G.R. No. 206666 – ATTY. ALICIA RISOS-VIDAL *v.* COMMISSION ON ELECTIONS and JOSEPH EJERCITO ESTRADA.

Promulgated:

January 21, 2015

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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 intepretation 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

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[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.

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]

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[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:

B.1. <u>The Disqualification Rulings in the 2010 Election Cases</u>.

Thus, in clear and explicit terms, the Resolutions ***<u>in all three cases</u>*** 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

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"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.

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

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[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]

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. <u>The COMELEC Ruling</u>.

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]

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[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."

C. <u>The Lim Intervention</u>.

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.

<u>The Issues for Resolution</u>

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

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19 177 Phil. 205, 222, February 8, 1979.
20 Sec. 2, first paragraph, Article X.
21 *Supra* note 19, at 223.
22 Id.

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) <u>Grave Abuse of Discretion</u>.

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

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[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).*

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 Stardards 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.*

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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.

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

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[28] *Supra* note 10.

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. <u>The Intervention of former Mayor Alfredo S. Lim</u>.

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. <u>Intervention in General</u>.

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. <u>The context of Lim's intervention</u>.

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, 21013 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. <u>Lim's petition-in-intervention should be dismissed</u>.

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

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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.

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*

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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.

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.

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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.

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 Risos-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,

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[46] G.R. No. 195649, April 16, 2013, 696 SCRA 420.
[47] G.R. No. 195229, October 9, 2012, 683 SCRA 1.

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**

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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).

> **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. <u>Structural Examination of the Erap Pardon</u>.

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]

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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.

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*.

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57 G.R. No. 160610, August 14, 2009, 596 SCRA 77, 89-90.

58 Id.

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 (₱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.
>
> (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 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 propio*.[62] In other words, the BPP is the foremost authority on what its title plainly states – pardons and paroles.

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[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.

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.***

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[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.

B.2. <u>The Third Whereas Clause as a Condition</u>.

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 ***<u>statements of fact</u>*** that the ***<u>grantor recognized in the course of considering the pardon</u>*** 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.

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[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.

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

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

69 Id.

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 Risos-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) <u>The Express Restoration of the Right to Hold Office</u>.

The petitioner Risos-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 ***<u>International Covenant on Civil</u>***

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

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[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, 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.

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) <u>The RPC Perspectives</u>.

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

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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.

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

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[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.

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

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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).

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

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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.

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 *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 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.

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94 Id. at 201.

95 Id. at 199-204.

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:*

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[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 he 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.

> 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

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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:

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.

(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.

B.3(b)(i) <u>The Liberal Mode of Interpretation</u>.

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 the 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) <u>The *Vox Populi* Line of Cases</u>.

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.***

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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.

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]

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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.

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.*

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116 Id.

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. <u>The Trilogy of Disqualification Cases in 2010</u>.

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

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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.

> 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]

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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.

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.

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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 *t*he 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.

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

C.2(a) <u>The Objections and its Fallacies</u>.

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 <u>common</u> 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) <u>*Res Judicata* and its Application to the Case</u>.

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

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[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.

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) <u>Issue preclusion or res judicata by conclusiveness of judgment</u>.

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.

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[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.*

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

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[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).

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) <u>Finality of the 2010 Disqualification Rulings</u>.

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]

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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.

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) <u>Judgment on the Merits</u>.

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

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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.

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) <u>Identity of Parties, Subject Matter and Cause of Action</u>.

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, <u>political</u>, or legal condition or <u>status</u> of a particular person or his relationship to another, the judgment or final order is***

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[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.

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.

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

143 Id.

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]

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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.

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

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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.

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. <u>Grave Abuse of Discretion, the 2010 Disqualification Trilogy, and COMELEC's Risos-Vidal Ruling</u>.

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.

ARTURO D. BRION
Associate Justice