Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. ALICIA RISOS-VIDAL, Petitioner,	**G.R. No. 206666**
	Present:
ALFREDO S. LIM Petitioner-Intervenor,	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION,[*] PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, LEONEN, and JARDELEZA,[**] *JJ.*
- *versus* -	
COMMISSION ON ELECTIONS and JOSEPH EJERCITO ESTRADA, Respondents.	Promulgated: January 21, 2015

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DECISION

LEONARDO-DE CASTRO, *J.*:

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;

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* On official leave.

** No part.

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

2 Id. at 49-50.

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 (₱545,291,000.00), 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.

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3 Id. at 395-414.

> (2) The amount of One Hundred Eighty[-]Nine Million Pesos (₱189,000,000.00), 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 oficio*.[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.*

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4 Id. at 260-262.

Given under my hand at the City of Manila, this 25th 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

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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.

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;
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> (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

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10 *Rollo* (Vol. I), p. 266.

11 Id. at 271.

> 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;
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> 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

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12 Id. at 43.

13 Id.

> 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*.

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14 Id. at 10-11.

15 Id. at 438.

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.)

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[16] Id. at 12-15.

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]

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17 Id. at 25.
18 252 Phil. 192, 207 (1989).
19 *Rollo* (Vol. I), p. 29.
20 *Rollo* (Vol. II), p. 498.

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

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21 Id. at 498-499.
22 Id. at 502.
23 Id. at 503.
24 Id. at 505.

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

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25 Id. at 582-596.

26 Id. at 607.

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

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27 71 Phil. 34, 38 (1940).
28 72 Phil. 441, 442 (1941).
29 Supra note 18 at 202.

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.**
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> 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.

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[30] Records of the Constitutional Commission of 1986 (Vol. II), July 31, 1986, pp. 524-526.

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,

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31 *Republic v. Camacho*, G.R. No. 185604, June 13, 2013, 698 SCRA 380, 398.

> 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

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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.

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.)

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[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.

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.

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35 G.R. No. 198742, August 10, 2012, 678 SCRA 267, 292.

36 Supra note 18.

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 *prision 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

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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).

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 3rd "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 3rd 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 3rd 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

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42 *Rollo* (Vol. I), p. 46.

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.

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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.

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.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

I join the dissent of J. Leonen

MARIA LOURDES P. A. SERENO
Chief Justice

I join the dissent of J. Leonen

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

J. Brion left his vote to dismiss the Risos Vidal Petition; see his Separate Opinion.

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

-See concurring opinion

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

I dissent. See separate opinion

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice
No part

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice