 4, Article VII of the Constitution: "[t]he President shall not be eligible for any reelection?"

The novelty and complexity of the constitutional issue involved in this case present a temptation that magistrates, lawyers, legal scholars and law students alike would find hard to resist. However, prudence dictates that this Court exercise judicial restraint where the issue before it has already been mooted by subsequent events. More importantly, the constitutional requirement of the existence of a "case" or an "actual controversy" for the proper exercise of the power of judicial review constrains us to refuse the allure of making a grand pronouncement that, in the end, will amount to nothing but a non-binding opinion.[113]

Estrada, though adjudged by the COMELEC Second Division and COMELEC En Banc to be qualified for a second bid at the presidency, was never conclusively adjudged by this court to be so qualified. The 2010 disqualification cases reached their conclusion not because it was determined, once and for all, that Estrada was not disqualified, but because — with Estrada's loss in the elections — there was no longer a controversy to resolve. There was no "determin[ation of] the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections";[114] neither was there "a determination of which party is right." [115] While the 2010 disqualification cases may have reached their literal end or terminal point, there was no final judgment on the merits.

VII

Estrada was disqualified from running for Mayor of the City of Manila in the May 13, 2013 elections and remains disqualified from running for any elective post

a. Joseph Ejercito Estrada: convicted, disqualified, and pardoned

We now come to the core of this case, that is, whether Estrada was qualified to run for Mayor of the City of Manila.

It is not disputed that Estrada was found guilty beyond reasonable doubt and convicted for plunder by the Sandiganbayan. This conviction stands unreversed and unmodified, whether by the Sandiganbayan, on reconsideration, or by this court, on appeal. By this conviction, Estrada was sentenced to suffer the accessory penalty of perpetual absolute disqualification. Per Article 30 of the Revised Penal Code, this accessory penalty produces the effect of, among others, "[t]he deprivation of the right to vote in any election for any popular elective office or to be elected to such office." [116]

Apart from the specific penalty of perpetual absolute disqualification meted on Estrada on account of his conviction, statutory provisions provide for the disqualification from elective public office of individuals who have been convicted for criminal offenses involving moral turpitude[117] and/or entailing a sentence of a defined duration of imprisonment.

Section 12 of the Omnibus Election Code provides for disqualifications for elective offices in general:

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.

This [sic] disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. (Emphasis supplied)

Section 40 of the Local Government Code provides for disqualifications for local elective offices in particular:

SECTION 40. Disqualifications. – The following persons are disqualified from running for any elective local position:

(a)

Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b)

Those removed from office as a result of an administrative case;

(c)

Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d)

Those with dual citizenship;

(e)

Fugitives from justice in criminal or non-political cases here or abroad;

(f)

Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g)

The insane or feeble-minded. (Emphasis supplied)

It is with this backdrop of, on the one hand, Estrada's conviction for plunder (with its concomitant penalty of absolute perpetual disqualification), as well as the cited statutory disqualifications, and, on the other, the pardon granted to Estrada, that this court must rule on whether Estrada was qualified to run for Mayor of Manila in the May 13, 2013 elections.

b. The power to grant clemency: an executive function

The power to grant pardons, along with other acts of executive clemency, is vested in the President of the Philippines by Article VII, Section 19 of the 1987 Constitution:

Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

The recognition that the power to grant clemency is lodged in the executive has been made since the earliest days of the Philippines as a republic. It "is founded on the recognition that human institutions are imperfect and that

there are infirmities, deficiencies or flaws in the administration of justice. The power exists as an instrument or means for correcting these infirmities and also for mitigating whatever harshness might be generated by a too strict an application of the law.”[118]

Our constitutional history is a cumulative affirmation of the fundamental conception of the power to pardon as an executive power.

Provisions from Title VIII of the Malolos Constitution of 1899 read:

Article 67 - Apart from the powers necessary to execute laws, it is the duty of the President of the Republic to:

- Confer civil and military employment in accordance to the law;
- Appoint Secretaries of Government;
- Direct diplomatic and commercial relations with other powers;
- Ensure the swift and complete administration of justice in the entire territory;
- Pardon lawbreakers in accordance to the law, subject to the provisions relating to the Secretaries of Government;
- Preside over national solemnities, and welcome accredited envoys and representatives of foreign powers.

Article 68 - The President of the Republic needs to be authorized by a special law:

- To transfer, cede or exchange any part of Philippine territory;
- To incorporate any other territory into the Philippines;
- To allow foreign troops in Philippine territory;
- To ratify treaties of offensive and defensive alliance, special commercial treaties, treaties that stipulate subsidies to a foreign power, and any other treaty that compels Filipinos to perform any individual obligation;

In no case can the confidential articles of a treaty nullify those that are public.

- To grant general amnesties and pardons;
- To mint money. (Emphasis supplied)

Contrasting the provisions of the Malolos Constitution with the present iteration of the pardoning power, it is particularly notable that the power, as provided for in 1899, is deferential to the legislative branch of government. While recognizing the pardoning power as ultimately one for the President to wield, it remained subject to legislative imprimatur.

Aided by the lens of history, this is most effectively understood in the context of a “conflict between people, on one hand, who were determined to secure the kind of freedom and economic benefits never enjoyed by them before, and groups, on the other, who wanted to maintain a social status and economic privilege inherited from way back or recently acquired by the displacement of elements formerly controlling the destiny of the colony.”[119] The latter — ilustrados — were the driving force behind the adoption of a constitution, and they endeavored “to make the legislature the most powerful unit in the government.”[120]

The adoption of organic acts under the auspices of American rule enabled the assimilation of some American constitutional principles. Not least of these is the grant to the executive of the power to pardon. The Constitution of the United States of America includes the grant of the pardoning power in the recital of the President’s powers:

Article II, Section 2.

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

....

Thus, the Jones Law of 1916 provides:

Section 21.-The Governor-General

(b)

Powers and duties.- . . . He is hereby vested with the exclusive power to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. . . .

As against the Malolos Constitution, the Jones Law makes no reference to the need for legislative consent, whether a priori or a posteriori, for the exercise of the pardoning power. Equally notable, the pardoning power is mentioned in the same breath (i.e., the same sentence) as the veto power — a power that delineates the relation of the executive branch with the legislative branch.

With the onset of the Commonwealth and en route to independence, the 1935 Constitution affirmed that the power to pardon is executive in nature. Article VII, Section 11(6) of the 1935 Constitution reads:

Section 11. . . .

(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly.

A recollection of the proceedings of the Constitutional Convention reveals attempts “to limit the absolute character of the pardoning power of the Executive:”[121]

It was also generally held that, as it was under the Jones Law and in other countries, the pardoning power should be vested in the Executive, although there was a difference of opinion with respect to the authority to exercise the power to grant amnesty. There were many proposals, however, intended to limit the absolute character of the pardoning power of the Executive. Of them were the proposal in the report of the committee on executive power and in the first draft of the Constitution to the effect that pardon should be granted to a person only after his conviction; the Galang amendment embodying a proposal in the report of the committee on executive power to the effect that the Chief Executive could grant pardon to a person only after the latter had served part of the sentence imposed upon him, except in cases where the convicting court should recommend executive clemency, when the same could be exercised even prior to the service of the sentence; and the Sanvictores amendment providing that no pardon should, without the recommendation of the Supreme Court, be granted until the prisoner should have served at least one-half of the minimum sentence imposed.

....

The Galang amendment and the Sanvictores amendment would go further by requiring that no person, even if already convicted, should be pardoned unless he had served partially his sentence. The Galang amendment would permit executive clemency even before the commencement of the service of the sentence, upon the

recommendation of the convicting court; and the Sanvictores amendment, upon the recommendation of the Supreme Court. . . .[122]

As will be gleaned from the final text of the 1935 Constitution, the Galang and Sanvictores amendments were both defeated. Thus was affirmed the executive nature of the power to pardon.

The 1943 Constitution, adopted in the interlude of the Second World War and the Japanese occupation, echoed the language of the 1935 Constitution on the executive nature of the pardoning power. The text of Article II, Section 13 of the 1943 Constitution is substantially similar with its counterpart in the 1935 Constitution except for the non-mention of impeachment as beyond the coverage of pardoning power:

Section 13. The President shall have the power to grant reprieves, commutations and pardons, and remit fines and forfeitures, after conviction, for all offenses, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly.

Like the Jones Law, but unlike the 1935 and 1943 Constitutions, the 1973 Constitution (as amended) dispensed with the requirement of prior conviction. The 1973 Constitution, adopted during the rule of President Ferdinand E. Marcos, is characteristic of a strong executive. Article VII, Section 11 of the 1973 Constitution provides:

Section 11. The President may, except in cases of impeachment, grant reprieves, commutations and pardons, remit fines and forfeitures and, with the concurrence of the Batasang Pambansa, grant amnesty.

From the grant of the power made by Section 21(b) of the Jones Law of 1916 to the present, the 1987 Constitution, the shifts in the grant to the executive of the power to extend clemency has mainly been in the matter of requiring or dispensing with conviction as a condition precedent for the exercise of executive clemency.

The present, the 1987 Constitution, requires prior conviction. Nevertheless, it retains the fundamental regard for the pardoning power as executive in nature. Jurisprudence dating to 1991[123] noted how the 1986 Constitutional Commission rejected a proposal to render the coverage of the pardoning power susceptible to legislative interference, particularly in matters relating to graft and corruption. Likewise, jurisprudence as recent as 2007[124] clarified that a court cannot pre-empt the grant of executive clemency.

In addition to restoring the requirement of prior conviction, the 1987 Constitution now includes the phrase “as otherwise provided in this Constitution.”

The 1987 Constitution, in Article VII, Section 19, enumerates the acts or means through which the President may extend clemency: (1) reprieve, or “the deferment of the implementation of the sentence for an interval of time;”[125] (2) commutation, which “refers to the reduction of the duration of a prison sentence of a prisoner;”[126] (3) remission of fines and forfeitures; (4) pardon; and (5) amnesty.

“[P]ardon is of British origin, conceived to temper the gravity of the King’s wrath.”[127] It is “an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the Court. . . . A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance.”[128] (Emphasis supplied)

Pardon and amnesty have been distinguished as follows:

Pardon is granted by the Chief Executive and as such it is a private act which must be pleaded and proved by the person pardoned, because the courts take no notice thereof; while amnesty by Proclamation of the Chief

Executive with the concurrence of Congress, and it is a public act of which the courts should take judicial notice. Pardon is granted to one after conviction; while amnesty is granted to classes of persons or communities who may be guilty of political offenses, generally before or after the institution of the criminal prosecution and sometimes after conviction. Pardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does "not work the restoration of the rights to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon," and it "in no case exempts the culprit from the payment of the civil indemnity imposed upon him by the sentence". While amnesty looks backward and abolishes and puts into oblivion the offense with which he is charged that the person released by amnesty stands before the law precisely as though he had committed no offense.[129] (Emphasis supplied, citations omitted)

c. Pardon and its effects: forgiveness but not forgetfulness

Estrada argues that pardon is characterized by what he refers to as the "forgive-and-forget rule." [130] He cites several decisions rendered in the United States [131] (chiefly, the 1866, post-Civil War decision in *Ex parte Garland*) and insists that "pardon not merely releases the offender from the punishment . . . but that it obliterates in legal contemplation the offense itself" [132] and that it "forever closes the eyes of the court." [133] Citing this court's decisions in *Cristobal v. Labrador* [134] and in *Pelobello v. Palatino*, [135] Estrada asserts that pardon "blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence . . . it makes him, as it were, a new man, and gives him new credit and capacity." [136]

Estrada is in grave error for insisting on what he has dubbed as the "forgive-and-forget rule."

In *Monsanto v. Factoran*, [137] this court repudiated the pronouncements made by *Cristobal* and *Pelobello*, as well as reliance on *Garland*, on the nature and effects of pardon:

In *Pelobello v. Palatino*, we find a reiteration of the stand consistently adopted by the courts on the various consequences of pardon: "x x x we adopt the broad view expressed in *Cristobal v. Labrador*, G.R. No. 47941, December 7, 1940, that subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by legislative action; that an absolute pardon not only blots out the crime committed but removes all disabilities resulting from the conviction. x x x (W)e are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after an inquiry into the environmental facts, should be at liberty to atone the rigidity of the law to the extent of relieving completely the party x x x concerned from the accessory and resultant disabilities of criminal conviction."

The *Pelobello v. Palatino* and *Cristobal v. Labrador* cases, and several others show the unmistakable application of the doctrinal case of *Ex Parte Garland*, whose sweeping generalizations to this day continue to hold sway in our jurisprudence despite the fact that much of its relevance has been downplayed by later American decisions.

Consider the following broad statements:

"A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity."

Such generalities have not been universally accepted, recognized or approved. The modern trend of authorities now rejects the unduly broad language of the *Garland* case (reputed to be perhaps the most extreme statement

which has been made on the effects of a pardon). To our mind, this [i.e., the rejection of Garland] is the more realistic approach. While a pardon has generally been regarded as blotting out the existence of guilt so that in the eye of the law the offender is as innocent as though he never committed the offense, it does not operate for all purposes. The very essence of a pardon is forgiveness or remission of guilt. Pardon implies guilt. It does not erase the fact of the commission of the crime and the conviction thereof. It does not wash out the moral stain. It involves forgiveness and not forgetfulness.

The better considered cases regard full pardon (at least one not based on the offender's innocence) as relieving the party from all the punitive consequences of his criminal act, including the disqualifications or disabilities based on the finding of guilt. But it relieves him from nothing more. "To say, however, that the offender is a 'new man', and 'as innocent as if he had never committed the offense'; is to ignore the difference between the crime and the criminal. A person adjudged guilty of an offense is a convicted criminal, though pardoned; he may be deserving of punishment, though left unpunished; and the law may regard him as more dangerous to society than one never found guilty of crime, though it places no restraints upon him following his conviction." [138] (Emphasis and underscoring supplied, citations omitted)

Estrada has made much of how Monsanto centered on the issue of the need for a new appointment of a pardoned officer seeking to be reinstated to her former position. He posits that Monsanto could not be controlling in this case, as what is at issue here is qualification for elective public office.[139]

This is but a vain attempt to split hairs. It is clear from the previously quoted discussion in Monsanto that there was an unequivocal consideration by this court of the nature and effects of pardon. This discussion laid the premises for the ultimate resolution of the dispute and was indispensable to the conclusions this court reached. As against Monsanto, Estrada would have this court rely on a decision, which was rendered nearly a century and a half ago by a court outside of this jurisdiction (i.e., *Ex parte Garland*), and which, this court has observed to be against the grain of contemporary authorities. In addition, Estrada would have us rely on jurisprudence which themselves depend on the same archaic and foreign decision. To do, as Estrada suggests, would be to indulge an absurdity. Estrada effectively invites this court to irrationality and to arrive at a conclusion resting on premises that have been roundly renounced.

In any case, from the preceding discussions, two points are worthy of particular emphasis:

- Pardon is a private, though official, act of the executive. Proceeding from the power to execute laws, it merely evinces the executive's choice to decline from enforcing punishment so as to mollify penal misery.
- Pardon does not erase the moral stain and the fact of conviction. It retains the law's regard for a convict "as more dangerous to society than one never found guilty of a crime";[140] the convict remains "deserving of punishment" though left unpunished.[141]

It is with the illumination of this fundamental notion of pardon as a 'private act that does not erase the moral stain and the fact of conviction' that this court must proceed to make a determination of Estrada's qualification.

VIII

The exercise of pardon:
limitations and prescriptions

- a. Articles 36 and 41 of the Revised Penal Code do not abridge or diminish the pardoning power of the President
- Article VII, Section 19 of the 1987 Constitution provides two (2) limitations on the President's exercise of the

power to pardon: first, it can only be given after final conviction; and, second, it cannot be exercised “in cases of impeachment, or as otherwise provided in this Constitution.” Elsewhere in the Constitution, Article IX, C, Section 5 provides that: “No pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules, and regulations shall be granted by the President without the favorable recommendation of the Commission [on Elections].”

Outside of the Constitution, the Revised Penal Code contains provisions relating to pardon.

Article 36 of the Revised Penal Code provides that: “A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him.”

The same Article 36 prescribes that for pardon to effect the restoration of the rights of suffrage and to hold public office, “such rights [must] be expressly restored by the terms of the pardon.”

Also on suffrage and/or the rights to vote for and be elected to public office, Articles 40 to 43 of the Revised Penal Code provide that the penalties of perpetual absolute disqualification, temporary absolute disqualification, perpetual special disqualification, and perpetual special disqualification on suffrage, which attach as accessory penalties to death, reclusion perpetua, reclusion temporal, prisión mayor and prisión correccional, as the case may be, shall still be suffered by the offender even though pardoned as to the principal penalty, “unless . . . expressly remitted in the pardon”:

ARTICLE 40. Death — Its Accessory Penalties. — The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date of sentence, unless such accessory penalties have been expressly remitted in the pardon.

ARTICLE 41. Reclusión Perpetua and Reclusión Temporal — Their accessory penalties. — The penalties of reclusión perpetua and reclusión temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

ARTICLE 42. Prisión Mayor — Its Accessory Penalties. — The penalty of prisión mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

ARTICLE 43. Prisión Correccional — Its Accessory Penalties. — The penalty of prisión correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon. (Emphasis supplied)

Citing the same cases of Cristobal, Pelobello, and Garland, Estrada argues that Articles 36 and 41 of the Revised Penal Code violate the Constitution in requiring that the restoration of the rights of suffrage or to otherwise vote for and be elected to public office must be made expressly. Specifically, he claims that these provisions “abridge or diminish the pardoning power of the President.”[142]

This court has previously acknowledged, in *Llamas v. Orbos*,[143] that the 1986 Constitutional Commission rejected a proposal to include in Article VII, Section 19, a statement to the effect that “the power to grant executive clemency for violation of corrupt practices laws may be limited by legislation.” Thus, this court concluded that “the President’s executive clemency powers may not be limited in terms of coverage, except as

already provided in the Constitution”:

During the deliberations of the Constitutional Commission, a subject of deliberations was the proposed amendment to Art. VII, Sec. 19 which reads as follows: "However, the power to grant executive clemency for violation of corrupt practices laws may be limited by legislation." The Constitutional Commission, however, voted to remove the amendment, since it was in derogation of the powers of the President. As Mr. Natividad stated:

“I am also against this provision which will again chip more powers from the President. In case of other criminals convicted in our society we extend probation to them while in this case, they have already been convicted and we offer mercy. The only way we can offer mercy to them is through this executive clemency extended to them by the President. If we still close this avenue to them, they would be prejudiced even worse than the murderers and the more vicious killers in our society. . . .”

The proposal was primarily intended to prevent the President from protecting his cronies. Manifestly, however, the Commission preferred to trust in the discretion of Presidents and refrained from putting additional limitations on his clemency powers. (II RECORD of the Constitutional Commission, 392, 418-419, 524-525)

It is evident from the intent of the Constitutional Commission, therefore, that the President's executive clemency powers may not be limited in terms of coverage, except as already provided in the Constitution, that is, "no pardon, amnesty, parole, or suspension of sentence for violation of election laws, rules and regulations shall be granted by the President without the favorable recommendation of the COMELEC" (Article IX, C, Section 5, Constitution). If those already adjudged guilty criminally in court may be pardoned, those adjudged guilty administratively should likewise be extended the same benefit.[144]

Not only has the coverage of executive clemency been recognized to be beyond the reach of legislative action, this court has also noted that the matter of whether the President should actually choose to extend executive clemency to a convict cannot be preempted by judicial action. Thus, the determination of whether a convict shall be extended clemency is a decision that is solely for the President to make:

This Court cannot review, much less preempt, the exercise of executive clemency under the pretext of preventing the accused from evading the penalty of reclusion perpetua or from trifling with our judicial system. Clemency is not a function of the judiciary; it is an executive function. . . .[145]

The 1987 Constitution's recital of the instances when pardon may or may not be exercised and this court's prior recognition of clemency as an executive function notwithstanding, Articles 36 and 41 of the Revised Penal Code could not be considered as abridging or diminishing the President's right to extend clemency.

To “abridge” or to “diminish” is to shorten, reduce, or lessen.[146] Further, “coverage” pertains to scope,[147] it refers to “[t]he extent to which something deals with or applies to something else.”[148]

Articles 36 and 41 do not reduce the coverage of the President's pardoning power. At no point do they say that the President may not grant pardon. They do not recite instances or areas in which the President's power to pardon is rendered non-existent, or in which the President is otherwise incapable of granting pardon. Articles 36 and 41 notwithstanding, the only instances in which the President may not extend pardon remain to be: (1) impeachment cases; (2) cases that have not yet resulted in a final conviction; and (3) cases involving violations of election laws, rules, and regulations in which there was no favorable recommendation coming from the COMELEC. Stated otherwise, the President remains capacitated to grant a pardon that works to restore the rights of suffrage and/or to hold public office, or to otherwise remit the penalty of perpetual absolute disqualification.

Articles 36 and 41 refer only to requirements of convention or form. They only provide a procedural prescription. They are not concerned with areas where or the instances when the President may grant pardon; they are only

concerned with how he or she is to exercise such power so that no other governmental instrumentality needs to intervene to give it full effect.

All that Articles 36 and 41 do is prescribe that, if the President wishes to include in the pardon the restoration of the rights of suffrage and to hold public office, or the remission of the accessory penalty of perpetual absolute disqualification, he or she should do so expressly. Articles 36 and 41 only ask that the President state his or her intentions clearly, directly, firmly, precisely, and unmistakably. To belabor the point, the President retains the power to make such restoration or remission, subject to a prescription on the manner by which he or she is to state it.

This interpretation is consistent with the clear constitutional intention to grant exclusive prerogative to the President to decide when to exercise such power. As in this case, any ambiguity invites judicial intervention.

Also, it is a basic precept that “public office is a public trust.”[149] In contrast, pardon is a “private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended.”[150] Given the contrasting natures of, on the one hand, elective office as a public trust, and, on the other, pardon as a private act, it “would not be asking too much”[151] of the President to be unequivocal with his or her intentions on restoring a convict’s right not just to vote, but more so, to be voted for elective public office.

Doing so serves not only a practical purpose but, more importantly, the greater public interest in not leaving to inference the qualification of a person who is regarded “as more dangerous to society”[152] but stands to gain from the reposition of public trust.[153] It addresses the “presumptive rule that one who is rendered infamous by conviction of a felony, or other base offense indicative of moral turpitude, is unfit to hold public office, as the same partakes of a privilege which the State grants only to such classes of persons which are most likely to exercise it for the common good.”[154]

Pronouncing in express and unmistakable language the restoration of the right to vote and be voted, therefore, complements the private act of pardoning such that it enables the inclusion of public effects in the private act. It desegregates the public consequence of enabling the convict with the opportunity to lead the community by being the occupant of a public office.

Recall that the manner by which the 1987 Constitution phrases its investiture on the President of the pardoning power now includes the phrase “as otherwise provided in this Constitution.” This phrase affirms the imperative of reading and interpreting the Constitution in its entirety, not taking a provision in isolation. The pardoning power of the President must, thus, not be divorced from the Constitution’s injunction that “[p]ublic office is a public trust.”[155] Read in harmony with this injunction, Articles 36 and 41 of the Revised Penal Code impress upon the President the significance of departing from the purely private consequences of pardon should he or she stray into the public affair of restoring a convict’s rights of suffrage and/or to hold public office.

Parenthetically, the Constitution also grants this court jurisdiction to determine “whether or not there has been a grave abuse of discretion amounting to . . . excess of jurisdiction on the part of any branch or instrumentality of the Government.”[156] This means that no grant of constitutional power is immune from review if it is done arbitrarily or without reason, capriciously, or on the basis of whim. However, this court’s power of review in the present case is not raised by any party and, thus, not an issue that this court must decide.

(b) Clarifying Monsanto

Monsanto, in the course of repudiating Cristobal, Pelobello, and Garland, declared that “[t]he better considered cases regard full pardon . . . as relieving the party from all the punitive consequences of his criminal act, including the disqualifications or disabilities based on the finding of guilt.”[157]

This “inclusion” should not be taken as authority for concluding that the grant of pardon ipso facto remits the accessory disqualifications or disabilities imposed on a convict regardless of whether the remission was explicitly stated.

For one, this “inclusion” was not a categorical articulation by this court of a prevailing rule. It was a statement made only in the course of a comparative survey of cases during which the court manifested a preference for “authorities [that reject] the unduly broad language of the Garland case.”[158]

Second, the footnote to this statement indicates that it relied on a case decided by a United States court: *Comm. of Met. Dist. Com. v. Director of Civil Service*.^[159] Thus, it was never meant as a summation of the controlling principles in this jurisdiction. It did not account for Articles 36 and 41 of the Revised Penal Code.

Lastly, even if it were to be granted that this statement articulated a rule, this statement, made in 1989, must be deemed to have been abandoned, in light of this court’s more recent pronouncements — in 1997, in *People v. Casido*,^[160] and in 2000, in *People v. Patriarca*^[161] — which cited with approval this court’s statement in *Barrioquinto v. Fernandez*^[162] that:

[p]ardon looks forward and relieves the offender from the consequences of an offense of which he has been convicted, that is, it abolishes or forgives the punishment, and for that reason it does ‘not work the restoration of the rights to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon,’ and it ‘in no case exempts the culprit from the payment of the civil indemnity imposed upon him by the sentence’.^[163] (Emphasis supplied)

So, too, this statement indicating “inclusion” must be deemed superseded by this court’s 2013 pronouncement in *Romeo Jalosjos v. COMELEC*^[164] which recognizes that “one who is previously convicted of a crime punishable by reclusion perpetua or reclusion temporal continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, unless the said accessory penalty shall have been expressly remitted in the pardon.”^[165]

IX

No remission of the penalty of perpetual absolute disqualification and restoration of the rights to vote and be voted for elective public office in Estrada’s pardon

Having established that the challenge to the validity of Articles 36 and 41 of the Revised Penal Code must fail, we turn to the pivotal issue of whether, in light of these statutory provisions, the pardon granted to Estrada effectively restored his rights to vote and be voted for elective public office, or otherwise remitted his perpetual absolute disqualification.

It did not.

(a) No express remission and/or restoration; reliance on inference is improper

The dispositive portion of the pardon extended by former President Gloria Macapagal-Arroyo to Estrada reads:

IN VIEW HEREOF and pursuant to the authority conferred upon me by the Constitution, I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA, convicted by the Sandiganbayan of Plunder and imposed a penalty of Reclusion Perpetua. He is hereby restored to his civil and political rights.

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.[166]

From the plain text of this disposition, it can be readily seen that there is no categorical statement actually saying that Estrada's rights to vote and be voted for elective public office are restored, or that the penalty of perpetual absolute disqualification is remitted.

The disposition contains three (3) clauses that delimit the effects of the pardon:

- The general grant of executive clemency to Estrada (i.e., "I hereby grant executive clemency to JOSEPH EJERCITO ESTRADA");
- The restoration of Estrada's civil and political rights (i.e., "He is hereby restored to his civil and political rights"); and
- The continuing validity of the forfeitures imposed by the Sandiganbayan.

As a cure for the lack of a categorical statement restoring his rights to vote and be voted for elective public office, or otherwise remitting the penalty of perpetual absolute disqualification, Estrada argues that the rights to vote and be voted for elective public office are political rights; hence, "the restoration of Estrada's right to seek public office is deemed subsumed when the pardon extended by GMA expressly restored the civil and political rights of the Public (sic) Respondent." [167] He asserts that "[s]uch statement is already a substantial if not full compliance with the requirements of Article 36 of the Revised Penal Code." [168]

Estrada's use of tentative and indefinite language — such as "deemed subsumed" and "substantial compliance" — reveals his own acknowledgement that the restoration and/or remission, if any, in the pardon are not as unequivocal or as absolutely clear as they could otherwise have been had the pardon simply stated, for instance, that "the penalty of perpetual absolute disqualification is hereby removed."

Estrada is noticeably compelled to resort to syllogism in order to arrive at the deductive conclusion that he is qualified to run. He rests his position on an inference.

This reliance on inference is precisely what the requirement of expressly stating the restoration or remission seeks to avoid. To be "express" is to state "directly, firmly, and explicitly." [169] It is synonymous with being precise. [170] On the contrary, to "infer" is to rely on what is implied; it is to "surmise." [171] Inference is exactly what relying on an express pronouncement does not entail.

(b) Even the inference that Estrada proffers is laden with fallacies

In any case, even if Estrada's inferences and reliance on the characterization of the rights to vote and be voted for elective public office as political rights is to be indulged, it does not follow that these specific rights have been restored by the pardon's generic restoration of civil and political rights.

The concept of "civil and political rights" both as its own collectivity and in contrast with other classes of human rights emerged in the aftermath of the Second World War. Its conceptual development is more effectively understood in the context of the emergence of the contemporary human rights regime and the efforts at enabling the then nascent United Nations to "assum[e] the role of guarantor of human rights on a universal scale" [172] consistent with the perceived need that "the individual human being be placed under the protection of the international community." [173]

As Professor Christian Tomuschat discussed in an introductory note to the International Convention on Civil and Political Rights (ICCPR), the Second World War revealed that "national governments could gravely fail in their duty to ensure the life and the liberty of their citizens." [174] Worse, some of these national governments have

themselves “become murderous institutions.”[175] It was, therefore, evident “that protective mechanisms at the domestic level alone did not provide sufficiently stable safeguards.”[176]

The historical milieu of the efforts taken to enable the United Nations to assume the previously mentioned “role of guarantor of human rights on a universal scale”[177] reveals how “civil and political rights” as a concept of distinct rights — embodied in its own instrument — came to be:

At the San Francisco Conference in 1945, some Latin American countries requested that a full code of human rights be included in the Charter of the United Nations itself. Since such an initiative required careful preparation, their motions could not be successful at that stage. Nonetheless, human rights were embraced as a matter of principle. The Charter contains references to human rights in the Preamble, among the purposes of the Organization (Article 1) and in several other provisions (Articles 13, 55, 62 and 68). Immediately after the actual setting up of the institutional machinery provided for by the Charter, the new Commission on Human Rights began its work for the creation of an International Bill of Rights. In a first step, the Universal Declaration of Human Rights was drafted, which the General Assembly adopted on 10 December 1948.

In order to make human rights an instrument effectively shaping the lives of individuals and nations, more than just a political proclamation was needed. Hence, from the very outset there was general agreement to the effect that the substance of the Universal Declaration should be translated into the hard legal form of an international treaty. The General Assembly reaffirmed the necessity of complementing, as had already been done in the Universal Declaration, traditional civil and political rights with economic, social and cultural rights, since both classes of rights were “interconnected and interdependent” (see section E of resolution 421 (V) of 4 December 1950). The only question was whether, following the concept of unity of all human rights, the new conventional rights should be encompassed in one international instrument or whether, on account of their different specificities, they should be arranged according to those specificities. Western nations in particular claimed that the implementation process could not be identical, economic and social rights partaking more of the nature of goals to be attained whereas civil and political rights had to be respected strictly and without any reservations. It is this latter view that eventually prevailed. By resolution 543 (VI) of 4 February 1952, the General Assembly directed the Commission on Human Rights to prepare, instead of just one Covenant, two draft treaties; a Covenant setting forth civil and political rights and a parallel Covenant providing for economic, social and cultural rights. The Commission completed its work in 1954. Yet it took many years before eventually the political climate was ripe for the adoption of these two ambitious texts. While both the Western and the Socialist States were still not fully convinced of their usefulness, it was eventually pressure brought to bear upon them from Third World countries which prompted them to approve the outcome of the protracted negotiating process. Accordingly, on 16 December 1966, the two Covenants were adopted by the General Assembly by consensus, without any abstentions (resolution 2200 (XXI)). Since that time, the two comprehensive human rights instruments of the United Nations have sailed on different courses.[178]

Professor Tomuschat further summarizes the provisions of the ICCPR, its manner of recital of civil and political rights, and the common thread binding the rights recited in it:

The ICCPR comprises all of the traditional human rights as they are known from historic documents such as the First Ten Amendments to the Constitution of the United States (1789/1791) and the French Déclaration des droits de l’homme et du citoyen (1789). However, in perfect harmony with its sister instrument, Part I starts out with the right of self-determination which is considered to be the foundational stone of all human rights (article 1). Part II (articles 2 to 5) contains a number of general principles that apply across the board, among them in particular the prohibition on discrimination. Part III enunciates an extended list of rights, the first of which being the right to life (article 6). Article 7 establishes a ban on torture or other cruel, inhuman or degrading treatment or punishment, and article 8 declares slavery and forced or compulsory labour unlawful. Well-balanced guarantees of habeas corpus are set forth in article 9, and article 10 establishes the complementary proviso that all persons deprived of their liberty shall be treated with humanity.

Freedom of movement, including the freedom to leave any country, has found its regulation in article 12. Aliens, who do not enjoy a stable right of sojourn, must as a minimum be granted due process in case their expulsion is envisaged (article 13). Fair trial, the scope *ratione materiae* of which is confined to criminal prosecution and to civil suits at law, has its seat in articles 14 and 15. Privacy, the family, the home or the correspondence of a person are placed under the protection of article 17, and the social activities of human beings enjoy the safeguards of article 18 (freedom of thought, conscience and religion), article 19 (freedom of expression), article 21 (freedom of assembly), and article 22 (freedom of association). Going beyond the classic dimension of protection against interference by State authorities, articles 23 and 24 proclaim that the family and the child are entitled to protection by society and the State.

Article 25 establishes the right for everyone to take part in the running of the public affairs of his/her country. With this provision, the ICCPR makes clear that State authorities require some sort of democratic legitimacy. Finally, article 27 recognizes an individual right of members of ethnic, religious or linguistic minorities to engage in the cultural activities characteristic of such minorities. No political rights are provided for. Minorities as such have not been endowed with any rights of political autonomy.[179]

Consistent with this concept of civil and political rights as a collectivity of “traditional human rights as they are known from historic documents”[180] is Karal Vasak’s conception[181] of civil and political rights as “first-generation human rights.” This is in contrast with economic, social and cultural rights as “second-generation human rights” and collective-developmental rights as “third-generation human rights.” Vasak’s conception of three generations of human rights is a deliberate effort to parallel the French Revolution ideals of liberty, equality, and fraternity, with each generation ordinarily reflecting the three ideals. Thus, “[f]irst-generation, ‘civil-political’ rights deal with liberty and participation in political life.”[182]

In our jurisprudence, *Simon, Jr. v. Commission on Human Rights*[183] discussed the concept of human rights as “so generic a term that any attempt to define it . . . could at best be described as inconclusive.”[184] Further, it attempted to define civil rights and political rights as follows:

The term “civil rights,” has been defined as referring –
“(to) those (rights) that belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, equal protection of the laws, freedom of contract, etc. Or, as otherwise defined civil rights are rights appertaining to a person by virtue of his citizenship in a state or community. Such term may also refer, in its general sense, to rights capable of being enforced or redressed in a civil action.”

Also quite often mentioned are the guarantees against involuntary servitude, religious persecution, unreasonable searches and seizures, and imprisonment for debt.

Political rights, on the other hand, are said to refer to the right to participate, directly or indirectly, in the establishment or administration of government, the right of suffrage, the right to hold public office, the right of petition and, in general, the rights appurtenant to citizenship vis-a-vis the management of government.[185] (Citations omitted)

The recurring refrain of these discussions — historical, academic and jurisprudential — is the understanding that “civil and political rights” is a collectivity. It is a figurative basket of “rights directly possessed by individuals [that are correlatively] positive duties upon the government to respect and fulfil them.”[186] Understood in this context, it is clear that the rights of suffrage and to hold public (elective) office, are but two of a manifold category of rights “deal[ing] with liberty and participation in political life”[187] and encompassing the entire spectrum of all such “rights appurtenant to citizenship vis-à-vis the management of government.”[188]

In light of the circumstances of this case, to speak of “restor[ing] civil and political rights”[189] is to refer to an

entire composite of rights. Estrada theorizes that because there was a sweeping reference to this collectivity, then everything in the 'basket' has been restored.

Estrada's theory fails on two points. First, it fails to consider the consequences of statutory requirements which specifically refer to the rights of suffrage and to hold public office. Second, it fails to recognize that the language used in the pardon is equivocal at best, and, worse, the conclusion he derives from this equivocal language is even contradicted by other examples previously considered in jurisprudence. Thus, he insists on a conclusion that does not logically follow from his premises.

Estrada capitalizes on the broad conception of civil and political rights as including in its scope the rights of suffrage and the right to hold public office. That is precisely the handicap in his theory: It is broad; it fails to account for requirements relating to specific rights.

As against the broad concept of civil and political rights as an expansive composite or a vast spectrum of rights having to do with liberty and membership in the political community, Articles 36 and 41 of the Revised Penal Code specifically deal with the rights of suffrage and to hold public office.

Juxtaposed with the manifold category of civil and political rights, the effect of Articles 36 and 41 is that, in the specific context of the President's exercise of the power to grant pardon to a convict, the rights of suffrage and to hold public office are segregated from all other similar rights.

This segregation is not grounded on whim. It hearkens to the fundamental distinction between public office as a public trust, on the one hand, and pardon as a private act, on the other. The special requirement of express restoration or remission affirms what was earlier discussed to be the need to desegregate, or to bridge the disjunct between the private gesture of pardoning — originally intended only to relieve an individual's misery over the harshness of punishment — and the public consequence (no longer connected with the basic purpose of mollifying penal misery) of not only enabling a convict to participate in the selection of public officials, but to himself or herself be a repository of public trust should he or she become a public officer. To reiterate, public office "partakes of a privilege which the State grants only to such classes of persons which are most likely to exercise it for the common good." [190]

Consistent with the public interest inherent in the rights of suffrage and holding public office, thus, if the President is to not actually say that the rights of suffrage and to hold public office are restored, there is plainly no basis for concluding that they have, in fact, been restored.

Such is the situation in this case. At no point does the pardon actually, expressly, categorically, and unmistakably say that Estrada's rights to suffrage and to hold public office have been restored. That this court — the Supreme Court of the Republic — has been asked to step in and settle the controversy is the best proof of this.

Apart from these, a meticulous consideration of how the restoration of Estrada's civil and political rights is worded, especially in contrast with other examples previously considered in jurisprudence, casts serious doubt on whether the restoration was as expansive as Estrada asserts.

The exact words of the pardon granted to Estrada are: "He is hereby restored to his civil and political rights." [191]

In contrast, jurisprudence is replete with pardon, working to restore civil and political rights in this wise: "full civil and political rights." [192] A fact noted in one case even seems to indicate that the inclusion of the qualifier "full" is common practice. In that case, the phrase "full civil and political rights" was "written on a standard printed form." [193]

This is not the occasion to rule on the sufficiency of adding the qualifier “full” for purposes of restoring even the rights of suffrage and to hold public office. However, burdened with the task of interpretation, particular note should be taken by this court of President Gloria Macapagal-Arroyo’s deviation from previous, standard practice.

The President must be presumed to be fully cognizant of the significance and consequences of the manner by which he or she executes official acts, as well as the manner by which they are formally reduced to writing. It is revealing that former President Gloria Macapagal-Arroyo chose to deviate from many historical examples and from what appears to be common practice. Aware of the significance of excluding the qualifier “full,” she chose to grant pardon to Estrada under entirely generic and indistinct terms.

Similarly, the President must be presumed to be cognizant of statutes and what they require. In granting pardon to Estrada, former President Gloria Macapagal-Arroyo must have been fully informed of the requirements of Articles 36 and 41 of the Revised Penal Code if it was ever her intent to restore Estrada’s rights to vote and be voted for elective public office or to otherwise remit the penalty of perpetual absolute disqualification.

Not only did former President Arroyo choose to shy away from qualifying the restoration of Estrada’s civil and political rights as “full.” She also chose, contrary to Articles 36 and 41, to be totally silent on the restoration of the rights to vote and be voted for elective public office and on the remission of the penalty of absolute disqualification. These twin circumstances — first, of her exclusion of a qualifier and, second, her silence on restoration and remission — can only mean that contrary to Estrada’s contention, his rights to vote and be voted for elective public office have not been restored, and his perpetual absolute disqualification not remitted.

Lest misinterpretation ensue, I am not here giving rise to a false dilemma and rendering inutile the restoration of Estrada’s civil and political rights. Indeed, they have been restored, all but the rights denied to him on account of the unremitted penalty of perpetual absolute disqualification, among these being the rights to vote and be voted for elective public office. That entire spectrum of rights “deal[ing] with liberty and participation in political life”[194] — to mention but a few such as his right to liberty; freedom of abode and movement; privacy rights; rights of expression, association, assembly; his right to petition the government and to a redress of grievances — are his to enjoy except for the select class of rights denied to him on account of the omissions in his pardon.

Similarly, my pronouncements should not be taken as rendering illusory the concept of “plenary pardon” — a concept that, as Estrada pointed out, is recognized in Section 12 of the Omnibus Election Code. The President remains free to grant pardon that works to restore all of a convict’s civil and political rights, even those of suffrage and to hold public office. What I have however emphasized is that, should the President choose to be so expansive in making such a restoration, he or she should be clear with his or her intentions.

X

The pardon’s preambular clauses militate against Estrada’s position

Apart from the pardon’s absolute silence on the matters of restoration and remission, its preambular or whereas clauses militate against the conclusion that Estrada’s rights to suffrage and to hold public office have been restored.

The pardon’s three preambular clauses read:

WHEREAS, this Administration has a policy of releasing inmates who have reached the age of seventy (70),

WHEREAS, Joseph Ejercito Estrada has been under detention for six and a half years,

WHEREAS, Joseph Ejercito Estrada has publicly committed to no longer seek any elective position or

office[.][195]

A preamble is “not an essential part of an act.”[196] It is only an introduction which indicates intent or purpose. In and of itself, it cannot be the source of rights and obligations. Thus, “[w]here the meaning of [an instrument] is clear and unambiguous, the preamble can neither expand nor restrict its operation, much less prevail over its text.”[197] Stated otherwise, it may be resorted to only when the instrument is “ambiguous and difficult of interpretation.”[198]

In *People v. Judge Purisima*,[199] this court had occasion to interpret an act of the President (who then held the power to legislate) through a reading of whereas clauses.[200] *People v. Judge Purisima* concluded, referring to “the presence of events which led to or precipitated the enactment of P.D. 9... [as] clearly spelled out in the ‘Whereas’ clauses,”[201] that Presidential Decree No. 9 excluded instances where a defendant carried bladed, pointed, or blunt weapons in situations which were not related to the purposes of Proclamation No. 1081 and General Orders Nos. 6 and 7. Further identifying the purposes for the issuance of Proclamation No. 1081, this court also read two of Proclamation No. 1081’s own whereas clauses[202] and concluded that it was aimed at putting an end to subversive activities. Thus, this court concluded that the act of carrying bladed, pointed, or blunt weapons was only punishable to the extent that it was done in the context of subversive activities.

Jurisprudence and other official acts of this court are replete with instances in which reference to preambular clauses was resorted to in interpreting instruments other than statutes and official acts of the President. In *Licaros v. Gatmaitan*,[203] this court sustained the Court of Appeals’ reference to a whereas clause in a contract between private parties (i.e., a memorandum of agreement) and thereby the conclusion that the parties “intended to treat their agreement as one of conventional subrogation.”[204] In *Kuwait Airways Corporation v. Philippine Airlines, Inc.*,[205] it was impliedly acknowledged that resort to a whereas clause is permissible in interpreting a contract entered into by the government; except that, because the circumstances have changed, it was deemed unnecessary to proceed to an interpretation in light of the relevant whereas clause.[206] In *Conte v. Palma*,[207] this court referred to whereas clauses in interpreting a resolution issued by the Social Security System.[208] Similarly, this court’s *En Banc* resolution in *A.M. No. 99-8-01-SC*,[209] issued by this court in the exercise of its rule-making power, cited a statute’s[210] whereas clause.

The pardon extended to Estrada is definite by its omission: There is neither an express restoration of Estrada’s rights to vote and be voted for elective public office nor a remission of his perpetual absolute disqualification. To this extent, it is clear and unambiguous. This should suffice to put an end to Estrada’s asseverations that he was qualified to run for Mayor of Manila.

Nevertheless, even if the position that there remains room for interpretation was to be indulged, a reading of the pardon as a whole, and an illumination, through the preambular clauses, of the pardon’s supposed ambiguity, will lead to the same conclusion: Estrada was and remains to be disqualified.

As in *Purisima*, the pardon’s whereas clauses indicate events and considerations that precipitated or led to the grant of pardon. More specifically, the third whereas clause reveals that the pardon was premised on Estrada’s prior, public commitment of disabling himself from being a candidate in an election (i.e., “to no longer seek any elective position or office”).[211]

The preceding discussions underscored the nature of the power to pardon (in particular, and to extend clemency, in general) as being fundamentally a matter of executive discretion. However, that this is a matter resting on the President’s prerogative is no license for the President to heedlessly brandish it. As with all other powers vested in the executive, it is a power that is not to be abused. It cannot be exercised arbitrarily, whimsically, or capriciously. The President may well be a despot, otherwise.

Thus, if the power to pardon were ever to be invoked, it must remain true to its reason for existence: to correct “infirmities, deficiencies or flaws in the administration of justice;”[212] to “mitigat[e] whatever harshness might be generated by a too strict an application of the law[;]”[213] or to otherwise “temper the gravity of [a punishment’s] wrath.”[214] To the extent, therefore, that the power to pardon is exercised in a manner that evinces nothing more than the indulgence of caprices, an issue that may properly be taken cognizance of by this court arises: grave abuse of discretion amounting to lack or excess of jurisdiction.

In stating this, I remain mindful of this court’s pronouncement in 2007 in *People v. Rocha*,[215] which I have cited earlier. At initial glance, *Rocha* appears to totally erode the power of judicial review in relation to the grant of executive clemency:

This Court cannot review, much less preempt, the exercise of executive clemency under the pretext of preventing the accused from evading the penalty of reclusion perpetua or from trifling with our judicial system. Clemency is not a function of the judiciary; it is an executive function. Thus, it is the President, not the judiciary, who should exercise caution and utmost circumspection in the exercise of executive clemency in order to prevent a derision of the criminal justice system. We cannot and shall not deny accused-appellants’ Motions to Withdraw Appeal just because of their intention of applying for executive clemency. With the Constitution bestowing upon the Executive the power to grant clemency, it behoves the Court to pass the ball to the President and let her determine the fate of accused-appellants.[216]

However, a meticulous reading of *Rocha* reveals that its pronouncements were made in a very specific context, i.e., the issue of whether this court should allow the withdrawal of the appeals of accused-appellants in order that they may avail themselves of executive clemency. In making the quoted pronouncement, this court merely affirmed the basic precept that the power to extend clemency is a choice for the President — and not for any other institution, such as this court — to make. Thus, it would be improper for this court to take any action that would effectively prevent the President from even making that choice.

Rocha was a deferential statement that recognized where the power to extend clemency was lodged. It was a recognition that this court could not preempt the grant of clemency. At no point, however, did *Rocha* sanction the fanciful exercise of the power. Nowhere did it say that the power granted to the President may be divorced from its *raison d’etre*.

While it behooves this court to extend to the President the presumption that the grant is attended with good reason, so, too, this court should not indulge a patently frivolous exercise of presidential discretion.

Presently, this court finds itself grappling with pardon extended to a deposed President of the Republic who was convicted for the crime of plunder.

Joseph Ejercito Estrada is no common convict. In him was reposed the trust of an overwhelming number of Filipinos. He was elected to nothing less than the highest office of the land. Assuming the presidency, he swore, invoking the name of God, to “faithfully and conscientiously fulfil [his] duties as President[; to] preserve and defend [the] Constitution[;] and [to] consecrate [himself] to the service of the Nation.”[217] This notwithstanding, he is a man, who, tormented with recriminations of massive corruption and failing to exculpate himself in the eyes of the Filipino people, was left with no recourse but to leave the Presidency. He stood trial for and was convicted of plunder: a conviction that endures and stands unreversed.

A ruling on this petition cannot be bereft of context, both of the present and of our history. Similarly, this court cannot turn a blind eye on its own recognition of the gravity and grievousness that Estrada’s conviction for plunder entails.

In 2001, in *Estrada v. Sandiganbayan*,[218] this court, against the asseverations of Estrada himself, ruled that

plunder is inherently immoral, i.e., *malum in se*. In so doing, this court, quoting the concurring opinion of Justice Vicente V. Mendoza, emphasized that any doubt on the inherent immorality of plunder “must be deemed to have been resolved in the affirmative by the decision of Congress in 1993 to include it among the heinous crimes punishable by reclusion perpetua to death.”[219] *Estrada v. Sandiganbayan*, quoting *People v. Echegaray*,[220] unequivocally underscored the abhorrence that animates the classification of plunder as a heinous crime punishable by death. This court did not mince words:

There are crimes, however, in which the abomination lies in the significance and implications of the subject criminal acts in the scheme of the larger socio-political and economic context in which the state finds itself to be struggling to develop and provide for its poor and underprivileged masses. Reeling from decades of corrupt tyrannical rule that bankrupted the government and impoverished the population, the Philippine Government must muster the political will to dismantle the culture of corruption, dishonesty, greed and syndicated criminality that so deeply entrenched itself in the structures of society and the psyche of the populace. [With the government] terribly lacking the money to provide even the most basic services to its people, any form of misappropriation or misapplication of government funds translates to an actual threat to the very existence of government, and in turn, the very survival of the people it governs over. Viewed in this context, no less heinous are the effects and repercussions of crimes like qualified bribery, destructive arson resulting in death, and drug offenses involving government officials, employees or officers, that their perpetrators must not be allowed to cause further destruction and damage to society.[221] (Emphasis supplied)

Turning its attention specifically to Republic Act No. 7080, the Anti-Plunder Law, *Estrada v. Sandiganbayan* stated:

Our nation has been racked by scandals of corruption and obscene profligacy of officials in high places which have shaken its very foundation. The anatomy of graft and corruption has become more elaborate in the corridors of time as unscrupulous people relentlessly contrive more and more ingenious ways to bilk the coffers of the government. Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury. Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately eradicate this scourge and thus secure society against the avarice and other venaleties in public office.[222] (Emphasis supplied)

Section 2 of Republic Act No. 7080, as amended, provides for the definition of and penalties for plunder, as follows:

Section 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

This technical-legal definition notwithstanding, in common understanding, to plunder is to pillage or to ransack. It denotes more than wrongful taking as to amount to common larceny. Synonymous with despoiling and

marauding, plundering evokes the devastation wrought by hordes laying waste to an enemy.[223] By plundering, a subjugator impresses the fact of its having vanquished another by arrogating unto itself the spoils of conquest and rendering more ignominious an otherwise simple defeat.

Plundering as a crime and by its scale, therefore, entails more than greed and covetousness. It conjures the image of a public officer deluded in the thought that he or she is some overlord, free to ravage and entitled to seize all that his or her realm can provide. It entails more than ordinary moral turpitude (i.e., an inherently immoral act)[224] as acts like theft, robbery, bribery, profiteering, estafa, extortion, and embezzlement have been categorized.[225] It evinces such a degree of depravity and debasement so heinous that, were it not for the subsequent enactment of a statute (i.e., Republic Act No. 9346), it would remain punishable by death.

Recognition must be given to the legislative wisdom underlying the choice of penalty. This is not only with respect to the severity of punishment chosen (i.e., deprivation of life or deprivation of liberty for the longest duration contemplated by the scale of penalties under the Revised Penal Code) but similarly with all other accessories that the penalties of reclusion perpetua and/or death entail. Congress, in choosing to penalize plunder with reclusion perpetua to death, must certainly have been cognizant of how these penalties did not only entail the deprivation of the right to life and/or liberty, but also of how, consistent with Articles 40 and 41 of the Revised Penal Code, they carried the accessory penalty of perpetual absolute disqualification.

To recognize this legislative wisdom is, thus, to recognize that penalizing plunder inherently entails the exclusion of a convict from elective exercises for public office, both as a candidate and as a voter, as well as from offices and public employments. This is consistent with the recognition that plunder is an “abomination . . . in the scheme of the larger socio-political and economic context.”[226] Through the penalty of perpetual absolute disqualification, it is, thus, ensured that a person convicted of plunder will no longer find himself or herself in the same setting, i.e., holding (elective) public office, which, in the first place, enabled the commission of plunder.

It is against this backdrop of plunder as a social “abomination”[227] as well as “corruption and obscene profligacy of officials in high places”[228] that Estrada insists on a pardon that worked to restore his rights to vote and be voted for elective public office. Bereft of any clue as to the intent behind the grant of pardon, such grant is mind-boggling. It, and its statement that Estrada is restored to his civil and political rights, appear to defy the disdain which animates the policy against plunder.

To reiterate, however, a President’s grant of pardon must be presumed to be grounded on the basic nature of pardon as a means for tempering the harshness of punishment. A reading of the preamble or whereas clauses of the pardon granted to Estrada will reveal that, indeed, the pardon was animated by nothing more than a desire to salve Estrada’s suffering.

Consider the recognition made in the first and second preambular clauses that Estrada was already more than 70 years old and had been in detention for about six and a half years. These preambular clauses provide context to why President Gloria Macapagal-Arroyo saw wisdom in tempering Estrada’s suffering: Keeping in prison a septuagenarian — a man who could well be considered to be in the twilight years of his life — may be too severe; anyway, Estrada had already been deprived of liberty for a considerable length of time.

The third preambular clause is even more revealing. It unveils the undertaking made by Estrada (acknowledged and unchallenged by him through his unqualified handwritten acceptance) that he would no longer embark on the very same affair, i.e., (elective) public office, that facilitated his commission of plunder. The inclusion of the third preambular clause is not empty rhetoric. It is an indispensable qualifier indicating that Estrada was pardoned precisely in view of his promise to no longer seek (elective) public office. Similarly, it establishes that the grant of pardon notwithstanding, there is no betrayal of the fundamental policy of aversion against plunder as an affront to

“the larger socio-political and economic context.”[229]

Accordingly, any reading of the phrase on which Estrada capitalizes — “[h]e is hereby restored to his civil and political rights” — must be made in accordance with the qualifier evinced by an undertaking Estrada himself made “to no longer seek any elective position or office.”[230] Read as such, the pardon could not have possibly worked to reverse the effects of the penalty of perpetual absolute disqualification or to otherwise restore his right to vote in any election for any popular elective office or to be elected to such office.

XI

Estrada’s re-incarceration is not a proper issue in this case.

Drawing attention to Estrada’s undertaking, Risos-Vidal theorizes that Estrada was granted a conditional pardon, i.e, that it was laden with a resolutive condition and that, as Estrada reneged on his undertaking, the rights vested by the pardon must be deemed extinguished. Citing Article 159 of the Revised Penal Code, Risos-Vidal, thus, suggests that Estrada should once again be incarcerated:

Thus, clearly, when Joseph Estrada himself intentionally and wilfully breached his pardon when he filed his certificate of candidacy for the position of Mayor of the City of Manila, he is guilty of breach of the conditions of the pardon which puts and [sic] end to the pardon itself and thereby immediately restoring the terms of conviction imposed by the Sandiganbayan. He should therefore be recommitted to prisión consistent with Article 159 of the Revised Penal Code which provides:

ART. 159. Other Cases of Evasion of Service of Sentence. — The penalty of prisión correccional in its minimum period shall be imposed upon the convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon. However, if the penalty remitted by the granting of such pardon be higher than six years, the convict shall then suffer the unexpired portion of his original sentence.[231]

Estrada counters that he was “granted an absolute pardon and thereby restored to his full civil and political rights, including the right to seek public elective [sic] office.”[232] Estrada, therefore, construes an “absolute pardon” as one with sweeping, all-encompassing effects.

As against the pardon’s premise of Estrada’s commitment to no longer seek any elective position or office is Estrada’s acceptance:

Received & accepted

Joseph E. Estrada (sgd.)

DATE: 26 Oct. ‘07

TIME: 3:35 P.M.[233]

Made in Estrada’s own handwriting, the acceptance articulates no qualification or reservation. Hence, it is an acceptance that is inclusive of his promise to no longer seek elective public office.

Nevertheless, the matter of Estrada’s re-incarceration as a possible consequence of the occurrence of a resolutive condition is no longer essential to the disposition of this case. After all, this case pertains to a petition for disqualification. What this court is called upon to rule on is Estrada’s qualification to run for Mayor of Manila.

In the limited context that excludes the question of Estrada’s possible re-incarceration, the materiality of his acceptance is in how such acceptance was imperative in order to bring the pardon to effect. As noted in Monsanto, “[a] pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance.”[234] This, too, is reflected in the pardon’s text, the last paragraph of which reads:

Upon acceptance of this pardon by JOSEPH EJERCITO ESTRADA, this pardon shall take effect.[235]

XII

Estrada's disqualification not affected by the lapse of more than two years since his release from prison

Having settled on Estrada's disqualification, it is worth emphasizing (in the interest of settling whatever lingering doubts there may be) that his disqualification is not negated by the statement in Section 40(a) of the Local Government Code that the disqualification relating to "[t]hose sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment" shall last for "two (2) years after serving sentence." This, even if Section 40 of the Local Government Code is the specific ground relied upon by Riso-Vidal in seeking to disqualify Estrada.

The relation between Article 30 of the Revised Penal Code — on the effects of perpetual absolute disqualification — and Section 40(a) of the Local Government Code was extensively discussed in *Romeo Jalosjos v. COMELEC*:^[236]

Well-established is the rule that every new statute should be construed in connection with those already existing in relation to the same subject matter and all should be made to harmonize and stand together, if they can be done by any fair and reasonable interpretation.

....

Keeping with the above-mentioned statutory construction principle, the Court observes that the conflict between these provisions of law may be properly reconciled. In particular, while Section 40(a) of the LGC allows a prior convict to run for local elective office after the lapse of two (2) years from the time he serves his sentence, the said provision should not be deemed to cover cases wherein the law imposes a penalty, either as principal or accessory, which has the effect of disqualifying the convict to run for elective office. An example of this would be Article 41 of the RPC, which imposes the penalty of perpetual absolute disqualification as an accessory to the principal penalties of reclusion perpetua and reclusion temporal[.]

....

Pertinently, it is observed that the import of Article 41 in relation to Article 30 of the RPC is more direct and specific in nature – insofar as it deprives the candidate to run for elective office due to his conviction – as compared to Section 40(a) of the LGC which broadly speaks of offenses involving moral turpitude and those punishable by one (1) year or more of imprisonment without any consideration of certain disqualifying effects to one's right to suffrage. Accordingly, Section 40(a) of the LGC should be considered as a law of general application and therefore, must yield to the more definitive RPC provisions in line with the principle of *lex specialis derogat generali* – general legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefor should prevail.

In the present case, petitioner was sentenced to suffer the principal penalties of reclusion perpetua and reclusion temporal which, pursuant to Article 41 of the RPC, carried with it the accessory penalty of perpetual absolute disqualification and in turn, pursuant to Article 30 of the RPC, disqualified him to run for elective office. As discussed, Section 40(a) of the LGC would not apply to cases wherein a penal provision – such as Article 41 in this case – directly and specifically prohibits the convict from running for elective office. Hence, despite the lapse of two (2) years from petitioner's service of his commuted prison term, he remains bound to suffer the accessory penalty of perpetual absolute disqualification which consequently, disqualifies him to run as mayor for Zamboanga City.

Notably, Article 41 of the RPC expressly states that one who is previously convicted of a crime punishable by reclusion perpetua or reclusion temporal continues to suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, unless the said accessory penalty shall have been expressly remitted in the pardon. In this case, the same accessory penalty had not been expressly remitted in the Order of Commutation or by any subsequent pardon and as such, petitioner's disqualification to run for elective office is deemed to subsist.[237] (Emphasis supplied, citations omitted)

Similarly, in this case, it is of no consequence that, by the time Estrada filed his candidacy and sought election as Mayor of the City of Manila, more than (2) years had lapsed since he was released from incarceration following President Gloria Macapagal-Arroyo's grant, and his acceptance, of pardon.

In sum, Estrada was disqualified to run for Mayor of the City of Manila in the May 13, 2013 elections. Moreover, his perpetual absolute disqualification not having been remitted, and his rights to vote and be voted for elective public office not having been restored, Estrada remains bound to suffer the effects of the penalty of perpetual absolute disqualification, as listed in Article 30 of the Revised Penal Code. Specifically, he remains disqualified from exercising the right to vote in any election for any popular elective office, and he remains barred from occupying any public office, elective, or otherwise.

XIII

On the supposed disenfranchisement of voters and disregard of the sovereign will

Estrada warns against the "massive disenfranchisement of votes [sic]"[238] and cautions against disrespecting "the sovereign will of the people as expressed through the ballot." [239] In doing so, he makes much of the margin of more than 35,000 votes by which he edged out Lim.[240]

Estrada is very loosely invoking the concept of a "sovereign" as though a plurality of votes is the sole determinant of the "sovereign will."

In the first place, what is involved here is merely an election for a local elective position. Certainly, the voters of a single local government unit ought not to be equated with the "sovereign Filipino people." So blithely is Estrada celebrating his 349,770 votes, he seems to forget that Lim was not even too far off with 313,764 votes.

Estrada celebrates the casting of votes in his favor as a seemingly indubitable expression of the sovereign will in trusting him with elective public office. He forgets that a mere three years prior, the voters, not just of the City of Manila, but of the entire Republic, repudiated him and rejected his attempt to once again secure the Presidency. He placed a distant second, behind by more than 5.72 million votes, to President Benigno Simeon Aquino III.

Estrada did secure more votes than Lim, that much can be conceded; but these votes were cast in favor of an ineligible candidate, i.e., one who was no candidate at all.

The matter of eligibility relates to circumstances personally pertaining to a candidate, e.g., citizenship, residency, age, lack of a prior conviction, and literacy. No amount of votes can cure a candidate's ineligibility. It could not, for instance, turn a 34-year-old person who filed a certificate of candidacy for Senator into a 35-year-old and suddenly qualify that person for election as a Senator. The matter of qualification is entirely beyond the mere plurality of votes.

In the context of constitutional democracy, the sovereign will is as effectively expressed in the official acts of public institutions. The Filipino people speak as much through the laws enacted by their elected representatives as they do through the ballot. Among these laws are those which prescribe the qualifications for elective public offices. Thus, by these requirements, the sovereign Filipino people delimit those who may be elected to public

office. Among these, too, is the Revised Penal Code, Articles 36 and 41 of which require the express restoration of the rights of suffrage and to hold public office, or otherwise the express remission of the penalty of perpetual absolute disqualification. So too, the Filipino people speak through the Constitution they have adopted, a basic precept of which is that public office is a public trust. Thus, matters relating to public office cannot be expediently dispensed with through the private act of granting pardon unless such grant be in compliance with legally established requisites.

The plurality of voters in Manila may appear to have decided contrary to what is expressed in our laws, but this cannot trump the sovereign will as expressed in our Constitution and laws.

XIV

Petitioner-intervenor Alfredo S. Lim is the qualified candidate who obtained the highest number of votes in the election for Mayor of the City of Manila

Having settled that Estrada suffered and continues to suffer from perpetual absolute disqualification, it is proper to resolve the resultant issue of who must be named Mayor of the City of Manila in lieu of Estrada.

In this court's April 16, 2013 decision in *Maquiling v. COMELEC*,^[241] we revisited the 1912 case of *Topacio v. Paredes*^[242] from which originated the often-quoted phrase "the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots."^[243] This was the progenitor of the principle that a supposed second-placer cannot be proclaimed the winner in an election contest.

As in the present case, *Maquiling* involved a petition for disqualification^[244] anchored on Section 40 of the Local Government Code.^[245] Thus, the principles laid down by *Maquiling* as to who must occupy an elective position following the determination that a candidate was disqualified are squarely applicable in this case.

As explained in *Maquiling*, the 'often-quoted phrase' from *Topacio* was a mere obiter dictum:

This phrase is not even the ratio decidendi; it is a mere obiter dictum. The Court was comparing "the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections x x x [with] that produced by declaring a person ineligible to hold such an office."

The complete sentence where the phrase is found is part of a comparison and contrast between the two situations, thus:

Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the elections is quite different from that produced by declaring a person ineligible to hold such an office. In the former case the court, after an examination of the ballots may find that some other person than the candidate declared to have received a plurality by the board of canvassers actually received the greater number of votes, in which case the court issues its mandamus to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a [plurality] of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fails entirely. In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is

confined to the personal character and circumstances of a single individual.

Note that the sentence where the phrase is found starts with “In the other case, there is not, strictly speaking, a contest” in contrast to the earlier statement, “In the former, we have a contest in the strict sense of the word, because of the opposing parties are striving for supremacy.”

The Court in *Topacio v. Paredes* cannot be said to have held that “the wreath of victory cannot be transferred from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots.”

A proper reading of the case reveals that the ruling therein is that since the Court of First Instance is without jurisdiction to try a disqualification case based on the eligibility of the person who obtained the highest number of votes in the election, its jurisdiction being confined “to determine which of the contestants has been duly elected” the judge exceeded his jurisdiction when he “declared that no one had been legally elected president of the municipality of Imus at the general election held in that town on 4 June 1912” where “the only question raised was whether or not Topacio was eligible to be elected and to hold the office of municipal president.”

The Court did not rule that Topacio was disqualified and that Abad as the second placer cannot be proclaimed in his stead. . . .[246] (Citations omitted)

By definition, an ineligible individual is not even a candidate in the first place.[247] It is, therefore, erroneous to refer to him or her as a “winner,” that is, as the “winning candidate,” should he or she obtain the plurality of votes. Consequently, it is illogical to refer to the candidates who are trailing in the vote count as “losers,” which is what labels like “second-placer” entail. As his or her ineligibility as a candidate remains, the number of votes cast for him or her is ultimately not decisive of who must be proclaimed as winner:[248]

The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole determinant of who should be proclaimed worthy to occupy elective positions in our republic.[249]

To rule as such is not tantamount to disrespecting the will of the electorate. As was very recently said in *Hayudini v. COMELEC*:[250]

[T]he will of the electorate is still actually respected even when the votes for the ineligible candidate are disregarded. The votes cast in favor of the ineligible candidate are not considered at all in determining the winner of an election for these do not constitute the sole and total expression of the sovereign voice. On the other hand, those votes for the eligible and legitimate candidates form an integral part of said voice, which must equally be given due respect, if not more.[251]

Contemporary jurisprudence has seen the repudiation of the position that a “second-placer” cannot be proclaimed a winner in lieu of an ineligible candidate.

This court’s 2012 decisions in *Aratea v. COMELEC*[252] and *Dominador Jalosjos, Jr. v. COMELEC*[253] ruled that a certificate of candidacy that was cancelled for being void ab initio, it having been filed by a candidate who falsely claimed that he was eligible, produces no effect, it “cannot give rise to a valid candidacy, and much less to valid votes.”[254] Thus, the votes cast for the ineligible candidate should be considered “stray votes and should

not be counted.”[255]

This court’s June 25, 2013 resolution in *Svetlana Jalosjos v. COMELEC*[256] expounded on the reasons for enabling the qualified candidate (the erstwhile “second-placer, unless of course, he is himself ineligible) who obtained the highest number of votes to assume the contested office. It has also clarified the proper operation of Section 44 of the Local Government Code on the rules on succession in case of a permanent vacancy in the Office of the Mayor:

There is another more compelling reason why the eligible candidate who garnered the highest number of votes must assume the office. The ineligible candidate who was proclaimed and who already assumed office is a de facto officer by virtue of the ineligibility.

The rule on succession in Section 44 of the Local Government Code cannot apply in instances when a de facto officer is ousted from office and the de jure officer takes over. The ouster of a de facto officer cannot create a permanent vacancy as contemplated in the Local Government Code. There is no vacancy to speak of as the de jure officer, the rightful winner in the elections, has the legal right to assume the position.[257]

Dominador Jalosjos, Jr. has not only ruled that the votes for an ineligible candidate are stray votes. It has also impressed upon the COMELEC that it is duty-bound to “motu proprio bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.”[258]

Even without a petition under either Section 12 or Section 78 of the Omnibus Election Code, or under Section 40 of the Local Government Code, the COMELEC is under a legal duty to cancel the certificate of candidacy of anyone suffering from the accessory penalty of perpetual special disqualification to run for public office by virtue of a final judgment of conviction. The final judgment of conviction is notice to the COMELEC of the disqualification of the convict from running for public office. The law itself bars the convict from running for public office, and the disqualification is part of the final judgment of conviction. The final judgment of the court is addressed not only to the Executive branch, but also to other government agencies tasked to implement the final judgment under the law.

Whether or not the COMELEC is expressly mentioned in the judgment to implement the disqualification, it is assumed that the portion of the final judgment on disqualification to run for elective public office is addressed to the COMELEC because under the Constitution the COMELEC is duty bound to “[e]nforce and administer all laws and regulations relative to the conduct of an election.” The disqualification of a convict to run for public office under the Revised Penal Code, as affirmed by final judgment of a competent court, is part of the enforcement and administration of “all laws” relating to the conduct of elections.

To allow the COMELEC to wait for a person to file a petition to cancel the certificate of candidacy of one suffering from perpetual special disqualification will result in the anomaly that these cases so grotesquely exemplify. Despite a prior perpetual special disqualification, Jalosjos was elected and served twice as mayor. The COMELEC will be grossly remiss in its constitutional duty to “enforce and administer all laws” relating to the conduct of elections if it does not motu proprio bar from running for public office those suffering from perpetual special disqualification by virtue of a final judgment.[259]

Applying these principles, the votes cast for private respondent Joseph Ejercito Estrada, a disqualified and ineligible candidate, must be held as stray votes. Petitioner-intervenor Alfredo S. Lim is the qualified candidate who obtained the highest number of votes in the contest to be elected Mayor of the City of Manila in the May 13, 2013 elections. Accordingly, he must be proclaimed the duly elected Mayor of the City of Manila, lest there be grounds, not contemplated in this opinion, barring his proclamation.

Final note

Not so long ago, our people were moved by revelations of wrongdoing committed by one who temporarily

occupied one of the most important public offices of our society — the Presidency. Our people's collective voices uttered in private conversations avalanched into a people's movement. This voice found its way into the halls of the House of Representatives and the Senate in a historic impeachment proceeding. Events unravelled, which caused the offending President to vacate Malacañang, to be considered resigned, and to finally be replaced.

His prosecution subsequently ensued. A first in our history, the Sandiganbayan found him guilty of committing the highest possible crime attended by graft and corruption. This betrayal of the public trust is called plunder. It is statutorily punished by a penalty of reclusion perpetua and permanent disqualification from public office.

The person convicted of plunder now walks free among us. He did not spend a single day in an ordinary jail. There is no question that he was pardoned. Today, the majority completes the circle by reading an ambiguous pardon allowing him yet again to run for public office. The majority uses the equivocal silence of the succeeding President who devised the ambiguous pardon as one of the bases to say that the convicted former President can again seek public office.

This is template for our political elite at the expense of the masses who toil and suffer from the consequences of corruption. It is hope for those who occupy high government offices who commit crimes as they await a next political term when the people's vigilance would have waned. It is the denouement in a narrative that will explain why there is no effective deterrent to corruption in high places. The pragmatism of politics takes over the highest notion that public office should be of effective public trust. The rule of law should unravel to meet this expectation.

The pardon was ambiguous. By our laws and constitutional fiat, it should have been read as perpetually prohibiting he who was convicted of plunder from again occupying any public office. This is my reading of what the values in our laws require.

I do not judge respondent for who he is as a person. That is not within our constitutional competence. But as a leader, the respondent will best show that the way forward for the country he loves should be for him to repent and for him to suffer courageously the consequences of his past acts. There are things which are clearly right. There are things which are clearly wrong. For in our hearts we know that impunity, in any form, should be abhorred especially when it gives advantage to the privileged and the powerful.

Thus, I dissent.

ACCORDINGLY, contrary to the majority, I vote to GRANT the petition and the petition-in-intervention. The assailed resolutions dated April 1, 2013 of the Second Division of public respondent Commission on Elections (COMELEC), and April 23, 2013 of public respondent COMELEC, sitting En Banc, must be ANNULLED and SET ASIDE.

Private respondent Joseph Ejercito Estrada continues to suffer the penalty of perpetual absolute disqualification and is thereby DISQUALIFIED from exercising the right to vote in any election for any popular elective office or to be elected to such office.

[1] Rep. Act No. 7080 (1991), sec. 2:

Sec. 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos

(P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by Rep. Act No. 7659, approved on December 13, 1993)

[2] Rep. Act No. 9346 (2006), otherwise known as An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[3] Rollo, pp. 39–43, 49–50.

[4] Id. at 34.

[5] Id. at 390–392.

[6] Id. at 395–412.

[7] Id. at 438.

[8] Jose “Jinggoy” Estrada, Charlie “Atong” Tiu Hay Sy Ang, Edward S. Serapio, Yolanda T. Ricaforte, Alma Alfaro, a John Doe (also known as Eleuterio Ramos Tan or Mr. Uy), a Jane Doe (also known as Delia Rajas), and several other John and Jane Does.

[9] Rollo, pp. 52–262.

[10] Id. at 261.

[11] Rep. Act No. 7080 (1991), otherwise known as An Act Defining and Penalizing the Crime of Plunder.

[12] Rep. Act No. 7659 (1993), otherwise known as An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that purpose the Revised Penal Laws, as amended, other special Penal Laws, and for other purposes.

[13] Art. 63. Rules for the application of indivisible penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

- When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
- When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
- When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[14] In the decision dated September 12, 2007, rollo, p. 261, the numbers in words and in figures do not match.

[15] Rollo, pp. 260–262.

[16] Id. at 265.

[17] Id. Certified true copy issued by Marianito M. Dimaandal, Director IV, Malacañang Records Office.

[18] Id. at 266.

[19] Id. at 267–275.

[20] Sec. 40. Disqualifications. – The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or non-political cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

[21] Sec. 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.

This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

[22] Rollo, p. 267.

[23] Id. at 284–296.

[24] Id. at 42.

[25] Id. at 3–34.

[26] Id. at 20–23.

[27] Id. at 30.

[28] Id. at 12–15 and 23–30.

[29] Id. at 16–20.

[30] Id. at 30–33.

[31] Id. at 726.

[32] Id.

[33] Id. at 437.

[34] Id. at 726.

[35] Id. at 390–393.

[36] Id. at 395–412.

[37] ARTICLE 36. Pardon; Its Effects. — A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

[38] ARTICLE 41. Reclusión Perpetua and Reclusión Temporal — Their accessory penalties. — The penalties of reclusión perpetua and reclusión temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

[39] Rollo, pp. 401–409.

[40] G.R. No. 193237, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[41] Id. at 409.

[42] Id. at 438.

[43] Id. at 457–485.

[44] Id. at 460.

[45] Id. at 464–467.

[46] Id. at 468–481.

[47] Sec. 94. Disqualifications. – The following persons shall not be qualified to vote:

(a) Any person who has been sentenced by final judgment suffer eighteen months or more of imprisonment, such disability not having been removed by plenary pardon.

(b) Any person who has been declared by final judgment guilty of any crime against property.

(c) Any person who has violated his allegiance to the United States or to the Commonwealth of the Philippines.

(d) Insane or feeble-minded persons.

(e) Persons who can not prepare their ballots themselves.

[48] Sec. 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.

This [sic] disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

[49] Rollo, p. 483.

[50] Id.

[51] Id.

[52] Id. at 489–507.

[53] Id. at 498.

[54] Id. at 574–610.

[55] Id. at 584.

[56] Id.

[57] Id. at 600–602.

[58] Id. at 602–607.

[59] Id. at 607–609.

[60] Id. at 728–754.

[61] Id. at 755–784.

[62] Id. at 810–821.

[63] Id. at 841–896.

[64] Id. at 1487–1534.

[65] Id. at 1736–1805.

[66] Id. at 1810–1830.

[67] Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. - A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

[68] Sec. 2. Period to File Petition. — The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

[69] Rollo, p. 1752.

[70] Sec. 3. Period to File Petition. — The Petition shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation.

[71] 595 Phil. 449 (2008) [Per J. Nachura, En Banc].

[72] Id. at 456–457.

[73] Id. at 465–469.

[74] G.R. No. 195229, October 9, 2012, 683 SCRA 105 [Per J. Carpio, En Banc].

[75] Id. at 141–142.

[76] G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[77] Id. at 20–21.

[78] Id. at 30–31.

[79] Description available at.

[80] Rollo, p. 267.

[81] Id.

[82] Id. at 271.

[83] Sec. 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. –

(a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

(b) If a permanent vacancy occurs in the office of the punong barangay, the highest ranking sanggunian barangay member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the punong barangay.

(c) A tie between or among the highest ranking sanggunian members shall be resolved by the drawing of lots.

(d) The successors as defined herein shall serve only the unexpired terms of their predecessors.

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

For purposes of succession as provided in this Chapter, ranking in the sanggunian shall be determined on the basis of the proportion of votes obtained by each winning candidate to the total number of registered voters in each district in the immediately preceding local election.

[84] Codilla, Sr. v. De Venecia, 442 Phil. 139, 182 (2002) [Per J. Puno, En Banc].

[85] Rollo, p. 1757, emphasis and capitalization in the original.

[86] Id.

[87] 316 Phil. 652 (1995) [Per J. Mendoza, En Banc].

[88] Id. at 695–696.

[89] 259 Phil. 748 (1989) [Per C.J. Fernan, En Banc].

[90] Id. at 753–754, citing *Bulova v. E.L. Barrett, Inc.*, 194 App. Div. 418, 185 NYS 424; *Ballantine*, 288–289; and *Pascual v. Del Saz Orozco*, 19 Phil. 82, 86 [Per J. Trent, En Banc].

[91] *Dominador Jalosjos, Jr. v. COMELEC*, G.R. No. 193237, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[92] *Heirs of Medrano v. De Vera*, G.R. No. 165770, August 9, 2010, 627 SCRA 109, 122 [Per J. Del Castillo, First Division].

[93] *Rollo*, pp. 616–641.

[94] Id. at 642–661.

[95] *Pormento v. Estrada*, G.R. No. 191988, August 31, 2010 [Per C.J. Corona, En Banc].

[96] *Rollo*, pp. 1796–1797.

[97] Id. at 1796.

[98] Id. at 639–640.

[99] G.R. No. 172302, February 18, 2014 [Per J. Leonen, Third Division].

[100] Id.

[101] Sec. 4. The President and the Vice-President shall be elected by direct vote of the people for a term of six years which shall begin at noon on the thirtieth day of June next following the day of the election and shall end at noon of the same date, six years thereafter. The President shall not be eligible for any re-election. No person who has succeeded as President and has served as such for more than four years shall be qualified for election to the same office at any time.

No Vice-President shall serve for more than two successive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of the service for the full term for which he was elected.

Unless otherwise provided by law, the regular election for President and Vice-President shall be held on the second Monday of May.

The returns of every election for President and Vice-President, duly certified by the board of canvassers of each province or city, shall be transmitted to the Congress, directed to the President of the Senate. Upon receipt of the certificates of canvass, the President of the Senate shall, not later than thirty days after the day of the election, open all the certificates in the presence of the Senate and the House of Representatives in joint public session, and the Congress, upon determination of the authenticity and due execution thereof in the manner provided by law, canvass the votes.

The person having the highest number of votes shall be proclaimed elected, but in case two or more shall have an equal and highest number of votes, one of them shall forthwith be chosen by the vote of a majority of all the Members of both Houses of the Congress, voting separately.

The Congress shall promulgate its rules for the canvassing of the certificates.

The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.

[102] Rollo, p. 619.

[103] Id. at 621.

[104] Id. at 626.

[105] Id. at 616–617.

[106] Id. at 511.

[107] Id. at 516–517.

[108] G.R. No. 181962, January 16, 2012, 663 SCRA 29 [Per J. Sereno, Second Division].

[109] Id. at 37–38, citing *Mirpuri v. Court of Appeals*, 376 Phil. 628 (1999) [Per J. Puno, First Division] and *Santos v. Intermediate Appellate Court*, 229 Phil. 260 (1986) [Per J. Gutierrez, Jr., Second Division].

[110] G.R. No. 191988, August 31, 2010, 629 SCRA 530 [Per C.J. Corona, En Banc].

[111] Id. at 532.

[112] Id. at 533–534.

[113] Id. at 531–532.

[114] *Cabreza, Jr. v. Cabreza*, G.R. No. 181962, January 16, 2012, 663 SCRA 29, 37–38 [Per J. Sereno, Second Division], citing *Mirpuri v. Court of Appeals*, 376 Phil. 628 (1999) [Per J. Puno, First Division] and *Santos v. Intermediate Appellate Court*, 229 Phil. 260 (1986) [Per J. Gutierrez, Jr., Second Division].

[115] *Cabreza, Jr. v. Cabreza*, G.R. No. 181962, January 16, 2012, 663 SCRA 29, 38 [Per J. Sereno, Second Division].

[116] Rev. Pen. code, art. 30(2).

[117] See *Teves v. Commission on Elections*, 604 Phil. 717, 728–729 (2009) [Per J. Ynares-Santiago, En Banc], citing *Dela Torre v. Commission on Elections*, 327 Phil. 1144, 1150–1151 (1996) [Per J. Francisco, En Banc].

“It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.”

[118] J. Padilla, dissenting opinion in *Llamas v. Orbos*, 279 Phil. 920, 946 (1991) [Per J. Paras, En Banc], citing the comment by JOAQUIN G. BERNAS, S.J., REVISED 1973 PHILIPPINE CONSTITUTION, part 1, 228 (1983).

[119] CESAR ADIB MAJUL, MABINI AND THE PHILIPPINE REVOLUTION 165 (1960).

[120] Id. at 171.

[121] JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION (1949).

[122] Id. at 436–437.

[123] *Llamas v. Orbos*, 279 Phil. 920 (1991) [Per J. Paras, En Banc].

[124] *People of the Philippines v. Rocha*, 558 Phil. 521, 538–539 (2007) [Per J. Chico-Nazario, Third Division], citing JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* 935 (2003).

[125] Implementing Rules and Regulations of Act No. 4103, the Indeterminate Sentence Law, sec. 2(n).

[126] Implementing Rules and Regulations of Act No. 4103, the Indeterminate Sentence Law, sec. 2(o).

[127] *Monsanto v. Factoran*, 252 Phil. 192, 198 (1989) [Per C.J. Fernan, En Banc].

[128] *Id.* at 198–199, citing *United States v. Wilson*, 7 Pet. 160, 160-1, cited in JOAQUIN G. BERNAS, *THE 1973 PHILIPPINE CONSTITUTION, NOTES AND CASES*, part I, 355 (1974).

[129] *Barrioquinto v. Fernandez*, 82 Phil. 642, 646–647 (1949) [Per J. Feria, En Banc].

[130] *Rollo*, p. 1793.

[131] *Ex parte Garland*, 71 U.S. 833 (1866); *Biddle v. Perovich*, 274 U.S. 480 (1927); *Ex parte Grossman*, 267 U.S. 87 (1925); *Carlisle v. U.S.*, 83 U.S. 147 (1872).

[132] *Rollo*, p. 1794, citing *Carlisle v. United States*, 83 U.S. 147, 151 (1872).

[133] *Id.*

[134] 71 Phil. 34 (1940) [Per J. Laurel, En Banc].

[135] 72 Phil. 441 (1940) [Per J. Laurel, En Banc].

[136] *Rollo*, pp. 1738–1739.

[137] 252 Phil. 192 (1989) [Per C.J. Fernan, En Banc].

[138] *Id.* at 199–201.

[139] *Rollo*, p. 1771.

[140] *Monsanto v. Factoran*, 252 Phil. 192, 201 (1989) [Per C.J. Fernan, En Banc], citing *State v. Cullen*, 127 P. 2d 257, cited in 67 C.J.S. 577, note 18.

[141] *Id.* at 201, citing *State v. Cullen*, 127 P. 2d 257, cited in 67 C.J.S. 577, note 18.

[142] *Rollo*, p. 1780.

[143] *Llamas v. Orbos*, 279 Phil. 920 (1991) [Per J. Paras, En Banc].

[144] *Id.* at 937–938.

[145] *People of the Philippines v. Rocha*, 558 Phil. 521, 538–539 (2007) [Per J. Chico-Nazario, Third Division], citing JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* 935 (2003).

[146] Definition available at.

[147] Definition available at.

[148] Definition available at.

[149] CONST. (1987), art. XI, sec. 1.

[150] *Monsanto v. Factoran*, 252 Phil. 192, 198–199 (1989) [Per C.J. Fernan, En Banc], citing *United States v. Wilson*, 7 Pet. 160, 160-1, cited in JOAQUIN G. BERNAS, *THE 1973 PHILIPPINE CONSTITUTION, NOTES AND CASES*, part I, 355 (1974). See also *Barrioquinto v. Fernandez*, 82 Phil. 642, 646–647 (1949) [Per J. Feria, En Banc].

[151] J. Padilla, dissenting opinion in *Monsanto v. Factoran*, 252 Phil. 192, 206 (1989) [Per C.J. Fernan, En Banc].

[152] *Monsanto v. Factoran*, 252 Phil. 192, 201 (1989) [Per C.J. Fernan, En Banc], citing *State v. Cullen*, 127 P. 2d 257, cited in 67 C.J.S. 577, note 18.

[153] *Id.*

[154] *Romeo Jalosjos v. COMELEC*, G.R. No. 205033, June 18, 2013, 698 SCRA 742 [Per J. Perlas-Bernabe, En Banc].

[155] CONST. (1987), art. XI, sec. 1.

[156] CONST. (1987), art. VIII, sec. 1(2).

[157] *Monsanto v. Factoran*, 252 Phil. 192, 201 (1989) [Per C.J. Fernan, En Banc].

[158] *Id.*

[159] 203 N.E. 2d 95.

[160] 336 Phil. 344 (1997) [Per J. Davide, Jr., Third Division].

[161] 395 Phil. 690 (2000) [Per J. Buena, Second Division].

[162] *Barrioquinto v. Fernandez*, 82 Phil. 642 (1949) [Per J. Feria, En Banc].

[163] *Id.* at 647, citing REV. PEN. CODE, art. 36.

[164] G.R. No. 205033, June 18, 2013, 698 SCRA 742 [Per J. Perlas-Bernabe, En Banc].

[165] *Id.* at 763.

[166] *Rollo*, p. 265.

[167] *Id.* at 1779.

[168] *Id.*

[169] Definition available at.

[170] *Id.*

[171] Definition available at.

[172] Available at.

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] Id.

[177] Id.

[178] Id.

[179] Id.

[180] Id.

[181] See Karel Vasak, "Human Rights: A Thirty-Year Struggle: the Sustained Efforts to give Force of law to the Universal Declaration of Human Rights", UNESCO Courier 30:11, Paris: United Nations Educational, Scientific, and Cultural Organization, November 1977.

[182] Available at.

[183] G.R. No. 100150, January 5, 1994, 229 SCRA 117 [Per J. Vitug, En Banc].

[184] Id. at 126.

[185] Id. at 132–133.

[186] Available at.

[187] Id.

[188] Id.

[189] Rollo, p. 265.

[190] Romeo Jalosjos v. COMELEC, G.R. No. 205033, June 18, 2013, 698 SCRA 742 [Per J. Perlas-Bernabe, En Banc].

[191] Rollo, p. 265.

[192] Cristobal v. Labrador, 71 Phil. 34 (1940) [Per J. Laurel, En Banc]; See also Pelobello v. Palatino, 72 Phil. 441 (1940) [Per J. Laurel, En Banc]; National Shipyards and Steel Corporation v. National Shipyards Employees and Workers Association, 132 Phil. 59 (1968) [Per J. J.B.L. Reyes, En Banc]; Lacuna v. Abes, 133 Phil. 770 (1968) [Per J. J.B.L. Reyes, En Banc]; In re: Atty. Saturnino Parcasio, 161 Phil. 437 (1976) [Per J. Aquino, Second Division]; In re: Atty. Tranquilino Rovero, 189 Phil. 605 (1980) [Per J. Concepcion, Jr., En Banc]; Sabello v. Department of Education, Culture and Sports, 259 Phil. 1109 (1989) [Per J. Gancayco, First Division].

[193] Monsanto v. Factoran, 252 Phil. 192 (1989) [Per C.J. Fernan, En Banc].

[194] Available at.

[195] Rollo, p. 265.

[196] Kuwait Airways Corporation v. Philippine Airlines, Inc., 605 Phil. 474 (2009) [Per J. Tinga, Second Division].

[197] Id. at 487–488, citing West's Encyclopedia of American Law (2nd ed., 2008); Echegaray v. Secretary of Justice, G.R. No. 132601, January 19, 1999 [Per Curiam, En Banc]; RUBEN E. AGPALO, STATUTORY CONSTRUCTION (2nd ed., 1990) and MARTIN, STATUTORY CONSTRUCTION (6th ed., 1984).

[198] See People v. Judge Purisima, 176 Phil. 186, 204 (1978) [Per J. Munoz Palma, En Banc], citing Words and Phrases, "Preamble," citing James v. Du Bois, 16 N.J.L. (1 Har.) 285, 294.

[199] *People v. Judge Purisima*, 176 Phil. 186 (1978) [Per J. Munoz Palma, En Banc].

[200] WHEREAS, pursuant to Proclamation No. 1081 dated September 21, 1972, the Philippines has been placed under a state of martial law;

WHEREAS, by virtue of said Proclamation No. 1081, General Order No. 6 dated September 22, 1972 and General Order No. 7 dated September 23, 1972, have been promulgated by me;

WHEREAS, subversion, rebellion, insurrection, lawless violence, criminally, chaos and public disorder mentioned in the aforesaid Proclamation No. 1081 are committed and abetted by the use of firearms, explosives and other deadly weapons[.]

[201] *People v. Judge Purisima*, 176 Phil. 186, 203 (1978) [Per J. Munoz Palma, En Banc].

[202] WHEREAS, these lawless elements having taken up arms against our duly constituted government and against our people, and having committed and are still committing acts of armed insurrection and rebellion consisting of armed raids, forays, sorties, ambushes, wanton acts of murders, spoilage, plunder, looting, arsons, destruction of public and private buildings, and attacks against innocent and defenseless civilian lives and property, all of which activities have seriously endangered and continue to endanger public order and safety and the security of the nation. . . .

. . . .

WHEREAS, it is evident that there is throughout the land a state of anarchy and lawlessness, chaos and disorder, turmoil and destruction of a magnitude equivalent to an actual war between the forces of our duly constituted government and the New People's Army and their satellite organizations because of the unmitigated forays, raids, ambushes, assaults, violence, murders, assassinations, acts of terror, deceptions, coercions, threats, intimidations, treachery, machinations, arsons, plunders and depredations committed and being committed by the aforesaid lawless elements who have pledged to the whole nation that they will not stop their dastardly effort and scheme until and unless they have fully attained their primary and ultimate purpose of forcibly seizing political and state power in this country by overthrowing our present duly constituted government. . . .

[203] 414 Phil. 857 (2001) [Per J. Gonzaga-Reyes, Third Division].

[204] *Id.* at 868–872:

We agree with the finding of the Court of Appeals that the Memorandum of Agreement dated July 29, 1988 was in the nature of a conventional subrogation which requires the consent of the debtor, Anglo-Asean Bank, for its validity. We note with approval the following pronouncement of the Court of Appeals:

"Immediately discernible from above is the common feature of contracts involving conventional subrogation, namely, the approval of the debtor to the subrogation of a third person in place of the creditor. That Gatmaitan and Licaros had intended to treat their agreement as one of conventional subrogation is plainly borne by a stipulation in their Memorandum of Agreement, to wit:

"WHEREAS, the parties herein have come to an agreement on the nature, form and extent of their mutual prestations which they now record herein with the express conformity of the third parties concerned" (emphasis supplied), which third party is admittedly Anglo-Asean Bank.

Had the intention been merely to confer on appellant the status of a mere "assignee" of appellee's credit, there is simply no sense for them to have stipulated in their agreement that the same is conditioned on the "express conformity" thereto of Anglo-Asean Bank. That they did so only accentuates their intention to treat the agreement

as one of conventional subrogation. And it is basic in the interpretation of contracts that the intention of the parties must be the one pursued (Rule 130, Section 12, Rules of Court).

....

As previously discussed, the intention of the parties to treat the Memorandum of Agreement as embodying a conventional subrogation is shown not only by the "whereas clause" but also by the signature space captioned "WITH OUR CONFORME" reserved for the signature of a representative of Anglo-Asean Bank. These provisions in the aforementioned Memorandum of Agreement may not simply be disregarded or dismissed as superfluous.

It is a basic rule in the interpretation of contracts that "(t)he various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly." Moreover, under our Rules of Court, it is mandated that "(i)n the construction of an instrument where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." Further, jurisprudence has laid down the rule that contracts should be so construed as to harmonize and give effect to the different provisions thereof. (Emphasis and underscoring supplied)

[205] 605 Phil. 474 (2009) [Per J. Tinga, Second Division].

[206] Id. at 487–488:

One line of argument raised by Kuwait Airways can be dismissed outright. Kuwait Airways points out that the third Whereas clause of the 1981 Commercial Agreement stated: "NOW, it is hereby agreed, subject to and without prejudice to any existing or future agreements between the Government Authorities of the Contracting Parties hereto. . . ." That clause, it is argued, evinces acknowledgement that from the beginning Philippine Airlines had known fully well that its rights under the Commercial Agreement would be limited by whatever agreements the Philippine and Kuwait governments may enter into later.

But can a perambulatory clause, which is what the adverted "Whereas" clause is, impose a binding obligation or limitation on the contracting parties? In the case of statutes, while a preamble manifests the reasons for the passage of the statute and aids in the interpretation of any ambiguities within the statute to which it is prefixed, it nonetheless is not an essential part of an act, and it neither enlarges nor confers powers. Philippine Airlines submits that the same holds true as to the preambular whereas clauses of a contract.

What was the intention of the parties in forging the "Whereas" clause and the contexts the parties understood it in 1981? In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered, and in doing so, the courts may consider the relations existing between the parties and the purpose of the contract. In 1981, Philippine Airlines was still owned by the Philippine government. In that context, it is evident that the Philippine government, as owner Philippine Airlines, could enter into agreements with the Kuwait government that would supersede the Commercial Agreement entered into by one of its GOCCs, a scenario that changed once Philippine Airlines fell to private ownership. Philippine Airlines argues before us that the cited preambular stipulation is in fact superfluous, and we can agree in the sense that as of the time of the execution of the Commercial Agreement, it was evident, without need of stipulation, that the Philippine government could enter into an agreement with the Kuwait government that would prejudice the terms of the commercial arrangements between the two airlines. After all, Philippine Airlines then would not have been in a position to challenge the wishes of its then majority stockholder – the Philippine government. (Emphasis and underscoring supplied)

[207] 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

[208] Id. at 32–33:

Petitioners' contentions are not supported by law. We hold that Res. 56 constitutes a supplementary retirement plan.

A cursory examination of the preambular clauses and provisions of Res. 56 provides a number of clear indications that its financial assistance plan constitutes a supplemental retirement/pension benefits plan. In particular, the fifth preambular clause which provides that "it is the policy of the Social Security Commission to promote and to protect the interest of all SSS employees, with a view to providing for their well-being during both their working and retirement years," and the wording of the resolution itself which states "Resolved, further, that SSS employees who availed themselves of the said life annuity (under RA 660), in appreciation and recognition of their long and faithful service, be granted financial assistance x x x" can only be interpreted to mean that the benefit being granted is none other than a kind of amelioration to enable the retiring employee to enjoy (or survive) his retirement years and a reward for his loyalty and service. Moreover, it is plain to see that the grant of said financial assistance is inextricably linked with and inseparable from the application for and approval of retirement benefits under RA 660, i.e., that availment of said financial assistance under Res. 56 may not be done independently of but only in conjunction with the availment of retirement benefits under RA 660, and that the former is in augmentation or supplementation of the latter benefits.

[209] En Banc Resolution Providing for Other Sources of the Judiciary Development Fund dated September 14, 1999.

[210] Pres. Decree No. 1949 (1984), otherwise known as Establishing a Judiciary Development Fund and for Other Purposes.

[211] Rollo, p. 265.

[212] J. Padilla, dissenting opinion in *Llamas v. Orbos*, 279 Phil. 920, 946 (1991) [Per J. Paras, En Banc], citing JOAQUIN G. BERNAS, S.J., *ON THE REVISED 1973 PHILIPPINE CONSTITUTION*, part 1, 228 (1983).

[213] Id.

[214] *Monsanto v. Factoran*, 252 Phil. 192, 198–199 (1989) [Per C.J. Fernan, En Banc], citing *United States v. Wilson*, 7 Pet. 160, 160-1, cited in JOAQUIN G. BERNAS, S.J., *THE 1973 PHILIPPINE CONSTITUTION, NOTES AND CASES*, part 1, 355 (1974).

[215] 558 Phil. 521 (2007) [Per J. Chico-Nazario, Third Division].

[216] Id. at 538–539, citing JOAQUIN G. BERNAS, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES, A COMMENTARY* 935 (2003).

[217] CONST. (1987), art. VII, sec. 5:

Section 5. Before they enter on the execution of their office, the President, the Vice-President, or the Acting President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President (or Vice-President or Acting President) of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted.)

[218] 421 Phil. 290 (2001) [Per J. Bellosillo, En Banc].

[219] Id. at 365.

[220] 335 Phil. 343 (1997) [Per Curiam, En Banc].

[221] Estrada v. Sandiganbayan, 421 Phil. 290, 365–366 (2001) [Per J. Bellosillo, En Banc].

[222] Id. at 366–367.

[223] Definition available at .

[224] See Teves v. Commission on Elections, 604 Phil. 717, 728–729 (2009) [Per J. Ynares-Santiago, En Banc], citing Dela Torre v. Commission on Elections, 327 Phil. 1144, 1150–1151 (1996) [Per J. Francisco, En Banc].

“It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude. Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.”

[225] See J. Brion’s concurring opinion in Teves v. Commission on Elections, 604 Phil. 733, 740–742 [Per J. Ynares-Santiago, En Banc].

[226] Estrada v. Sandiganbayan, 421 Phil. 290, 365 (2001) [Per J. Bellosillo, En Banc].

[227] Id.

[228] Id. at 366.

[229] Id. at 365.

[230] Rollo, p. 265.

[231] Id. at 1521.

[232] Id. at 1765–1766.

[233] Id. Certified true copy issued by Marianito M. Dimaandal, Director IV, Malacañang Records Office.

[234] Monsanto v. Factoran, 252 Phil. 192, 198 (1989) [Per C.J. Fernan, En Banc], citing United States v. Wilson, 7 Pet. 160, 160-1, cited in JOAQUIN G. BERNAS, THE 1973 PHILIPPINE CONSTITUTION, NOTES AND CASES, part I, 355 (1974).

[235] Rollo, p. 265.

[236] G.R. No. 205033, June 18, 2013, 698 SCRA 742 [Per J. Perlas-Bernabe, En Banc].

[237] Id. at 757–763.

[238] Rollo, p. 1764.

[239] Id. at 1735.

[240] Id. at 1748.

[241] G.R. No. 195649, April 16, 2013, 696 SCRA 420 [Per C.J. Sereno, En Banc].

[242] 23 Phil. 238 (1912) [Per J. Trent, En Banc].

[243] Id. at 240.

[244] *Maquiling v. COMELEC*, G.R. No. 195649, April 16, 2013, 696 SCRA 420, 443 [Per C.J. Sereno, En Banc]. “[T]he COMELEC First Division and the COMELEC En Banc correctly treated the petition as one for disqualification.”

[245] *Id.* at 464. “[Arnado] was a dual citizen disqualified to run for public office based on Section 40(d) of the Local Government Code.”

[246] *Id.* at 456–457.

[247] *Id.* at 458.

[248] *Id.*

[249] *Id.* at 459.

[250] G.R. No. 207900, April 22, 2014 [Per J. Peralta, En Banc].

[251] *Id.*, citing *Maquiling v. COMELEC*, G.R. No. 195649, April 16, 2013, 696 SCRA 420, 456–457 [Per C.J. Sereno, En Banc].

[252] G.R. No. 195229, October 9, 2012, 683 SCRA 105 [Per J. Carpio, En Banc].

[253] G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[254] *Aratea v. COMELEC*, G.R. No. 195229, October 9, 2012, 683 SCRA 105, 145 [Per J. Carpio, En Banc].

[255] *Dominador Jalosjos, Jr. v. COMELEC*, G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1 [Per J. Carpio, En Banc].

[256] G.R. No. 193314, June 25, 2013, 699 SCRA 507 [Per C.J. Sereno, En Banc].

[257] *Id.* at 519–520.

[258] *Dominador Jalosjos, Jr. v. COMELEC*, G.R. Nos. 193237 and 193536, October 9, 2012, 683 SCRA 1, 24 [Per J. Carpio, En Banc].

[259] *Id.* at 23–24, citing CONST. (1987) art. IX-C, sec.2(1).

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