

I. FACTS

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1. On November 1, 1981, Defendant Pedro P. Tenorio (hereafter "Tenorio") was elected to the office of Governor of the Commonwealth of the Northern Mariana Islands for the first time, and took office on January 11, 1982, for a four-year term. Declaration of Pedro P. Tenorio ¶ 2 (hereafter "Tenorio's Declaration") in Tenorio's Motion to Dismiss, or in the alternative, for Summary Judgment filed November 17, 1997 (hereafter "Tenorio's Motion").
2. On November 3, 1985, Tenorio was elected to the office of Governor of the Commonwealth of the Northern Mariana Islands for the second time, and took office on January 13, 1986, for a four-year term. Tenorio's Declaration ¶ 3.
3. Also on November 3, 1985, the voters ratified Amendment 12 which amended the text on term limits in Article III, section 4 of the Northern Mariana Islands Constitution to read "No person shall be elected governor more than twice."
4. The original text of Article III, section 4 of the Northern Mariana Islands Constitution on term limits read "No person shall be elected governor more than three times."
5. In May, 1996, Tenorio announced his intention to the local media to seek the endorsement of the Republican Party as its candidate for Governor in the November, 1997, general election. Tenorio's Declaration ¶ 4.
6. On July 19, 1997, the CNMI Board of Elections ("BOE") certified Tenorio and Jesus R. Sablan as the Republican Party's candidates for Governor and Lieutenant Governor for the November 1, 1997, general election. Tenorio's Declaration, ¶ 6.
7. On November 1, 1997, the election of the Governor and Lieutenant Governor of the Commonwealth of the Northern Mariana Islands was held.
8. Plaintiff **Manasses S. Borja** is a citizen of the United States, a resident of the Commonwealth of the Northern Mariana Islands, and a registered voter on the island of Saipan, who cast a vote in the November 1, 1997, general election. Complaint, ¶ 2.
9. On November 3, 1997, Plaintiff Borja first learned of Tenorio's apparent election to the office of the Governor. Complaint, ¶ 11.

1 10. On November 10, 1997, Plaintiffs **Borja** and Eileen **Babauta**^{1/} filed an election contest complaint
2 in this Court pursuant to 1 CMC §§ 6421-6610. Complaint, ¶ 1.

3 11. On November 17, 1997, Defendants Tenorio and Jesus R. Sablan (hereafter "Sablan") filed an
4 answer, a motion to dismiss, or in the alternative, a motion for summary judgment.

5 12. As of November 17, 1997, the BOE had not certified the official results of the election. Tenorio's
6 Affidavit, ¶ 7.

7 13. The parties concede that Defendants garnered the highest number of votes. Complaint ¶ 10,
8 Tenorio's Answer ¶ 10, Sablan's Answer ¶ 1.

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10 **II. ISSUES**

11 The parties present four issues for this Court's consideration:

- 12 1. Whether this Court should dismiss this action as untimely because Plaintiff filed his
13 complaint nine days after the election, months after the Board of Election certified the
14 Defendants as candidates on the **ballot**, and over a year after Defendants announced
their candidacy when 1 CMC § 6423(b) requires a complaint to be filed within seven
days after discovery of the fact supporting the contest.
- 15 2. Whether Article III, section 4 of the N.M.I. Constitution, as amended, bars Defendant
16 Tenorio **from** serving as governor as a result of being elected on November 1, 1997.
- 17 3. Whether the two-election restriction of Article III, section 4 of the N.M.I.
18 Constitution imposes a lifetime limit on the number of times Defendant Tenorio can be
19 elected governor and, if so, whether the limit is unconstitutional under the First and
20 Fourteenth Amendments to the U.S. Constitution made applicable to the N.M.I. by the
21 Covenant.
- 22 4. Whether this Court, if it should find Defendant Tenorio ineligible to serve as governor
23 in January, 1998, should declare the next **successful** candidates for governor and
24 lieutenant governor as the winning candidates under 1 CMC § 6426.

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26 The Court resolves this election contest by addressing the first two issues, and therefore does
27 not need to address the third and fourth issues.

28 ^{1/} Plaintiff Eileen **Babauta**'s request to withdraw from the case as a party-plaintiff was granted on
November 20, 1997, at the pre-trial conference. Order After Pretrial Conference, ¶ 7 (filed November
20, 1997).

1 **III. ANALYSIS**

2 **A. The Court's subject matter jurisdiction.**

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4 Under 1 CMC § 6425(c), this Court has jurisdiction to hear election contests. Section 6425(c)
5 states that “[t]he court shall hear and determine all issues arising in contested elections not involving seats
6 to the legislature, except the validity of ballots based on the manner in which they are marked.”
7 Furthermore, our Supreme Court declared that “[o]nce the complaint in an election contest has been
8 timely filed, . . . , the trial court obtains subject matter jurisdiction to resolve the matter.” Taimanao v.
9 Superior Court, 4 N.M.I. 94, 97 (1994). Therefore, the timeliness of Plaintiffs filing of the complaint
10 determines whether this Court has subject matter jurisdiction over this election contest.

11 Defendants argue that the filing of Plaintiffs complaint is untimely under 1 CMC § 6423(b), and
12 therefore this case should be dismissed. Section 6423(b) requires that “[t]he contestant shall verify the
13 statement of contest, and shall file it within seven days after the discovery of the fact supporting the
14 contest, except that no complaint may be filed over 30 days after the declaration of the official results.”
15 (emphasis added). Defendants contend that “the discovery of the fact supporting the contest” was
16 triggered when Tenorio “announced his candidacy, or at the latest when defendants were certified to
17 appear on the ballot in the general election.” Tenorio’s Motion at 5.

18 Under 1 CMC § 6421(a), “[a]ny Commonwealth voter may contest an election” if “[t]he person
19 declared elected to an office will not be eligible for that office at the beginning of its term.” (emphasis
20 added). First, 1 CMC § 6421 gives any Commonwealth voter standing to challenge an election. An
21 election must therefore occur first before an election contest complaint may be filed. Second, the
22 condition placed in Section 6421(a) that a person be “declared elected,” and Section 6423(b)’s
23 requirement of a “discovery of the fact supporting the **contest**” must be read so that they each have
24 meaning and effect. To adopt Defendants' argument that the triggering event is the date a person
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1 declares his candidacy would create an issue of ripeness.^{2/} Therefore, this Court concludes that under 1
2 CMC § 6421(a), the timeliness of the filing of the complaint is based upon the discovery that a person
3 has been "declared elected."

4 In this case, the general election was held on November 1, 1997. Plaintiff learned of Tenorio's
5 apparent election to the office of Governor on November 3, 1997, and filed this complaint on November
6 10, 1997. As of November 17, 1997, the BOE had not certified the official results of the election. Yet,
7 the parties concede that Defendants garnered the highest number of votes. At the hearing, none of the
8 parties were able to provide the Court with a definition of when a person is "declared elected as meant
9 by 1 CMC § 6421(a). In search of a definition, the Court finds 1 CMC § 6427(a) instructive. Section
10 6427(a) states that "[t]he person declared elected by the board is entitled to a certificate of election."
11 (emphasis added). Therefore, a person can be declared elected yet not certified by the BOE. Here,
12 Plaintiff claims he learned of Defendants' election on November 3, 1997, two days **after** election day.
13 This date is reasonable given the fact that Super typhoon Keith struck the Mariana Islands on November
14 2, 1997. Based on the foregoing analysis, this Court finds that this case is ripe for judicial review and
15 Plaintiffs complaint is timely. Accordingly, Defendants' motion to dismiss is hereby denied.

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17 B. Summary Judgment Standard

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19 Summary judgment is appropriate where the Court, upon viewing the facts in a light most
20 favorable to the non-moving party, finds as a matter of law that the moving party is entitled to the
21 requested relief Cabrera v. Heirs of De Castro, 1 N.M.I. 172, 176 (1990); Rios v. Marianas Pub. Land
22 Corp., 3 N.M.I. 512, 518 (1993). Summary judgment must be entered against a party who fails to make
23 a showing sufficient to establish the existence of an element essential to the party's case. Celotex v.
24 Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986).

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26 ^{2/} A ripe dispute is one which has matured sufficiently for judicial resolution. Bauer v. McCoy, 1 CR
27 248,259 (D.N.M.I. 1982). The case or controversy component requires that plaintiff be threatened with
28 immediate injury which the requested relief would redress. Id.

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1 C. Application of Article III, section 4 of the N.M.I. Constitution.

2 The threshold issue presented in this case is the application of Article III, section 4 of the N.M.I.
3 Constitution, as amended, to Defendant Tenorio as a result of the November 1, 1997, election. The
4 original text of the **term** limit provision of Article 111, section 4 reads: "No person shall be elected
5 governor more than three times." In 1985, while Defendant Tenorio was sitting as governor, the people
6 of the Commonwealth ratified Amendment 12. The pertinent language at issue is the term **limit** imposed
7 by Amendment 12 which states: "No person shall be elected governor more than twice." Based on this
8 language and considering the 1981 and 1985 elections of Defendant Tenorio to the office of Governor,
9 Plaintiff urges this Court to declare that Defendant Tenorio is ineligible to serve as governor in January,
10 1998.

11 The Court is **mindful** of the simple and plain meaning of the word "twice." The word, however,
12 is not as simple and plain as Plaintiff casually portrays. This constitutional issue warrants a more serious,
13 in depth discussion and evaluation than the simplistic and limited approach Plaintiff presents to this Court.

14 The words "three times" from the original Article 111, § 4 was amended to read "twice." An
15 "amendment" of a constitution repeals or changes some provision in, or adds something to, the
16 instrument amended. 3 WORDS AND PHRASES: Amend; Amendment 458 (1953). As applied to
17 Amendment 12, Defendant Tenorio, who was then the governor, had his "three times" term changed and
18 repealed to "twice." Was this term limit to apply to include the term he was completing in 1985 and to
19 a term in the future?

20 A basic principle of construction is that language must be given its plain meaning. Camacho v.
21 Northern Marianas Retirement Fund, 1 N.M.I. 362, 368 (1990). Because Amendment 12 does not
22 provide a clear answer to the question of when to begin counting terms, it is ambiguous. This Court must
23 therefore resort to the rule of constitutional construction of amendments. That rule has been firmly
24 established by our Supreme Court in Camacho: "[t]he presumption is that a constitutional amendment
25 is to be given only prospective application unless the intention to make it retrospective in operation
26 clearly appears from its terms." Camacho, 1 N.M.I. at 368-369. (emphasis added). This rule of law on
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1 the construction of constitutional amendments establishes a presumption of prospective application absent
2 clear terms showing an intent to operate retrospectively.

3 Plaintiff has the burden of rebutting this presumption. He must show the clear and unambiguous
4 terms in the text of Amendment 12 manifesting an intent to apply its term retrospectively. It is Plaintiffs
5 burden to provide evidence that Amendment 12 was intended to operate retrospectively.

6 The operative terms of Amendment 12 are:

7 Section 4. Joint Election of the Governor and Lieutenant Governor. The governor and lieutenant
8 governor shall be elected at large within the Commonwealth for a term of office of four years.
9 The governor and lieutenant governor shall be elected jointly with each voter casting a single vote
10 applicable to both offices. No person shall be elected governor more than twice.

11 See Sablan's Memorandum of Points and Authorities in Support of Motion for Summary Judgment (filed
12 November 17, 1997) at Exhibit F. Clearly, nothing in the terms of Amendment 12 indicates any intent
13 to make the terms retrospective in operation. This Court finds that there is no language in the text of
14 Amendment 12 indicating any intent to apply its terms retroactively.

15 Second, Plaintiff has not shown any evidence of legislative history such as journals from the
16 convention or committee reports indicating any intent by the delegates to apply Amendment 12
17 retroactively. At the hearing, Plaintiffs counsel admitted that history was against him: he cannot provide
18 the Court with any journal records or tapes of the two readings of Committee Recommendation No. 46,
19 the predecessor to Amendment 12, which indicate any intent to apply its terms retroactively. Thus,
20 Plaintiff has failed to meet his burden of proving any intent to make Amendment 12 retroactive in
21 application.

22 In support of the contrary, Defendants provided the Court with journal excerpts of various
23 convention discussions regarding other proposed amendments that contemplated retroactive effect.
24 These discussions were held after Committee Recommendation No. 46 was passed. For example, on July
25 18, 1985, on the discussion of amending Article XII, section 5 on restrictions on alienation of land,
26 Delegate Torres stated:

27 But as Delegate Villagomez and as Counsel Lizama and I'm sure Colleague Nabors had explained
28 that we cannot make laws applied retroactively, cannot.

1 Second Constitutional Convention Journal (hereafter "Journal") at 581, 31st Day, July 18, 1985. Further,
2 on July 20, 1985, the discussion of amending Article II to impose a term limit on the legislature is
3 instructive on the delegates' intent not to make the amendments retroactive:

4 DELEGATE KING: Another thing is I'm just wondering why Delegate Manglona is arguing
5 about this. I was thinking maybe because he is **afraid** of his uncle to lose his position for not to
run for the third term.

6 DELEGATE MANGLONA: This will not come into effect until after the ratifications. So **I'm**
7 not too worried about my uncle because he still has eight years, if he is concerned that I'm
worried.

8 Journal at 674, 33rd Day, July 20, 1985. This Court concludes that Plaintiff has failed to rebut the
9 presumption and, therefore, Amendment 12 applies prospectively.

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11 **D.** When did Amendment 12 take effect?

12 Defendant **Tenorio** argues that Amendment 12 became effective on January 7, 1986, when the
13 results were certified by the Board of Elections, and so Amendment 12 should not be applied to his
14 election in 1981 and 1985. See Tenorio's Motion to Dismiss Memorandum of Points and Authorities
15 at 6 (filed November 17, 1997). However, Committee Recommendation No. 46 indicates that
16 Amendment 12 took effect "upon ratification." Committee Recommendation No. 46 states:

17 Upon ratification pursuant to Section 5 of Article XVIII of the Commonwealth of the
18 Northern Mariana Islands Constitution and Public Law No. 4-30, the Constitution of the
Commonwealth of the Northern **Mariana** Islands is amended as follows:

19 I. Effective upon ratification, Section 4 of Article **III** is amended to read:

20 (emphasis added). See Sablan's Memorandum at Exhibit F.

21 Under Article XVIII, section 5(b) "an amendment proposed by constitutional convention or by
22 popular initiative shall become effective if approved by a majority of the votes cast and at least two-thirds
23 of the votes cast in each of two senatorial districts." According to the ANALYSIS, "[a] proposed
24 amendment approved by the voters takes effect immediately after the approval unless the text of the
25 amendment provides otherwise." ANALYSIS OF THE CONSTITUTION OF THE NORTHERN MARIANA ISLANDS
26 at 193 (1976). Amendment 12 expressly provides an effective date of Amendment 12: "upon
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1 ratification." Therefore, based on the foregoing, this Court concludes that pursuant to Article XVIII,
2 section 5(b), Amendment 12 took effect immediately after the necessary majority votes were cast on
3 November 3, 1985. The certification by the BOE is merely a process to validate the results of the acts
4 taken by the voters on election day.

5 In this case, Defendant Tenorio was elected governor on November 3rd, 1985. Amendment 12
6 took effect contemporaneously with Defendant Tenorio's second election. Therefore, Amendment 12
7 applies to Tenorio's 1985 election as well as his 1997 election. Amendment 12 does not apply to
8 Tenorio's 1981 election. Accordingly, under Article 111, section 4 of the Northern Mariana Islands
9 Constitution, as amended, Defendant Tenorio is eligible to serve as governor based on his 1997 election.

10 Because the Court has found Defendant Tenorio eligible to serve as governor, it does not need
11 to address the issues of the constitutionality of the two-election limit imposed by Article 111, section 4,
12 and the ascension rights of a lieutenant governor in the case that a governor-elect is found ineligible to
13 hold office.

14 15 **IV. CONCLUSIONS**

16 This Court is highly cognizant of the importance and significance of the constitutional issues
17 involved in this election contest. It is also conscious of its duty not to **redraft** the Constitution but to
18 interpret and apply the Constitution as the delegates and voters intended.

19 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECLARED THAT under
20 Article 111, section 4 of the N.M.I. Constitution, as amended, Defendant Pedro P. Tenorio is eligible to
21 serve as governor in January, 1998.

22 Based on this Court's analysis of the Constitution and Election Act^{3/} as applied to this case:

- 23 1. Defendants' motion to dismiss is hereby denied;
- 24 2. Defendants' motion for summary judgment is hereby granted; and

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26 ^{3/} It is fortunate that the statutory provisions governing an election contest require the Court and the
27 parties to resolve the dispute expeditiously. However, there are some flaws in the Election Act that the
legislature should reconsider, such as what the Court should do when a winning candidate is declared
ineligible to hold an elected office for any reason other than a conviction of a felony.

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3. Plaintiffs cross-motion for summary judgment is hereby denied.

So ORDERED this 1 day of December, 1997.


EDWARD MANIBUSAN, Associate Judge