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

MARJA LEE TAITANO,	)	Civil Action No. 95-1082(R)
Plaintiff,	)	
v.	)	
ANICETO H. MUNDO, BOARD OF	)	<b>ORDER</b>
ELECTIONS,	)	
Defendants.	)	

Plaintiff, Marja Lee Taitano ("Taitano"), filed this election contest pursuant to 1 CMC § 6421 et. al., seeking reversal of the results of the November 4, 1995 Rota election for District No. 6 Board of Education representative, of which Defendant, Aniceto H. Mundo ("Mundo") was declared the winner. In the alternative, Plaintiff requests that the Court void the result of the November 4, 1995 election, and order that a new election be held. A two day hearing of this matter was conducted at the Rota

**FOR PUBLICATION**

1 courthouse on January 18 and 19, 1996.

## 2 I. FACTS

3 Defendant Mundo won the November 4, 1995 election by a margin of three votes. Prior to the  
4 November 4, 1995 election, the Defendant, Board of Elections (“the Board”), for the first time, applied  
5 a new procedure to hear and adjudicate challenges to voter residency status. Pursuant to this procedure,  
6 the Board received a list of written challenges from Democratic and Republican representatives prior  
7 to the election. Based on those challenges, the Board issued letters to voters informing them that their  
8 eligibility was in question, and that a hearing would be conducted on October 30, 1995, at which they,  
9 or their attorney, could present evidence proving their eligibility. *See* Defendant’s Exhibits 2 and 3.  
10 These letters were mailed to the address listed on each voter’s registration application.

11 Approximately twenty Republican voters were challenged. Of the twenty, seven were allowed  
12 to vote in the November 4, 1995 election, seven were completely disqualified, and six were required to  
13 vote in a Saipan district as the result of the October 30, 1995 hearing. The Board subsequently compiled  
14 a list of thirteen people deemed ineligible to vote by reason of either disqualification or transfer of  
15 registration to Saipan. Plaintiff’s Exhibit A. The list, dated November 2, 1995, included, but was not  
16 limited to: Gina M. Aldan, John A. Atalig and Danny C. Charfauros, identified as disqualified voters;  
17 and Anabelle M. Atalig and Simeon A. Santos, identified as transferred voters (collectively, “the Five  
18 Voters”). Each of these individuals testified at the January 18 and 19 hearings on behalf of the plaintiff.

19 Danny C. Charfauros testified that he was notified of the October 30, 1995 hearing, but only  
20 received the notice two days before the hearing and was too busy working to attend. Gina M. Aldan and  
21 John A. Atalig testified that although they were represented at the October 30, 1995 hearing by Jim  
22 Atalig, they never authorized the representation. Anabelle A. Atalig and Simeon A. Santos testified that  
23 they were represented by Vicente Atalig at the October 30, 1995 hearing. The Board considered  
24 Herman Apatang’s testimony concerning his “research” with respect to these voters’ eligibility at the  
25 hearing, as well as the criteria to establish domicile set forth in 1 CMC §§ 6202; 6203; 6204, and the  
26 guidelines concerning voting districts set forth in 1 CMC § 6205(b)(1). Closing argument of Defendant  
27 Board of Elections, p. 7.

1 Although the Board never published the November 2, 1995 list that resulted from the October  
2 30, 1995 hearing, two of the Five Voters testified that they were told they were ineligible to vote by  
3 Senator Paul Manglona, who had seen the list. Another disqualified voter testified that he was denied  
4 an absentee ballot based on Rota Board member, Mr. George O. Hocog's, reading the list. In addition,  
5 the two transferred voters testified that on November 2, 1995, they received a hand delivered letter from  
6 the Board of Elections notifying them that their registrations had been transferred to Saipan.

7 None of the Five Voters attempted to vote on Rota on election day, but all testified that they  
8 would have voted for Taitano, had they voted. In addition, all of the voters received a letter from the  
9 Board, dated November 7, 1995 (Plaintiff's Exhibit D), stating that the Board deemed them ineligible  
10 to vote, but that they could cast their ballots in the November 4, 1995 election and that their votes would  
11 be preserved until their time to appeal the Board's determination expired. On the eve of the election,  
12 the Board's legal counsel, James Sirok, Esq., attempted unsuccessfully to reach John Manglona, Esq.  
13 by telephone. Mr. Sirok did leave a message on Mr. Manglona's answering machine stating that the  
14 persons identified on the November 2, 1995 list could vote in the November 4, 1995 election. A letter  
15 similar to the November 7, 1995 letter was transmitted by facsimile to the Rota Board member on  
16 election day, with instructions to insure that if the voters appeared at the polls, they be allowed to vote.

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19 **II. ISSUE**

20 1. Whether the Board of Elections' disqualification of five individual voters in the November  
21 4, 1995 Rota election for District No. 6 Board of Education Representative was supported by substantial  
22 evidence.

23 2. Whether the procedure implemented by the Board of Elections to adjudicate voter challenges  
24 in the November 4, 1995 Rota election for District No. 6 Board of Education Representative deprived  
25 five individual voters their right to appeal the Board's decision concerning their eligibility to vote.

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III. ANALYSIS

Defendants, in their closing memoranda, jointly moved to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted, and for lack of standing.

**A. Statement of Claim**

Any Commonwealth voter may contest an election if the Board, in the conduct of the election or arithmetical tabulation of votes, made errors sufficient to change the final result of the election as to any person who has been declared elected. 6 CMC §6421(d). Plaintiff's *pro se* complaint, filed on November 24, 1995, alleges that the irregularity and improper conduct of the Board of Elections in the proceedings of the November 4, 1995 Rota election for District No. 6 Board of Education Representative resulted in Defendant Mundo being declared elected. Paragraph 6 of the Complaint repeats the language of 1 CMC § 6421(d) almost verbatim ("The Board in the conduct of the election or arithmetical tabulation of votes made errors sufficient to change the final result of the election as to Mundo, to Taitano's detriment and actual prejudice, and in violation of 1 CMC § 6421(d), as well as in violation of Taitano's rights to equal protection and due process of the laws.").<sup>1/</sup> Because Plaintiff's Complaint states statutorily prescribed reasons for challenging the November 4, 1995 election, the Court denies Defendants' motion to dismiss for failure to state a claim for which relief can be granted.

**B. Standing**

Taitano alleges facts in her Complaint indicating that the Board's disqualification of at least three qualified voters, who would have voted for Taitano, resulted in Mundo's being elected. Complaint at Para. 7. Defendants argue that Plaintiff lacks standing to complain about the Board's adjudication of another's right to vote. Defendants further argue that because three of the voters who testified at the January 18 and 19 hearings also filed a separate lawsuit against the Board under the CNMI

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<sup>1/</sup> Prior to commencement of the January 18 and 19, 1996 hearings, Plaintiff voluntarily withdrew her civil rights claims.

1 Administrative Procedure Act seeking money damages ( not the right to vote), plaintiff is precluded from  
2 seeking the right to vote for them.

3 In *CNMI Board of Elections v. Superior Court*, Consolidated Civil Action Nos., 94-24, 94-25,  
4 & 94-26, the Supreme Court explicitly held that the Superior Court has jurisdiction to review election  
5 contests based on claims that legal votes were not counted, and that this jurisdiction emanates from §  
6 6421(d), which allows election contests arising from the actions of the Board. In fact, the Supreme  
7 Court stated that “Any reading [of the Election Act] to the contrary would not serve the public policy  
8 of providing a means for defeated candidates and other voters to contest the outcome of an election when  
9 they have substantial grounds to believe that the outcome did not reflect [the][sic] will of the majority  
10 of those legally voting.” *Id.* For the same reasons, reading the Election Act to deny Plaintiff standing  
11 to raise her contest based on the Board’s conduct would clearly frustrate the purpose of the election  
12 contest statute. The fact that three voters also filed a lawsuit under the Administrative Procedure Act  
13 seeking money damages is irrelevant. Accordingly, Defendants’ motion to dismiss for lack of standing  
14 is denied.

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16 **C. Conduct of the Board**

17 **1. Standard of Review**

18 In reviewing the Board’s decision to disqualify the Five Voters, the Court must apply a  
19 “substantial evidence” standard of review and find that the Board’s decision demonstrates ‘sound  
20 judgment’--not necessarily correct judgment. *Lucas L. Mendiola et. al. v. Jovita Taimano et. al.*,  
21 Consolidated Action Nos. 94-24, 94-25, 94-26; 2 Koch *Administrative Law and Practice*, § 9.4 (1985).

22 At the trial of this matter, the Board presented testimony from Herman A. Apatang, the Democratic  
23 Party Researcher, Miguel M. Sablan, Chairman of the Board of Elections, and two board members,  
24 Vicente S. Atalig and George Ogo Hocog to demonstrate what evidence was presented to the Board  
25 concerning the Five Voters’ eligibility. Defendants did not present any transcribed testimony from the  
26 Board hearings themselves.

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**2. Review of Particular Voter Challenges**

Based on its evaluation of the testimony, and exhibits presented by the parties, the Court enters the following findings with regard to the five individual challenged voters.

a. Danny C. Charfauros.

Mr. Charfauros testified at trial that he is 18 years old and moved to Rota in June of 1995 to manage his father's Rota business, JNM Enterprises. Mr. Charfauros lives with his auntie and a maid on the business premises in Rota. Mr. Sablan testified at trial that the Board heard testimony from Senator Paul Manglona that Mr. Charfauros was living on Rota and managing his father's business on the island. Mr. Apatang testified at the January 19, 1996 hearing that he appeared on behalf of the Democratic party throughout the Board's October 30, 1995 hearing concerning his "research" on the eligibility of challenged voters. With respect to Mr. Charfauros, Mr. Apatang stated that he had not seen him on Rota, that he had a small family name and that the family name was "not in Mr. Apatang's family roots."

Mr. Sablan testified that Mr. Apatang told the Board that he had not seen Mr. Charfauros on Rota and thought that he was domiciled in Guam, and that the Board decided Mr. Charfauros was not eligible to vote based on testimony alone. Mr. Sablan stated that he was only remotely familiar with the Superior Court decisions outlining voter residency requirements and the exceptions thereto, but that he relied on the presence of the Board's legal counsel with regard to such matters. Mr. Vicente Atalig testified that he and the other board members did not discuss the residency qualifications and exceptions described in any Superior Court opinions when they made their determinations at the October 30, 1995 hearing. Mr. Hocog testified that he was not familiar with recent Superior Court cases involving voter residency requirements and was not aware of any exceptions to those requirements, but that he and the Board just ask their legal counsel when those questions arise. Mr. Hocog further explained that the Board's counsel did not participate in the Board's review of the voter challenge hearing unless asked for a legal opinion by a member of the Board.

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b. John A. Atalig.

Mr. Atalig testified at trial that he is 25 years old and attended elementary and high school on Rota. He formerly worked for Freedom Air and lived in Guam, but moved to Rota in September 1995. Mr. Atalig lives with his parents in Rota and owns a homestead but is financially unable to construct anything on it. Mr. Atalig voted on Rota in the 1993 general election, 1995 con con, and 1995 Rota primary election.

Mr. Apatang testified that he had not seen Mr. Atalig on Rota and did not know when he had returned to Rota prior to the election. He said he told the Board that Mr. Atalig was employed by Freedom Air and was living on Guam.

c. Gina Marie T. Aldan.

Ms. Aldan testified at trial that she is 24 and Mr. Atalig's common law wife. She and their four year old daughter moved to Rota with Mr. Atalig in September 1995. Ms. Aldan also lives with Mr. Atalig's parents in Rota. She is unemployed and owns a homestead on Rota, but is financially unable to build on it. Mr. Apatang testified that he does not know Ms. Aldan personally, but knows what she looks like and through his investigation found out that she is not residing or employed on Rota and is staying with her mother on Guam. Mr. Apatang told the Court that his research included an inquiry into whether the contested voter owned a Rota homestead. However, when asked whether Mr. Apatang investigated Mr. Atalig's and Ms. Aldan's homestead ownership, he replied that he "had not gone that far." Mr. Sablan testified that Mr. Atalig and Ms. Aldan were represented by Jim Atalig at the October 30, 1995 hearing, and that Jim Atalig told the Board that they were living with Mr. Atalig's family in Sinapalo. Mr. Sablan recalled that Mr. Apatang told the Board that Mr. Atalig was working for an airline in Guam and that Ms. Aldan was living with him in Guam. He stated that the Board based its decision to deny Mr. Atalig and Ms. Aldan the right to vote based on this testimony alone. Vicente Atalig also testified that the Board found that these two voters were not actually living in Rota "based on the testimony of the witnesses." When asked which witnesses he was referring to, he specifically named Mr. Apatang. When asked why he thought Mr. Apatang was qualified to testify about residency, he responded "based on his own (Apatang's) research."

1           c. Simeon Santos

2           Mr. Santos testified at trial that he is 28 years old, married to Anabelle Atalig and employed as  
3 a CNMI labor investigator in Saipan. Mr. Santos lives in a leased home on Saipan with his wife and  
4 their four children. His children attend school in Saipan. Mr. Santos owns a homestead on Rota but has  
5 not constructed anything on it. Mr. Santos testified that he and his family plan to live permanently in  
6 Rota, but must live in Saipan until his wife gains two years of experience working with an accredited  
7 AICPA institution (Deloitte & Touche). The two years of work experience is required for her to receive  
8 a CPA license and no such accredited institutions exist on Rota.

9           Mr. Apatang testified that he had personal knowledge that Mr. Santos was working in Saipan  
10 and residing there with Ms. Atalig. Mr. Sablan testified that the Board was informed that Mr. Santos  
11 had voted in the Constitutional Convention but since 1993 had relocated to Saipan “for economic  
12 reasons” to work for the Department of Labor and Immigration. He further testified that the Board  
13 decided that Mr. Santos lived and worked on Saipan and, therefore, resided there as well.

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15           d. Anabelle Atalig.

16           Ms. Atalig testified at trial that she is 25 years old and married to Mr. Santos. She lives in a  
17 leased home on Saipan with her husband and their four children. Her children attend school in Saipan.  
18 She owns a homestead on Rota and has constructed the structure for a house on it. Ms. Atalig works  
19 for Deloitte & Touche in Saipan. She testified that she and her family plan to live in Rota, but that to  
20 receive a CPA license, she must complete two years of work experience with an accredited AICPA  
21 institution. She further testified that she and her family are required to live in Saipan because no  
22 accredited AICPA institution exists in Rota. Mr. Apatang testified that he had personal knowledge that  
23 Ms. Atalig resided with Mr. Santos in Saipan. Mr. Sablan recalled that Ms. Atalig was represented by  
24 her brother, Ben Atalig, who explained that Ms. Atalig was living in Saipan to gain experience in a  
25 private accounting firm. Mr. Sablan could not recall whether Ben Atalig specifically stated that Ms.  
26 Atalig’s experience related to her desire to acquire a CPA license which was not possible on Rota. Mr.  
27 Sablan testified that based on the above testimony, and a belief that the “experience” Ms. Atalig was



1 receiving did not fall within the education exception to the residency requirement, the Board found Ms.  
2 Atalig ineligible to vote in Rota.

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4 **3. Substantial Evidence Review**

5       Taking the testimony presented at the January 18 and 19, 1996 election contest hearing in its  
6 entirety, it is clear to the Court that the Board relied almost exclusively on the “research” of Herman  
7 Apatang in making its determinations concerning voter eligibility, and that such “research” amounted  
8 to little more than reliance on who Mr. Apatang knew personally or recalled seeing on Rota in the weeks  
9 preceding the November election. Not only was Mr. Apatang’s research insubstantial, but it was, in  
10 several cases, demonstrated to be incorrect. Sound judgment is a fairly sturdy standard and the mere  
11 chance that the agency’s judgment is correct is not enough. A substantial evidence, or reasonableness  
12 review demands that the probabilities that the agency is correct be relatively high. Koch, *supra*, p. 90-  
13 91. The Court finds that the evidence the Board relied on to make its determinations on the eligibility  
14 of Danny C. Charfauros, John A. Atalig and Gina Marie T. Aldan inadequate to support their  
15 conclusions. The Board’s decision to not allow these three individuals to vote is not supported by  
16 substantial evidence. In addition, the Court finds that the Board’s decision to not allow Anabelle Atalig  
17 to vote on Rota is not supported by substantial evidence. Included in the education exception to the  
18 voter residency requirement outlined in *Ruben v. Ogumoro*, Civ. No. 94-14 (“1) to pursue full-time or  
19 part-time studies”), is the fulfillment of all requirements necessary to obtain the degree or license sought.  
20 Because it is a prerequisite to her obtaining a CPA license, Ms. Atalig’s work experience is an  
21 educational requirement and she therefore comes within the education exception. With respect to  
22 Simeon Santos, however, the Court finds that the Board decision is supported by substantial evidence.  
23 Although Ms. Atalig falls within the education exception to voter residency requirements, the exception  
24 applies only to the individual pursuing the education. Ms. Atalig’s education exception does not extend  
25 to her husband Simeon Santos.

1 **4. Preservation of the Right to Appeal**

2 Even if the Board had met the “substantial evidence” standard, the Court is still left with the  
3 Board’s egregious failure to notify and allow disqualified or transferred voters the opportunity to appeal  
4 its determinations concerning their eligibility to vote. The Court appreciates the difficulty and time  
5 constraints involved in hearing voter challenges. Yet, in this instance, it finds that the Board, in its  
6 unprecedented and unpublished attempt to revise the challenge procedure, denied disqualified voters  
7 their right to appeal determinations concerning their eligibility. In its November 7, 1995 letter, the  
8 Board notified disqualified and transferred voters of their right, under 1 CMC § 9112 to have the Board’s  
9 determination reviewed. In addition, the letter stated that these voters must vote in the November 4,  
10 1995 general election on Rota to preserve their right to appeal. Thus, it appears that the Board  
11 recognized that its new procedure was flawed, but was unable to correct it before the election was held.

12 There may be a better way to conduct voter challenges, but the “new” procedure applied to the  
13 November 4, 1995 election was not it. The Board failed to publish regulations which would have  
14 established this new procedure in an orderly and lawful manner. Such publication would have given  
15 members of the public the opportunity to comment on the proposed system and ample notice that it was  
16 being instituted by the Board.

17 The Board’s conduct in the November 4, 1995 Rota election prevented five voters from casting  
18 their ballots in addition to denying them the right to appeal the Board’s adverse decision concerning  
19 their voting eligibility. The Court’s “substantial evidence” review of the Board’s decision to disqualify  
20 the Five Voters from voting on Rota effectively revives their right to such an appeal. In view of the  
21 Board’s unsubstantiated decision, the Court is now faced with the difficult task of fashioning a remedy  
22 which is appropriate for the voters and the plaintiff.

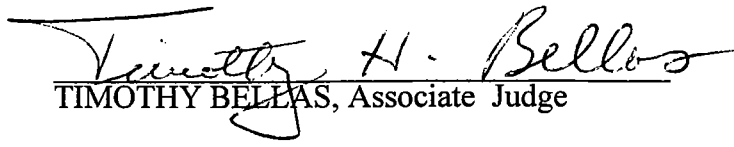
23 Accordingly, it is hereby **ORDERED** that:

24 1. Danny C. Charfauros, John A. Atalig, Gina Marie T. Aldan and Anabelle Atalig shall be  
25 given the opportunity to cast their votes for the Rota District No. 6 Board of Education representative  
26 within ten days of the date of this order;

1           2. The Board shall, within twenty days of the date that any such ballots are cast retabulate the  
2 election result and recertify the result for the Rota District No. 6 Board of Education representative.

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So ORDERED this 11 day of April, 1996.

  
TIMOTHY BELLAS, Associate Judge