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IN THE SUPERIOR COURT ~~CLERK OF COURT~~  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LUCAS L. MENDIOLA,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG,  
  
Contestants,

) Consolidated Cases:  
) Civil Action No. 94-24  
) Civil Action No. 94-25  
) Civil Action No. 94-26

v.

JOVITA TAIMANAO and  
ABRAHAM R. TAIMANAO,  
  
Defendants.

) MEMORANDUM DECISION ON  
) MOTIONS TO DISMISS;  
) ORDER FOR STAY

VINCENT MANGLONA,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG,  
  
Contestants,

v.

JOSE INOS,  
  
Defendant.

VICENTE M. ATALIG,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG,  
  
Contestants,

v.

JOVITA TAIMANAO and  
ABRAHAM P. TAIMANAO,  
  
Defendants.

COMMONWEALTH BOARD OF  
ELECTIONS,  
  
Intervenor.

FOR PUBLICATION

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1           This matter came before the Court for hearing on March 10,  
2 1994, on motions by Defendants and by Intervenor Board of  
3 Elections ("Board") for involuntary dismissal pursuant to Rule  
4 41(b). The Court, ruling from the bench, granted the motion as to  
5 Contestants' claims of bribery and bias but denied it as to  
6 Contestants' claim that voter challenges were erroneously  
7 determined. Pursuant to 1 CMC § 6425(c) and Com. R. Civ. P.  
8 52(a), this memorandum decision sets forth the Court's grounds for  
9 the rulings.

10           Also on March 10, 1994, immediately after the Court ruled on  
11 the motion to dismiss, the Board moved to stay this action pending  
12 the Supreme Court's decision on the Board's application for a writ  
13 of prohibition, filed earlier that day. This motion was granted  
14 on March 11, 1994.

## 16                           **I.   FACTS**

### 17                           **A.   PROCEDURAL BACKGROUND**

18           The action arises from the general election held November 6,  
19 1993, on Rota. Defendant Jose Inos is the certified winner of the  
20 office of Mayor in that election; Defendants Jovita Taimanao and  
21 Abraham Taimanao are two of the certified winners of seats on the  
22 Rota Municipal Council. Contestants Vincent Manglona, Lucas  
23 Mendiola and Vicente Atalig were certified as unsuccessful  
24 candidates for election to the Rota Mayoral and Municipal Council  
25 offices, respectively. The other named Contestants are voters in  
26 the election district of Rota.

27           The Board is charged with the task of administering and  
28 overseeing elections in the Commonwealth. 1 CMC § 6104. In the

1 course of the election on Rota, the Board received challenges to  
2 the eligibility of 167 registered Rota voters, alleging lack of  
3 residency, domicile, citizenship, or all three. *Sablan v. Board*  
4 *of Elections*, Civil Action No. 93-1274, slip op. at 2 (N.M.I.  
5 Super. Ct. Jan. 3, 1994). Of this total, the Board found twenty-  
6 five challenges to be frivolous and summarily dismissed them. The  
7 remaining 142 challenges were adjudicated in hearings held by the  
8 Board on Rota. The hearings began on November 26, 1993 and were  
9 completed on December 28, 1993.<sup>1</sup> As a result of the hearings, the  
10 Board affirmed the challenges against 106 voters; the ballots cast  
11 by these voters were not counted in the final tally. *Id.* The  
12 challenges against the remaining thirty-six voters were denied,  
13 and those votes were tallied. *Id.*

14 This Court's evidentiary hearing on this election contest  
15 began on March 7, 1994, and continued until March 11, 1994. At  
16 the outset of the hearing, the Court ruled that, in the interest  
17 of judicial economy, the hearing would be bifurcated. In the  
18 first phase of the trial, the Court would first hear evidence on  
19 and decide the following claims: 1) that the Board received bribes  
20 from the Democratic candidates in the 1993 general election for  
21 Mayor and Municipal council of Rota; and 2) that the Board was  
22 biased against the Republican candidates for those offices.  
23 Pursuant to the Court's February 9, 1994 ruling on Defendants'  
24 earlier motion to dismiss for failure to state a claim, the Court  
25 required that these allegations of bribery and bias be accompanied  
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27 <sup>1</sup> See Contestants' Exhibit 17, *In the Matter of the Election*  
28 *Challenges to the 1993 General Election for the Island of Rota*,  
Findings and Conclusions (Bd. of Elec. Feb. 16, 1994) ("Findings  
and Conclusions") at 1.

1 by proof of "causal linkage with the actual prejudice requirement  
2 of [1 CMC § 6422(a)]" that the alleged bias or bribery resulted in  
3 Defendants being declared elected to office instead of  
4 Contestants. *Mendiola v. Taimanao*, Consolidated Civil Actions 94-  
5 24, 94-25, 94-26, slip op. at 23 (N.M.I. Super. Ct. Feb. 9, 1994).

6 According to the Court's March 7, 1994, bench ruling, the  
7 second phase of the bifurcated trial would review Contestants'  
8 allegations of specific errors committed in adjudicating each  
9 individual voter challenge. The Court reasoned that its ruling on  
10 the allegations of overall impropriety would determine the proper  
11 standard of review of specific alleged errors as well as the  
12 amount of evidence required to adjudicate each claim of error.<sup>2</sup>  
13 In a similar vein, the Court denied Contestants' motion to move  
14 the trial to Rota as to the first set of issues and reserved  
15 deciding whether the second portion of the trial should be held on  
16 Rota.

17 At the outset of the hearing, the Board was not a party to  
18 the proceedings. However, the Board's counsel requested to be  
19 heard at the March 7 hearing, stating that he had not previously  
20 been aware that this action would consider the propriety and  
21 correctness of Board's conduct of the challenge hearings.  
22 Although the Board first contended that it was not a proper party  
23 to an election contest, it moved to intervene on March 8, 1994 in  
24 order to "defend [its] actions and conduct, and to present  
25 evidence, not otherwise available to the existing parties, to

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27 <sup>2</sup> Defendants urged in their trial brief that this review  
28 should be conducted under a "substantial evidence" standard.  
*Defendants' Trial Brief*, at 14. On the other hand, Contestants  
urged that each voter challenge should be re-adjudicated de novo.  
*Contestants' Trial Brief*, at 4. See Part II(C)(3), *infra*.

1 prove that no errors were made." *Motion to Intervene*, at 2-3  
2 (Mar. 8, 1994). The Court granted the Board's motion.

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4 **B. EVIDENCE PRESENTED**

5 **1. Live Testimony.**

6 **a. Trinidad Meikel.** The Court first heard the testimony of  
7 Trinidad Meikel, an employee of the Rota Mayor's office who was  
8 assigned to assist Clerk of Court Henry Manglona at the Rota  
9 Courthouse beginning in January 1993. Ms. Meikel testified that  
10 one of her regular duties was to empty the trash receptacle in the  
11 Clerk's office at the Rota Courthouse. During the week of  
12 December 20, 1993, the Board was conducting its voter challenge  
13 hearings in the Rota Courthouse. According to Ms. Meikel, during  
14 the Monday of that week, she noticed some wadded pieces of note  
15 paper which spilled on the floor as she was emptying the trash.  
16 She "got curious," opened one of the wads, and discovered a  
17 handwritten note making a sexual reference to "Benita," whom she  
18 understood to be Benita Manglona, the wife of Rota Mayoral  
19 candidate Vincent Manglona. Ms. Meikel also opened another note  
20 which read, "We need to check Mr. V. Hocog so that we could get  
21 paid."<sup>3</sup>

22 Ms. Meikel testified that she gathered up all similarly  
23 wadded notes from the trash, placed them in a separate plastic  
24 bag, and later brought them to Ms. Manglona. The next day, Ms.

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<sup>3</sup> At this point in her testimony, Ms. Meikel read aloud the  
27 note quoted above. The Board objected that the note had not yet  
28 been admitted as evidence and the Court sustained the objection.  
However, as the note was later admitted as Contestants' Exhibit 2,  
(see Part II(B), *infra*) the Court recites her reading of the text  
here for ease of presentation.

1 Meikel again "got curious," searched for and removed all  
2 handwritten notes from the trash and brought them to Ms. Manglona.  
3 She repeated this procedure on Tuesday, Wednesday and Thursday  
4 during the week of December 20, 1993. When asked why she gave Ms.  
5 Manglona the notes, Ms. Meikel said she thought Ms. Manglona  
6 should see the notes which made sexual references to her. As to  
7 why she thought Ms. Manglona should see other notes from the  
8 trash, Ms. Meikel said that the two were friends and that she  
9 wanted to "show [Ms. Manglona] what's going on in the court." Ms.  
10 Meikel denied that Ms. Manglona ever instructed her to search for  
11 the notes. Ms. Meikel did not tell Henry Manglona, whom she was  
12 assigned to assist at the Rota Courthouse, about the notes until  
13 Ms. Manglona had given the notes to counsel for the Republican  
14 Party.

15       **b. Benita Manglona.** Benita Manglona corroborated Ms.  
16 Meikel's testimony that she received the notes from Ms. Meikel  
17 during the week of December 20, 1993. She testified that she  
18 placed the original notes in a binder and gave the binder to the  
19 attorney for the Republican Party. It was her understanding that  
20 this binder was given to the Board in the course of a motion for  
21 recusal of the Board. When shown Contestants' Exhibits 1 through  
22 14, she testified that she recognized them as photocopies of the  
23 notes made before the originals were given to the Board. She also  
24 testified that she had placed her initials on these photocopies.

25       Ms. Manglona testified that she worked in the Rota Mayor's  
26 office during the mid-1980's, and that during that time Pedro Dela  
27 Cruz was one of her co-workers. She testified that she became  
28 familiar with Mr. Dela Cruz's handwriting during that same period.

1 She also stated that Mr. Dela Cruz is a relative of hers. When  
2 asked if she recognized the handwriting of any of the notes taken  
3 from the trash, she identified Contestants' Exhibits 1, 6, 9, 13  
4 and 14 as being at least partially in Mr. Dela Cruz's  
5 handwriting.<sup>4</sup>

6 Later in the hearing, Ms. Manglona testified that she  
7 recalled a meeting with Mr. Dela Cruz and other family members  
8 prior to the election in which they discussed which candidates the  
9 family should support. Ms. Manglona said she had wanted the  
10 meeting in order to "confront" Mr. Dela Cruz regarding his support  
11 for Vianney Hocog, the Democratic candidate for Representative.

12 c. Andrew Ramos. Andrew Ramos identified himself as the  
13 Coordinator for the Republican candidates on Rota. When shown  
14 Contestant's Exhibit 2, he testified that there were only two "Mr.  
15 V. Hocogs" on Rota: Victor Hocog, a prominent Democratic  
16 supporter; and Vianney Hocog, a Democratic candidate for  
17 Representative.<sup>5</sup> According to Mr. Ramos, the list of names that  
18 appeared on the second page of Contestants' Exhibit 9 coincides  
19 with the leadership of the C.N.M.I. Ninth Legislature.

20 Mr. Ramos also testified that, as a member of the Tabulation  
21 Committee established by the Board to count ballots, he observed  
22 that "between thirty and forty" absentee ballot envelopes appeared  
23 to have been opened and then stapled closed before the Tabulation  
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25 <sup>4</sup> Specifically, she testified that all of Exhibit 1, the  
26 third note on Exhibit 6 (first portion), the circled portion of  
27 the second page of Exhibit 9, all of Exhibit 13 and all of Exhibit  
28 14 were in Mr. Dela Cruz's handwriting.

<sup>5</sup> On cross examination, he admitted to uncertainty about the  
total number of persons named V. Hocog on Rota, but asserted that  
the only two adult males by that name were the two listed above.

1 Committee received them. Mr. Ramos said he informed Mr. Diaz; the  
2 Executive Director of the Board of Elections, of this observation.  
3 However, he admitted that he did not call the condition of the  
4 ballots to the attention of the other Tabulation Committee  
5 members, and he took no other action to investigate it. Mr. Ramos  
6 also admitted that he did not know the proper procedures for  
7 preparing affidavits and school seals for the absentee ballots of  
8 students.

9 Finally, Mr. Ramos testified that, as Coordinator for the  
10 Republican candidates, he was intimately familiar with the  
11 qualifications of the challenged voters who were registered as  
12 Republicans. On direct examination, he was shown the Board's  
13 Findings and Conclusions (Contestants' Exhibit 17). He testified  
14 that he was personally aware of ten instances in which a  
15 Democratic voter challenge and a Republican voter challenge  
16 involved similar facts as to the voters' domicile and residency.  
17 In each of the ten instances, the Democratic challenge was denied  
18 and the Republican challenge was affirmed.<sup>6</sup> However, on cross  
19 examination, Mr. Ramos admitted that he was not present at any of  
20 the Board's hearings on these challenges, was not aware of all the  
21 evidence presented at each hearing, and did not know the law of  
22 residency and domicile as it relates to certain occupations.

23 **d. Severina Ogo.** Severina Ogo testified that she was  
24 appointed to the Board of Elections by Governor Lorenzo I.  
25 Guerrero in December 1993, but that the Democratic-registered  
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27 <sup>6</sup> The list of ten "pairs" actually contained two instances  
28 where an individual from one party was compared to a married  
couple from the other. Thus, the total number of voters involved  
was twenty-two.



1 voters moved for her recusal immediately after her appointment.  
2 She initially testified that she was not told of the reasons for  
3 the recusal. However, on cross examination, she admitted that she  
4 had been present when the Board issued its oral ruling on the  
5 motion for recusal and had heard the Board state its reasons for  
6 granting the motion.<sup>7</sup>

7 As to the reasons for her recusal, Ms. Ogo acknowledged that  
8 she was related by blood to two candidates. She also acknowledged  
9 that she had been convicted of a charge of criminal assault upon  
10 the wife of Defendant Jose Inos in 1990. However, she stated that  
11 both the conviction and sentence had been completed more than  
12 three years prior to her appointment, and that she and Ms. Inos  
13 had since put aside their quarrel. She also stated that Board  
14 members Pedro Dela Cruz and Mike San Nicolas had relatives among  
15 the candidates, and neither of them were recused from the Board.

16 Ms. Ogo corroborated Ms. Manglona's opinion that portions of  
17 Contestants' Exhibits 1, 6, 13 and 14 were in the handwriting of  
18 Mr. Dela Cruz, with which she had become familiar as his co-worker  
19 in the Rota Mayor's office. She also testified that Contestant's  
20 Exhibit 2 was in Mr. Dela Cruz's handwriting.

21 On other subjects, Ms. Ogo testified to attending a lunch  
22 meeting with Mr. Dela Cruz and other Board members on December 18,  
23 1993 at which it was discussed that Mr. Dela Cruz would be offered  
24 the post of Director of Commerce and Labor in the incoming  
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26 <sup>7</sup> She also testified that she had never seen a copy of the  
27 Board's written decision of recusal, introduced on cross-  
28 examination as setting forth the reasons for its action. See  
Board of Election' Exhibit AA. On re-direct examination, counsel  
for Contestants drew Ms. Ogo's attention to the fact that the  
decision was dated March 8, 1994, one day before Ms. Ogo's  
testimony.

1 Administration, a post which he now holds. No specific details of  
2 this conversation, or any other testimony regarding this alleged  
3 offer, were given.

4 Ms. Ogo also related that, on one occasion during the lunch  
5 recess of the one of the challenge hearings, she observed  
6 Democratic counsel David Wiseman, Board counsel James Sirok and  
7 Board Executive Director Juan Diaz in a private conversation. She  
8 did not overhear the subject of the conversation which according  
9 to her lasted roughly one minute.

10 Finally, Ms. Ogo testified that, though prevented from  
11 participating in the Board's deliberations on the Rota challenges,  
12 she was present in the building where the deliberations took  
13 place. According to her, these deliberations took roughly forty-  
14 five minutes, contrasting with the deliberations over the Tinian  
15 and Northern Islands challenges, which concerned fewer voters but  
16 lasted longer. However, on cross-examination, she admitted that  
17 the Board could have deliberated at other times on the Rota  
18 challenges without her knowledge.

19  
20 **2. Documentary Evidence.**

21 In addition to the above testimony, a number of documents  
22 were admitted into evidence. Although the parties stipulated to  
23 the admission of several key exhibits,<sup>8</sup> they disputed vigorously  
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25 <sup>8</sup> The following exhibits were admitted without objection:

- 26 1. Contestants' Exhibit 16: Official Election Results.  
27 2. Contestants' Exhibit 17: the Board's Findings and  
28 Conclusions, (Feb. 16, 1994).  
3. Contestants' Exhibit 18: Severina Ogo's "Motion for  
Reconsideration of Vote to Recuse" (Jan. 4, 1994).  
4. Defendants' Exhibit A: Affidavit of Trinidad Meikel  
(Dec. 28, 1993).

1 the admissibility of the notes Ms. Meikel removed from the trash.  
2 The notes were originally admitted by the Board in its  
3 consideration of the Republican voters' motion for recusal. See  
4 *Memorandum Opinion Regarding Motions of the Challengers for*  
5 *Disqualification of the Board of Elections*, slip op. at 4 (Bd. of  
6 Elec. Feb. 16, 1994). On March 10, 1994, the Court examined the  
7 notes in camera and admitted the following exhibits:

8 1. Contestants' Exhibit 1: a photocopy of a handwritten  
9 note, allegedly written by Mr. Dela Cruz, relating a meeting he  
10 had with his family members approximately three months before the  
11 election. In the note, the author recounted that then-Mayor  
12 Manglona attempted to persuade the Dela Cruz family to endorse  
13 Vincent Manglona for Mayor. The note further relates that the  
14 family refused on the grounds that "none of the family actually  
15 benefitted" from having supported the previous administration.

16 2. Contestants' Exhibit 2: a photocopy of a handwritten  
17 note, assertedly also written by Mr. Dela Cruz, which reads "We  
18 need to check Mr. V. Hocog so that we could get paid."

19 3. Contestants' Exhibit 6: of the three handwritten notes  
20 reproduced on this exhibit, the Court admitted the top and bottom  
21 notes and excluded the middle note. The top note reads: "Don't  
22 start your act that would lead the opposing counsels to move for  
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24 5. Defendants' Exhibit C: Affidavit of Bernadita Manglona  
(Dec. 28, 1993).

25 6. Defendants' Exhibit D: Affidavit of Benita Manglona  
(Dec. 28, 1993).

26 7. Board's Exhibit AA: the Board's written decision  
granting the motion to recuse Ms. Ogo (Mar. 8, 1994).

27 8. Board's Exhibit BB: the Democratic voters' motion to  
recuse Ms. Ogo (Dec. 17, 1994).

28 Contestants' Exhibit 15: Supplementary Affidavit of Benita  
Manglona supporting a motion to recuse Mr. Dela Cruz and the Board  
(Jan. 4, 1994). Two pages of attached notes were excluded.

1 another recusal!!" The bottom note reads, in what witnesses  
2 opined to be Mr. Dela Cruz's handwriting: "[Illegible], You  
3 should deny that now." It continues, in other handwriting: "We  
4 are trying to deliberate and tabulate ballots without answering  
5 their request."

6 4. Contestants' Exhibit 8: a photocopy of a handwritten  
7 note which reads:

8 The man in blue is always looking at you.

9 Do not try to make comments that would  
10 prejudice our decision. Do not make comments  
11 that tend to show support to anyone because  
12 counsel could use our comments for appeal.

13 5. Contestants' Exhibit 9: The Court excluded the note  
14 reproduced on the first page and admitted the note reproduced on  
15 the second page. While the notes themselves are completely  
16 illegible, someone (there is no testimony as to who) wrote two  
17 lists of names below the illegible portions. The names are of  
18 members of the Ninth Legislature.

19 6. Contestants' Exhibit 10: a photocopy of a handwritten  
20 note, admitted with the caveat that no testimony had been received  
21 as to the individual author. It reads: "If people ask me why the  
22 Board is always favoring the other side, I'll just say that we are  
23 a minority inside." In different handwriting, the note continues:  
24 "No evidence black & white."

25 7. Contestants' Exhibit 11: a photocopy of a handwritten  
26 note, addressed to "Pete," in which the author states that "Mrs.  
27 Ogo's situation and mine are same as regards to having a close  
28 relative as a candidate." The author then expresses a worry that  
if Ms. Ogo were to be removed from the Board, "then somebody in  
Tinian decided to contest the election of Municipal Council cause

1 of my father, I think that our decisions on the challenges will be  
2 no good because I participated."

3 8. Contestants' Exhibit 13: a photocopy of a handwritten  
4 note, allegedly written by Mr. Dela Cruz. It reads: "As a result  
5 of their failure to convince the other voters in Sina on the last  
6 week in October and the 1st week of November, Andrew wrote to Pua  
7 listing challenges on November 5, 1993. This matter stinks."

8 The Court excluded the remaining handwritten notes as  
9 irrelevant to the proceedings. Contestants' Exhibits 5 and 7,  
10 containing sexual references to "Benita," were excluded as both  
11 irrelevant and inappropriate for admission.

12 Upon the admission of the above evidentiary exhibits,  
13 Contestants rested their case on the issues of bribery and bias by  
14 the Board.

## 15 16 **II. ANALYSIS**

### 17 **A. LEGAL STANDARDS GOVERNING MOTION TO DISMISS.**

18 Defendants' motion to dismiss is based on Com. R. Civ. P.  
19 41(b) which permits the Court, after the plaintiff rests, to  
20 "determine [the facts] and render judgment against the plaintiff"  
21 if it deems dismissal appropriate. If the Court elects to render  
22 such judgment, it operates as an adjudication on the merits. As  
23 Defendants point out, the Court is not required to view the  
24 evidence in the light most favorable to the plaintiff, but rather  
25 must weigh the evidence and decide issues of credibility. *Castro*  
26 *v. Castro*, 2 N.M.I. 334, 338 (N.M.I. 1991). Accordingly, this  
27 Court has weighed the credibility and demeanor of witnesses and  
28 scrutinized the documentary evidence to determine whether

1 Contestants have established a prima facie case that the Board  
2 received a bribe or was biased against Contestants.

3  
4 **B. EVIDENTIARY ISSUES**

5 As noted above, Defendants and the Board objected vigorously  
6 to the admission of Contestants' Exhibit 1 through 15, the notes  
7 Ms. Meikel removed from the trash at the Rota Courthouse. On  
8 March 9, 1994, the Board filed a written objection to the notes'  
9 admission, asserting that the notes are within the "deliberative  
10 process privilege," which protects "documents reflecting advisory  
11 opinions, recommendations, and deliberations comprising of a  
12 process by which governmental decisions and policies are  
13 formulated." *NLRB v. Sears Roebuck & Co.*, 95 S.Ct. 1504, 1516  
14 (1975).

15 According to the authority cited by the Board, the  
16 "deliberative privilege" is not absolute. A five-factor test  
17 governs revelation of material covered by the privilege, in which  
18 a Court inspects the material in camera and considers: 1) the  
19 relevance of the evidence sought to be protected; 2) the  
20 availability of other evidence; 3) the seriousness of the  
21 litigation and the issues involved; 4) the role of the government  
22 in the litigation; and 5) the possibility of future timidity by  
23 government officials who will be forced to recognize that their  
24 secrets are violable. *Zinker v. Doty*, 637 F. Supp. 138, 141 (D.  
25 Conn. 1986); see also *Gomez v. City of Nashua*, 126 F.R.D. 432,  
26 435-36 (D.N.H. 1989) (in camera review of documents).

27 Here, the Court notes that the documents in question are  
28 already part of the public records of both this case and Civil

1 Action No. 93-1327.<sup>9</sup> While the Court does not condone -- indeed  
2 it condemns -- the method by which these notes were taken from the  
3 Rota Courthouse, the damage of exposing the Board's inner workings  
4 to public scrutiny has already been done.

5 Moreover, the Court notes that the Board itself chose to  
6 admit the notes into the evidence it considered on the Republican  
7 motion for recusal. See the Board's Disqualification Decision,  
8 *supra*, slip op. at 4. While the Board's hearings are conducted  
9 using different standards of evidence from those observed by the  
10 Court, it is nevertheless significant that the Board felt that it  
11 had at least to consider the notes before ruling on the recusal  
12 motion.

13 Lastly, by the standards of the "deliberative process  
14 privilege" enunciated in *NLRB v. Sears, supra*, 95 S.Ct. at 1516,  
15 and the other authorities cited by Defendants, admission of some  
16 of the notes is proper. The Court, in its in camera review,  
17 determined that the five-factor test of *Zinker, supra*, 637 F.  
18 Supp. at 141, favored the admission of some of Contestants'  
19 Exhibits in that they could be read as evidence of bribery  
20 (Contestants' Exhibit 2) or of bias (Contestants' Exhibits 1, 6,  
21 8, 9, 10, 11 and 13). Compare *Id.* (notes not admitted where they  
22 were not relevant to issues at hand and did not involve  
23 allegations of improprieties on part of hearing officer).

24 The issues in this litigation are of the most serious kind.  
25 Allegations of impropriety have been made against the Board,

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27 <sup>9</sup> See *Sablan v. Board of Elections*, Civil Action No. 93-1327,  
28 slip op. at 3-4 (N.M.I. Super. Ct. Jan. 6, 1994). This case  
involved an application by the Rota Republican voters for a  
temporary restraining order against the Board.

1 against a sitting member of the Legislature, and by implication  
2 against Governor Froilan Tenorio. The public interest in  
3 determining who the rightful elected leaders of the Commonwealth  
4 are, and in dispelling any cloud under which those leaders may  
5 labor, is paramount. It is this unusual context, coupled with the  
6 fact that the Board's notes have already been made public, that  
7 leads the Court to admit selected documents from among the  
8 notes.<sup>10</sup>

9  
10 C. FINDINGS

11 In ruling on these motions to dismiss by Defendants and the  
12 Board, the Court is guided by its earlier legal analysis of the  
13 election contest statute, 1 CMC § 6421 et seq. See Decision and  
14 Order on Motion to Dismiss, *supra*, slip op. at 18-24 (Feb. 9,  
15 1994). Measured against the statute's requirements for a  
16 successful election contest, Contestants have failed to offer  
17 substantial proof supporting their allegations of bribery and  
18 bias.

19 1. Bribery.

20 As to one of the claims of bribery, the only evidence  
21 submitted is Contestants' Exhibit 2, which refers to "Mr. V.  
22 Hocog" and checking "that we get paid." There was no testimony as  
23 to the context in which this note was written or what the words  
24 "get paid" might refer to. One possible interpretation is that  
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27 <sup>10</sup> In so holding, the Court stresses that its holding does not  
28 approve "fishing expeditions" into the private papers of  
government decision-makers, much less clandestine missions to  
bring such documents under the public eye.



1 the author, who may have been Mr. Dela Cruz,<sup>11</sup> was referring to  
2 some illegal consideration; however, it is at least as likely that  
3 the note referred to a previous minor debt to the author or that  
4 the note was written as a joke. A joke such as this, though no  
5 more appropriate in such a context than the obviously-improper  
6 sexual references contained in other notes, would not be evidence  
7 of bribery. Thus, while Contestants' Exhibit 2 can be considered  
8 circumstantial evidence of bribery, it is uncorroborated by any  
9 other such evidence and fails to constitute more than a scintilla  
10 of the required showing.

11 Contestant's only other claimed evidence of bribery is  
12 Severina Ogo's testimony that Board members suggested to Pedro  
13 Dela Cruz that he might be offered the Directorship of the  
14 Department of Commerce and Labor. The exact nature of  
15 Contestants' allegation was never explained, but the implication  
16 of Ms. Ogo's testimony and counsel's argument on the motion to  
17 dismiss is that the Governor was prepared to offer Mr. Dela Cruz  
18 a post in his government in exchange for corrupt handling of the  
19 Rota voter challenges. However, Ms. Ogo's testimony failed to  
20 provide any facts which would enable the Court to determine  
21 whether the conversation constituted an improper offer, and if so  
22 by whom and for what purpose. Moreover, the Court finds her  
23 testimony uncorroborated by any other evidence to substantiate  
24 such a serious charge.

25 Evaluating this evidence in its totality, the Court deems  
26 Contestants' allegations of bribery unproven by even the lowest

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28 <sup>11</sup> As noted above, while Severina Ogo testified that this  
note was in Mr. Dela Cruz's handwriting, Benita Manglona testified  
that it was not.

1 standard.<sup>12</sup> The motion to dismiss Contestants' claims under 1 CMC  
2 § 6421(b) is granted.

3 2. Bias.

4 Contestants' allegations of bias are similarly unproven. The  
5 notes admitted into evidence are ambiguous as to what the authors  
6 may have meant, and there was no evidence showing the context in  
7 which any of them were written. Contestants' Exhibits 6, 8 and 11  
8 all show that the Board was thinking carefully about the issues  
9 raised by the recusal of Severina Ogo. None demonstrates bias  
10 against Republican candidates. For example, the top note of  
11 Exhibit 6 -- which asks the unnamed reader not to start "your act"  
12 for fear of prompting "opposing counsel to move for another  
13 recusal" -- suggests, if anything, an attitude hostile to the  
14 Democrats, since they were the only ones to have moved for any  
15 recusals up to the week of December 20, 1993, the time the note  
16 apparently was written.

17 Likewise, the notes reproduced in Contestants' Exhibit 11  
18 raise the author's serious concerns that the recusal standards  
19 applied to Ms. Ogo might be applied to him. However, considered  
20 in light of the Board's written decision and the other testimony  
21 relating to the various reasons for the Board's decision to recuse  
22 Ms. Ogo, the Court does not find any evidence of bias or  
23 impropriety in the Board's action.

24 As to Ms. Ogo's claim that the Board took only forty-five  
25 minutes to deliberate on the 142 Rota challenges, the Court finds  
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27 <sup>12</sup> In addition, Contestants presented no evidence that "V.  
28 Hocog's" alleged bribe was on behalf of the Defendant candidates.  
Under 1 CMC § 6421(b), this element is required to prevail on an  
election contest claim.

1 that as a recused Board member she did not have personal knowledge  
2 of how many times the other Board members might have met to  
3 discuss the Rota challenges. Nor did her testimony suggest that  
4 the "private" conversation between Messrs. Wiseman, Sirok and Diaz  
5 that she witnessed involve any improper ex parte contacts on the  
6 subject of the hearings. This testimony adds up to nothing more  
7 than innuendo and speculation.

8 Finally, as to Mr. Ramos' testimony that the Board  
9 adjudicated Democratic challenges differently from Republican  
10 challenges, the Court finds that this testimony may constitute  
11 evidence that the Board committed errors in individual voter  
12 challenges. However, since Mr. Ramos does not know the full  
13 extent of the evidence before the Board for each challenge and was  
14 not present at the hearings on the challenges, his testimony does  
15 not demonstrate bias by the Board as a whole.

16 In sum, the circumstantial evidence of bias presented by  
17 Contestants is insufficient to demonstrate a prima facie case.  
18 Moreover, there is insufficient evidence to show that any claimed  
19 bias caused the Board to adjudicate the voter challenges in such  
20 a way as to result in Contestants being denied a rightful victory.  
21 Thus, Contestants fail to meet both the "errors" requirement of 1  
22 CMC § 6421(d) and the "actual prejudice" requirement of 1 CMC §  
23 6422(a).

24 In reaching these findings of fact, the Court does not  
25 approve the Board's conduct in writing and passing certain of the  
26 notes offered as exhibits in this proceeding. However, this  
27 election contest has only one object: to determine whether the  
28 proper candidate was declared elected. The evidence presented

1 here so far does not support the conclusion that Defendants were  
2 improperly certified as elected to their respective offices.

3 3. Errors in Adjudicating Individual Voter Challenges.

4 Movants have requested dismissal of the entire election  
5 contest. However, Contestants have rested their case only as to  
6 the issues of bribery and bias. Contestants still request an  
7 opportunity to demonstrate that enough voter challenges were  
8 erroneously decided to change the result of the election. Because  
9 this evidence has yet to be presented, the Court cannot grant  
10 Defendants' motion.

11 However, the Court's ruling on the previous two issues does  
12 allow it to decide the proper standard of review to be applied in  
13 determining the individual challenges. Contestants' claims of  
14 error in individual challenge determinations falls under the  
15 general standard of 1 CMC § 6421(d) of "errors" by the Board. As  
16 has been often stated in this litigation, an election contest is  
17 not an appeal of the Board's action under the Administrative  
18 Procedure Act. Nonetheless, a claim that the Board committed  
19 errors does involve some type of judicial review of the Board's  
20 decisions, especially when those decisions involved extensive  
21 evidentiary presentations.

22 The election contest statute is silent as to what standard of  
23 review is called for. Generally, unless otherwise provided  
24 statutorily, the review of a formal hearing is for substantial  
25 evidence. *In Re Hafa Adai Beach Hotel Extension*, Appeal No. 92-  
26 020, slip op. at 9, n. 21 (N.M.I. Oct. 6, 1993). De novo review  
27 is only appropriate in an adjudicatory setting where the reviewed  
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1 agency's procedures are inadequate. *Citizens to Preserve Overton*  
2 *Park, Inc. v. Volpe*, 91 S.Ct. 814, 823 (1971).

3 Since Contestants have been unsuccessful in showing that the  
4 Board's actions were systemically infected by bias or improper  
5 consideration, the Court finds that the Board's challenge hearing  
6 procedures were adequate to adjudicate the issues before it.  
7 Accordingly, in order to prevail on its remaining cause of action,  
8 Contestants will have to show that enough of the Board's  
9 individual voter challenge findings were unsupported by "such  
10 evidence as a reasonable mind might accept as adequate to support  
11 such a conclusion" to change the result of the elections at issue.  
12 See 2 Koch, *Administrative Law and Practice*, 91 (1985) (citation  
13 omitted).

14 Mr. Ramos testified to intimate familiarity with the  
15 qualifications of the Republican-registered Rota voters who were  
16 challenged in the 1993 election. In his testimony, he named  
17 twenty-two voters whose challenges he believed were improperly  
18 adjudicated. Consequently, the Court ruled on March 10, 1994,  
19 that it would begin the second phase of this trial by hearing  
20 evidence relating to these twenty-two voter challenges listed by  
21 Mr. Ramos. If the Court finds that there was substantial evidence  
22 supporting the Board's findings on these challenges, it will  
23 dismiss this action. If a significant portion of these challenges  
24 are found to be unsupported by substantial evidence, the Court  
25 will consider allowing Contestants to present evidence relating to  
26 other voter challenges.

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**D. BOARD'S MOTION TO STAY PROCEEDINGS**

The Board of Elections argued its motion to dismiss on the afternoon of March 10, 1994. Immediately after the Court issued its bench ruling on the motion, the Board moved to stay these proceedings pending the outcome of an application for a writ of prohibition the Board had filed with the Commonwealth Supreme Court earlier that day. The Court reserved ruling on the motion for a stay until the next afternoon in order to allow the parties to decide how they wished to proceed in light of the Court's ruling on the motion to dismiss. When the Court reconvened on March 11, 1994, the Board renewed its motion for a stay. Contestants did not oppose the motion. Finding good cause, the Court granted the Board's motion.

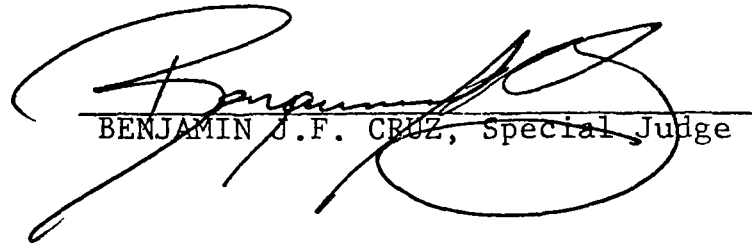
**IV. CONCLUSION**

For the foregoing reasons, the Court ORDERS:

1. The motions to dismiss Contestants' cause of action under 1 CMC § 6421(b) is hereby GRANTED.
2. The motions to dismiss Contestants' cause of action under 1 CMC § 6421(d) is hereby GRANTED as it relates to Contestants' claim that the Board of Elections was biased against Republican-registered voters, and DENIED as it relates to claims that the Board erroneously adjudicated individual voter challenges.
3. The proceedings in this action are STAYED pending the outcome of the Board of Election's application for a writ of prohibition. In the event that the writ is denied, further

1 proceedings consistent with this Order shall be scheduled after a  
2 status conference to be held at the earliest possible date.

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4 SO ORDERED this 15th day of March, 1994.

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7 BENJAMIN J.F. CRUZ, Special Judge  
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