FOR PUBLICATION

IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JUAN S. DEMAPAN, **Plaintiff,** **vs.** **PAMELA S. BROWN, et al,** **Defendants.**	**CIVIL ACTION NO. 04-0573-CV** ***SUA SPONTE* ORDER FINDING PARTICIPATION OF SENATORS HOCOG AND MENDIOLA IN THE NOVEMBER 17, 2003 SENATE SESSION ON ROTA WAS VALID**

I. INTRODUCTION

PLAINTIFF Juan S. Demapan ("Demapan") seeks to have Defendant Pamela S. Brown ("Brown") removed from the position of Attorney General ("AG") on the theory that her appointment to the office was invalid. As a collateral matter to this issue, the propriety of actions taken by Senators Joseph M. Mendiola ("Mendiola") and Paterno S. Hocog ("Hocog") have been called into question. Specifically, Plaintiff asserts that as of the November 17, 2003, Senate session on Rota ("Rota Session"), these two Senators were not official members of the Senate, and thus their votes to affirm Ms. Brown as the AG violated Senate rules. [Plaintiff's First Amended Complaint ("FAC") ¶ 18.]

With the Court's approval, the Senate intervened in this matter and filed an amicus curiae brief on May 26, 2005. While the amicus brief scrupulously avoids taking any position on the validity of Ms. Brown's appointment, it asserts both: 1) that the Senate itself is the final judge of the qualification of its members, and 2) the issue of whether or not Senators Hocog and Mendiola acted

improperly at the Rota Session is a nonjusticiable political question.

On May 26, 2005, at oral arguments on Defendant's Motion for Summary Judgment, counsel for the Plaintiff conceded that both Senators may have been properly elected and sworn in, but their participation in the Rota Session may not have been timely. This argument does not affect the Plaintiff's theory: that the 90-day time period for Ms. Brown's appointment to office had already expired at the time of that particular Session. However, it is relevant to the two Senators, and whether they may have participated in any improprieties.

II. ANALYSIS

The Court recognizes that if it agrees with the Senate's assertion that if the political question doctrine properly applies, then any further discussion of the Senate's actions is irrelevant. However, the Court also recognizes that the political question doctrine ("Doctrine") is often used, perhaps overused, as an easy escape route for courts to avoid ruling on issues that it should properly address. Therefore, this Court will address the applicability of the Doctrine first, before making any findings on the Senate's action(s) as they apply to this case.

A. The Political Question Doctrine

The political question doctrine "is a policy of judicial abstention wherein the judiciary declines to adjudicate a case, so as not to violate the separation of powers by interfering with a coequal branch of government." *Rayphand v. Tenorio*, 2003 MP 12 ¶ 40 (citing *Sablan v. Tenorio*, 4 N.M.I. 351, 363 (1996)). The Doctrine applies, "when the controversy brought before the court (1) involves a decision made by a branch of the government coequal to the judiciary, and (2) concerns a political matter." *Id.* at ¶ 41.

The United States Supreme Court outlined the test to determine whether the issue concerns a political matter in *Baker v. Carr*, 369 U.S. 186, 217, 82 S. Ct. 691, 710, 7 L. Ed. 2d 663, 685-86 (1962). The six *Baker* factors include: (1) whether there is a textually demonstrable commitment of the issue to a coordinate branch of government; (2) whether judicially discoverable and manageable standards for assessing the dispute are lacking; (3) whether a court could render a decision without also making an initial policy determination that clearly should be left to another branch; (4) whether it would be possible for a court independently to resolve the case without

undercutting the respect due to a coordinate branch of government; (5) whether there is an unusual need to adhere to a political decision already made; and (6) whether an embarrassing situation might be created by various governmental departments ruling on one question. *Id.* While any one *Baker* factor may be sufficient for a court to determine that the Doctrine should apply, multiple factors will weigh even more heavily in its application.

Here, Plaintiff is asking the Court to find that Senators Hocog and Mendiola were not official members of the Senate when they participated in the Rota Session. To do so would require that the Court evaluate the Senate's own procedure for determining the validity of its members, and also to second guess the propriety of the actions of two Justices of the Supreme Court.[1] The Court is naturally reluctant to venture into such determinations without a careful evaluation of the *Baker* factors.

Article II, Section 14(a) of the N.M.I. Constitution states: "[e]ach house of the legislature shall be the final judge of the election and qualifications of its members." The Senate has already filed formal Senate Resolutions[2] with the Court, stating that both Senators Hocog and Mendiola were duly elected and sworn when they participated in the Rota Session. Under these circumstances, the Court finds that *Baker* factors one, four, six, and possibly factor three militate for finding the Doctrine should apply. Further, Ms. Brown's appointment was not the only issue that the Senate addressed with Senators Hocog and Mendiola in attendance. To rule now that these sessions were effectively invalid due to lack of a quorum could have effects reaching far beyond the parameters of this case. Therefore, *Baker* factor five is also relevant.

B. Application of the Law to this Case

The Court's analysis of this issue would be far different if Plaintiff had asserted that the election of either (or both) of the Senators was somehow improper or tainted, and if Plaintiff had

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[1] The record indicates that the Honorable Alexandro C. Castro administered the Oath of Office for Senator Hocog on or about November 17, 2003, so that Senator Hocog could participate in the remainder of the Thirteenth Northern Marianas Senate. [Defendant's Exhibit FF, Declaration of Senator Hocog]. Chief Justice Miguel S. Demapan administered the Oath of Office to Senator Mendiola on or about October 20, 2003. [Defendant's Exhibit D, Declaration of Senator Mendiola]. Chief Justice Demapan also administered the Oath of Office to Pam Brown.

[2] Senate Resolutions 14-51and 14-52, adopted April 28, 2005 in answer to this litigation, state that both Senators Mendiola and Hocog were duly elected and sworn when they participated in the Rota Session.

asserted such a claim in a timely fashion. Further, the Court would be quite willing to intercede, could even be required to do so under *Baker*, if Plaintiff had asserted that either of the Senators had acted outside the scope of their Constitutional authority–or that the Senate itself was in violation of the Constitution or Commonwealth law. *Baker*, 369 U.S. at 217, 82 S. Ct. at 710, 7 L. Ed. 2d at 685-86. Here the Plaintiff has made no such claims.

The only argument Plaintiff has advanced pertaining to election law is a general claim[3] that Senators Hocog and Mendiola should not have taken office until the following January, pursuant to N.M.I. Const. art. VIII, § 4, and therefore there was no quorum at the Rota Session. However, that Constitutional provision expressly pertains to officers elected *general* elections, not *special* elections. The very purpose of special elections is to fill vacant positions when no regular election is timely enough to do the job. This purpose of would be greatly diminished or nullified if the elected official then had to wait until the next January to assume their office.

The Court finds nothing in the record to indicate that there is any reason that the Court should find against the inclusion of Senators Hocog and Mendiola in the Rota Session. Simply put, regardless of the considerations of the political question doctrine, absolutely no reason has been provided for this Court to find that the Senators engaged in any impropriety when they participated in the Rota Session, or that the Senate somehow failed to follow proper procedure on that date. Plaintiff's argument is unpersuasive, and without legal merit.

III. CONCLUSION

The Court reminds both parties that this ruling only affects the validity of the November 17, 2003, Senate session on Rota, and the actions of Senators Mendiola and Hocog at that session.[4] First, there is nothing in the record to indicate that either Senators Hocog or Mendiola acted

[3] "Generally, no person [elected] for political office is sworn in the month of November. And no person in political election takes office in November. In fact, the NMI Constitution requires that public officials take office on the second Monday in January following a general election." Plaintiff's Opposition to Defendant's Motion for Summary Judgment and Cross Motion for Summary Judgment, April 28, 2005, at 4.

[4] Other legal issues raised by Plaintiff, such as whether or not Ms. Brown's appointment to the position of Attorney General had already expired, are still to be determined.

improperly.[5] Further, even if the record contained some showing of impropriety, the political question doctrine could easily be applied as several *Baker* factors are present. Therefore, the Court finds that the participation of Senators Mendiola and Hocog in the Senate session held on Rota on November 17, 2003, was proper.

SO ORDERED this 13th day of July, 2005.

/s/
ROBERT C. NARAJA,
Presiding Judge

[5] Similarly, there is nothing in the record to indicate that the Senate acted outside the scope of its Constitutionally delegated authority–the issue of Pam Brown's appointment notwithstanding. That shall be addressed in a subsequent opinion of this court.