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

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RAMONA TAISAKAN REBUENOG,
Plaintiff-Appellee,

v.

TOBIAS DELA CRUZ ALDAN and the COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ELECTION COMMISSION,
Defendants-Appellants.

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SUPREME COURT NO. 2010-SCC-0001-CIV
SUPERIOR COURT NO. 09-0463 E

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Cite as: 2010 MP 1

Decided January 29, 2010

Robert T. Torres, Saipan, Commonwealth of the Northern Mariana Islands, for Appellant.
Richard W. Pierce, Saipan, Commonwealth of the Northern Mariana Islands, for Appellee.
Michael Ernest, Assistant Attorney General, Saipan, Commonwealth of the Northern Mariana Islands, for the Commonwealth Election Commission.

BEFORE: MIGUEL DEMAPAN, Chief Justice; JOHN MANGLONA, Associate Justice; EDWARD MANIBUSAN, Justice Pro Tem.

PER CURIAM:

¶ 1   This case arises out of the Northern Islands mayoral election held on November 7, 2009. Defendant Tobias Dela Cruz Aldan ("Aldan") was declared the winner over Plaintiff Ramona Taisakan Rebuenog ("Rebuenog") by one vote. Out of 137 cast votes, Aldan received sixty-nine votes and Rebuenog received sixty-eight votes. Rebuenog challenged the election results, arguing that illegal voters had cast ballots, and that if these votes were removed there would be enough votes in her favor to declare her the winner. After subtracting votes cast by illegal voters, the trial court declared Rebuenog the election winner. Upon review, this Court finds that Rebuenog is a resident and domiciliary of the Northern Islands and she qualifies as a mayoral candidate. We further find that she has standing to bring this election contest. While we also affirm the procedures adopted by the trial court to deduct illegal votes from the election results, we hold that the trial court erred by declaring Rebuenog the election winner under 1 CMC § 6606 because the court could not determine with certainty which candidate received the most legal votes. Under this circumstance, 1 CMC § 6602(b) mandates that the election be set aside. Accordingly, we VACATE the trial court order declaring Rebuenog the election winner and order the Commonwealth Election Commission to conduct a new mayoral election as soon as possible.

I

¶ 2   On November 12, 2009, which was after Aldan was declared the winner of the Northern Islands mayoral election, Rebuenog filed a Verified Complaint for Election Contest and Special Procedure with the Commonwealth Superior Court. Therein, Rebuenog asserted that she received the largest number of legal votes cast in the November 7 election and asked the court to declare her the winner.[1] Specifically, Rebuenog claimed that approximately twenty-one voters who were ineligible to vote were nevertheless permitted by the Defendant Commonwealth Election Commission ("CEC") to cast ballots.

¶ 3   A trial on this matter was held from December 1, 2009 to December 17, 2009. The trial court faced the difficult task of determining whether illegal voters had voted in the election, and if so, how to remedy the alleged tainted election results. Rebuenog argued at trial that twenty-one voters were not residents of the Northern Islands, and therefore were illegal voters.[2] After interpreting the applicable statutory provision governing voter residency – 1 CMC § 6204 – the trial court initially determined that

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[1]   Rebuenog also asserted two related requests for relief: that any certification of election issued to Aldan be declared void, and that Aldan and the CEC be found jointly and severally liable to Rebuenog for her attorney fees, costs and expenses.

[2]   Under 1 CMC § 6601(a)(3), "illegal votes" include "any vote cast by a person who is not qualified to vote because of failure to meet age, domiciliary or residency requirements . . . ."

seventeen voters failed to meet the voter residency requirements and consequently, that their votes should not be counted.[3] Following Rebuenog's filing of a motion for reconsideration, the trial court changed its tally and held that Jesus Igisomar Wabol was not qualified to vote, thus bringing the total number of illegal voters to eighteen. Out of the eighteen ineligible voters, the trial court subtracted seven votes from Aldan's total and four votes from Rebuenog's total. As a result the trial court declared Rebuenog the winner, with the final vote tally of sixty-four votes for Rebuenog and sixty-two votes for Aldan.

¶ 4   The procedures that the trial court adopted to reach this result are contested on appeal, and we find it necessary to examine them in greater depth. Broadly speaking, the process can be broken down into four steps. First, the trial court determined whether a voter was an illegal voter – that is, whether the voter was not a Northern Islands resident under 1 CMC § 6204. Second, each voter was asked to disclose who he or she voted for in the election. Third, the trial court allowed each party to challenge the testimony of each voter if the party contested the voter's credibility. Fourth, if the trial court deemed the witness credible, one vote was subtracted from the candidate that the voter said he or she voted for in the election. If the voter was found not credible, no vote was subtracted from either candidate.

¶ 5   As explained above, first the trial court applied 1 CMC § 6204 to determine the number of illegal voters. After making this determination, the trial court next attempted to ascertain who each illegal voter had voted for in the mayoral election. The trial court determined that this step was an "indispensible requirement under the election contest rules" and necessary to determine whether the illegal voters affected the election's outcome. *Rebuenog v. Commonwealth Election Comm'n*, Civ. No. 09-0463E (NMI Super. Ct. Dec. 30, 2009) (Final Order Declaring Plaintiff Ramona T. Rebuenog Mayor of the Northern Islands at 5) ("Final Order"). Specifically, the court cited 1 CMC § 6602(b), which states that "[a]n election may not be set aside on account of illegal votes cast" unless "the number of votes given to the person enabled him or her to win or to tie the election and, if the illegal votes were taken from him, would reduce his legal votes so that he would have less votes than necessary to win or tie the election."

¶ 6   The procedure used to determine who each voter had voted for varied throughout trial. The first witness, after testifying about his residency, was asked in open court to disclose his vote. Final Order at 5. Following an objection by the CEC, a new procedure was adopted whereby, following disqualification, the witness marked down his or her vote in their respective Voter Affidavit Exhibit. This process was carried out for eight witnesses. *Id.* The trial court then changed this procedure and returned to the practice of having each witness state in open court his or her vote. *Id.* at 5-6. The trial court, citing Commonwealth

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[3]   These seventeen illegal voters were: Angelica Dela Cruz Aldan, Martin Palacios Ayuyu Jr., Alvin Kaipat Buekis, Isabel Kaipat Davis, Barcelisa Anastasia Saures Inos, Francisco Litulumar Kaipat Jr., Jacinta Ayuyu Kaipat, Natividad Carmen Romolor Litulumar, Rita Rafaela Satur Romolor, Linda Cruz Santos, Menjor Kaipat, Merced Litulumar, Clotilde Kaipat Aldan, Cabrini Celina Somol Hambros, Alfred Michael Kileleman, Santiago Litulumar Saures, and Juan Iguel.

precedent, found that disqualified voters had no right to a secret ballot, and thus determined that this process was permissible. *Id.* at 6.

¶ 7   Once a disqualified voter disclosed his or her vote, the trial court assessed witness credibility. This was accomplished by giving each party the opportunity to examine each voter to determine whether each voter's statement concerning who he or she voted for in the election was credible.[4] Significantly, only if the trial court found the witness to be credible was his or her vote removed from the appropriate candidate's vote total. If the witness was found not credible, no vote was removed.

¶ 8   Of the seventeen individuals initially declared illegal voters, neither party challenged the credibility of eight of these voters – six who testified that they voted for Aldan[5] and two who testified that they voted for Rebuenog.[6] These eight votes were stricken from the vote totals of the respective mayoral candidates. This left the trial court with determining the fate of the votes cast by the nine remaining illegal voters.

¶ 9   Rebuenog challenged the credibility of four disqualified voters – Francisco Litulumar Kaipat Jr., Rita Rafaela Satur Romolor, Jacinta Ayuyu Kaipat, and Linda Cruz Santos. Each stated that he or she voted for Rebuenog, but Rebuenog argued that the testimony was not credible and that these votes should not be subtracted from her vote total. The court found that two of the four voters, Francisco Litulumar Kaipat Jr. and Rita Rafaela Satur Romolor, were credible witnesses, and therefore subtracted their votes from Rebuenog's vote total. The court found that the other two voters, Jacinta Ayuyu Kaipat and Linda Cruz Santos, were not credible witnesses, and therefore did not subtract their votes from either candidate's vote total.

¶ 10   Aldan challenged the credibility of four voters who each claimed to have voted for him. These voters were Celina Taisakan Somol Hambros, Santiago Litulumar Saures, Alfred Michael Kileleman, and Juan Iguel. The trial court concluded that Celina Hambros, Santiago Saures, and Juan Iguel were not credible witnesses. Accordingly, their votes were not subtracted from the election totals. The trial court concluded that Alfred Kileleman was a credible witness, and therefore subtracted his vote from Aldan's vote total.

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[4]   We note that this procedure varied somewhat throughout trial. For example, after Jacinta Ayuyu Kaipat testified that she voted for Rebuenog, no additional testimony was offered. However, both attorneys were asked whether they had any additional questions. Excerpts of Record ("ER") at 356.

[5]   Angelica Dela Cruz Aldan, Martin Palacios Ayuyu Jr., Isabel Kaipat Davis, Natividad Carmen Romolor Litulumar, Menjor Kaipat and Clotilde Kaipat Aldan.

[6]   Barcelisa Anastasia Saures Inos and Merced Litulumar.

¶ 11   Finally, Alvin Kaipat Buekis was disqualified as an illegal voter. However, he testified that he could not remember who he voted for in the mayoral election, and so the trial court was unable to make a credibility determination or deduct a vote from either candidate.

¶ 12   On December 15, 2009, Rebuenog filed a Motion for Reconsideration of Certain Voters. While the trial court had initially ruled that Jesus Igisomar Wabol was a qualified voter, it noted that this decision was based on "its mistaken view that he had a fixed habitation in the Northern Islands." Final Order at 12. The court granted Rebuenog's motion and ruled that Jesus Wabol was an illegal voter, thus bringing the number of illegal voters to eighteen. However, the court ended its inquiry there, stating that it "does not need to make a determination as to who Mr. Wabol voted for in the [election] because his vote would not affect the outcome of said election contest." *Id.* at 13. As noted above, the trial court ultimately declared Rebuenog the election winner by a vote of sixty-four to sixty-two. Accordingly, the court ordered that "any certification of election issued to Defendant Aldan be declared void, and that the Defendant CEC issue a certification of election to Plaintiff Rebuenog" pursuant to 1 CMC § 6606. *Id.* at 18.

¶ 13   In addition to Aldan's challenges to the trial court procedures, he also argues on appeal that Rebuenog herself was not a resident of the Northern Islands, and therefore was not a qualified voter, not qualified to run for mayor, and lacked standing to challenge the election results. The trial court determined that Rebuenog was a qualified voter in the Northern Islands election. The trial court also ruled that Rebuenog was a qualified mayoral candidate, finding that she met the residency and domicile requirements established in Article VI, Section 2(a) of the NMI Constitution and in 1 CMC § 6305.

¶ 14   We now consider this matter following Aldan's timely appeal.[7]

II

¶ 15   We first address the issues of whether Rebuenog is a qualified voter and a qualified mayoral candidate. These determinations rest primarily on whether Rebuenog is a resident and domiciliary of the Northern Islands. A residency determination is a mixed question of law and fact. *See, e.g.*, *Butler v.*

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[7]   As a preliminary matter, we note the unusual procedural history in this case. Specifically, so that this Court could fully resolve this appeal, following oral argument we ordered the trial court to determine whether Rebuenog was a qualified mayoral candidate. *Rebuenog v. Aldan*, No. 2010-SCC-0001-CIV (NMI Sup. Ct. Jan. 19, 2010). This Court recognizes that 1 CMC § 6609 establishes deadlines for election contest appeals, including that oral argument must be heard within twenty days of entry of the trial court's judgment, and that this Court's judgment must be entered within thirty days of the trial court's judgment.

In *Reyes v. Reyes*, 2004 MP 1 ¶ 86-103, we held that a statute directing the CNMI judiciary to issue all opinions within one year violated the separation of powers doctrine and was unconstitutional. We have doubts about the constitutionality of provisions such as 1 CMC § 6609, and draw the legislature's attention to the constitutional implications attending attempts to statutorily require this Court to issue decisions within prescribed time limits.

We recognize the urgency in issuing decisions in election contests and will not examine the constitutionality of 1 CMC § 6609 at this time. However, we may address this issue in another case after we give the parties an opportunity to brief this issue.

Butler, 641 So. 2d 272, 273 (Ala. Civ. App. 1993); *Quinn v. Nevills*, 93 P. 1055, 1056 (Cal. Ct. App. 1907). As is a domicile determination. *See, e.g.*, *Noble v. Franchise Tax Bd.*, 118 Cal. App. 4th 560, 567 (2004); *Dozier v. Baker*, 661 S.E.2d 543, 544 (Ga. 2008). Thus, the inlaid questions of law – in this case, questions of constitutional and statutory interpretation – are subject to de novo review, and the trial court's findings of fact are reviewed under the clearly erroneous standard. *See Islam v. Islam*, 2009 MP 17 ¶ 7 (Slip Opinion, Dec. 22, 2009) (internal citations omitted). Applying these standards of review, we conclude that the trial court properly applied Commonwealth election law, and that its factual findings appurtenant to its legal conclusions – that Rebuenog is a qualified voter and mayoral candidate – are not clearly erroneous.

A. Rebuenog is a Northern Islands Resident and Qualified Voter

¶ 16   Aldan argues that Rebuenog is not a Northern Islands resident and that the trial court therefore erred in ruling that she was a qualified voter in the Northern Islands and had standing to raise an election contest under 1 CMC § 6601. While Aldan admits that Rebuenog has some "connection" to the Northern Islands, he cites facts, adduced during Rebuenog's trial testimony, that he feels show that she is not a Northern Islands resident for voting purposes. For example, that after coming to Saipan to care for her sick son-in-law, she did not return to Anatahan after he died. Also, that there is no school-related rationale for her staying on Saipan, as her children have all completed high school. She has additionally procured a homestead in Kagman. Also, while all parties agree that Anatahan has been declared uninhabitable since May 2003 following a volcano eruption, Aldan argues that since the Northern Islands is made up of multiple islands, Rebuenog could have chosen to live on another one of these islands in order to remain a Northern Islands resident.

¶ 17   Rebuenog responds that the record is replete with evidence establishing her Northern Islands residency. She cites her long-standing ties to Anatahan: that she was born and raised there, and that she stayed with her parents on Anatahan during the summer in the 1970s and 1980s. She also notes that she built a house in Anatahan in the late 1980s, subsequently became a registered voter, and has been voting in the Northern Islands district for twenty years without challenge. More recently, while she left Anatahan in 2001 to care for her sick son-in-law, Rebuenog testified that by the time he passed away in November 2003, the Anatahan volcano had already erupted and she was thus unable to return to her now ash-covered house. On the homestead matter, Rebuenog contends that if Anatahan is declared habitable, she intends to give her Saipan homestead to her children and return to Anatahan.

¶ 18   Under 1 CMC § 6201(f), "[n]o person shall register or vote in any other precinct than that in which the person resides." Residency requirements are established in 1 CMC § 6204, which states that "[t]he residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has the intention to return." *Id.* § 6204(a). Moreover, a "person does not

gain residence in any precinct into which the person comes without the present intention of establishing the person's permanent dwelling place within such precinct." *Id.* § 6204(b).

¶ 19   The trial court found that Rebuenog was a resident of the Northern Islands as defined in 1 CMC § 6204. To support this conclusion the court reasoned that Rebuenog "voted in the Northern Island district in every election for twenty (20) years without challenge," that she "has a home in Anatahan," and that "she intends to return to Anatahan when it is open since it is her home." Final Order at 15. The court found that "Plaintiff came to Saipan due to medical reasons, remained on Saipan because of her children's education, and has consistently voted in the Northern Islands since 1989." *Id.* Significantly, the court found that "Plaintiff returned to the Northern Islands on several occasions," and that "Plaintiff has the *present intent* to return to the Northern Islands now that her children are done with school and also *has a fixed habitation* on the Northern Islands." *Id.* at 16 (emphasis added). Accordingly, the trial court found that Rebuenog was a qualified voter and thus had standing under 1 CMC § 6603 to challenge the election results.

¶ 20   As previously stated, a trial court's residency determination is a mixed question of law and fact; however, the trial court findings of fact associated with this determination can only be set aside if such findings are clearly erroneous. *Islam*, 2009 MP 17 ¶ 7. A finding is clearly erroneous when, "even though some evidence supports it, the entire record produced the definite and firm conviction that the court below committed a mistake . . . . The test is whether the trial court could rationally have found as it did, rather than whether the reviewing court would have ruled differently." *In re Estate of Young Kyun Kim*, 2001 MP 22 ¶ 9 (citing *Rogolofoi v. Guerrero*, 2 NMI 468, 476 (1992)).

¶ 21   The trial record supports the lower court's factual findings. For example, Rebuenog's testimony provided ample support for the court's finding that she had voted in the Northern Islands for 20 years[8] and that she came to Saipan for her children's education.[9] One potentially confusing part of the trial court's findings is its statement that Rebuenog "came to Saipan for medical reasons." Final Order at 15. Why

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[8]   The following exchange occurred concerning Rebuenog's voting history:

Q: And when you came back you registered to vote for the Northern Island correct?
A: Yes.
Q: And that was in 1989 I'll show [sic] exhibit to help you [sic] is possible in 1989?
A: Yes.
Q: Now, ever since then you always voted in the Northern Islands district.
A: Yes.
Q: Every election.
A: Yes.
Q: Have you ever been challenged?
A: No.

ER at 515.

[9]   Rebuenog testified that her children were educated in Saipan. ER at 439-40.

Rebuenog first came to Saipan in the 1970s is not entirely clear from the record. However, she did testify that she left Anatahan in 2001 to come to Saipan to care for her sick son-in-law. These findings were integral to the trial court's finding that "Plaintiff has the *present intent* to return to the Northern Islands." *Id*. at 16.

¶ 22 A residency determination is tied in large part to the intent of the individual to return to their place of habitation whenever they are absent. *See* 1 CMC § 6204(a). Intent is a question of fact. *See Yang v. Angel Enter. Inc.*, 2000 MP 6 ¶ 27 ("ratification requires intent to ratify" and "is a question of fact"); *see also Clement v. Daniels*, 235 S.W.3d 521, 524 (Ark. 2006) ("[I]ntention is a question of fact, and in election contests, the findings of the trial judge on factual questions have the force and effect of a jury verdict."). While it is undisputed that Rebuenog spent considerable time on Saipan over a forty year period, the trial court found that the time Rebuenog spent on Anatahan combined with her trial testimony supported a finding that she intended to return to the Northern Islands. The trial court properly applied Commonwealth election law – specifically, 1 CMC § 6204 – and determined that Rebuenog was a Northern Mariana Islands resident. This Court finds that there is sufficient evidence for the court to have "rationally have found as it did," and thus we cannot say as a matter of law that the trial court's conclusion is clearly erroneous. Accordingly, we affirm the trial court's finding that Rebuenog is a Northern Mariana Island resident and is therefore qualified to bring an election contest under 1 CMC § 6601.

B. Rebuenog is a Qualified Mayoral Candidate

¶ 23 Aldan contends that Rebuenog is not a qualified candidate under the Commonwealth Constitution[10] and 1 CMC § 6305. Section 6305 states that:

> A candidate for mayor shall be qualified to vote in the Commonwealth and on the island or islands served by the mayor, at least twenty-five (25) years of age, a *resident and a domiciliary* of the island or islands served by the mayor for at least three years immediately preceding the date on which the mayor takes office, and must reside in the island or islands served by the mayor after each election. No person convicted of a felony in the Commonwealth or in any area under the jurisdiction of the United States may be eligible for these offices unless a full pardon has been granted.

(emphasis added). The trial court determined that Rebuenog met the resident and domiciliary requirements stated in the Commonwealth Constitution and 1 CMC § 6305, and ruled that Rebuenog was

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[10] "A mayor shall be qualified to vote in the island or islands served by the mayor, at least twenty-five years of age, a resident and domiciliary of the island or islands served by the mayor for at least three years immediately preceding the date on which the mayor take office, and must reside in the island or islands served by the mayor after each election, and shall meet other qualifications provided by law. No person convicted of a felony in the Commonwealth or in an area under the jurisdiction of the United States may be eligible for this office unless a full pardon has been granted." NMI Const. Art. VI, § 2(a).

a qualified candidate for Northern Islands mayor.[11] In response to the trial court's order, Aldan argues that even if Rebuenog qualifies as a voter, "she fails to meet the three year residency and domicile requirement" of Article VI, section 2(a) of the Commonwealth Constitution. Appellant's Br. at 17.

¶ 24   The cornerstone of Aldan's argument is that the constitutional and statutory language at issue is clear and unambiguous and thus, the commonly understood meaning of these terms must be applied. The language in question requires that "every mayoral candidate be a resident and domiciliary of the island or islands served by the mayor for at least three years immediately preceding the date on which the mayor takes office." NMI Const. Art. VI, § 2(a). Aldan argues that the "constitutional mandate is thus plain, clear and unambiguous," and cites a series of Commonwealth cases standing for the proposition that unambiguous constitutional or statutory language must be given its plain meaning. *See, e.g.*, *United States v. Borja*, 2003 MP 8 ¶ 9 (stating that the Court applies "plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended"). While this Court agrees that the Constitution unambiguously declares that a candidate must be a resident and domiciliary for three years, the terms "resident" and "domiciliary" are legal terms of art – subject to interpretation – and, as discussed below, are far from unambiguous.

¶ 25   The unclear meaning of these terms is grounded in the enactment of the CNMI Constitution itself, as the terms "resident" and "domiciliary" were intentionally left undefined. This fact is unmistakably conveyed in the Report of the Committee on Personal Rights and Natural Resources to the Constitution Convention, which stated: "The Committee's recommended provision includes requirements for domicile and residence, as explained above, but does not define either of these terms. The Committee believes that it is appropriate to leave these definitions to the Legislature because the criteria for determining domicile and residence may change over time." 2 Journal of the Northern Mariana Islands Constitution Convention of 1976 at 457 (1976). Committee reports are a highly authoritative source for determining legislative, or in this case constitutional, intent. *See, e.g.*, *Garcia v. United States*, 469 U.S. 70, 76 (1984). Thus, because the meaning of these terms was entrusted to the legislature, and neither term is defined in either the

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[11]   In its Final Order dated December 30, 2009, the trial court ruled that Aldan did not challenge Rebuenog's qualifications properly, and therefore found that it did not need to address the matter. Following oral argument on January 19, 2010, this Court issued an Order stating that pursuant to 1 CMC § 6605(c), when deciding the election contest the trial court was required to determine whether Rebuenog was a qualified mayoral candidate. *Rebuenog v. Aldan*, No. 2010-SCC-0001-CIV (NMI Sup. Ct. Jan. 19, 2010) (Order at 2). This Court reasoned that 1 CMC §§ 6601 and 6603(a) – relied on by the trial court – were inapplicable because Aldan was not a voter attempting to contest an election, but instead a defendant in an election contest. *Id.* at 4. The trial court subsequently ruled that Rebuenog was a qualified candidate. *Rebuenog v. Commonwealth Election Comm'n*, Civ. No. 09-0463E (NMI Super. Ct., Jan. 22, 2010) (Final Order Declaring Plaintiff Ramona T. Rebuenog Qualified Mayoral Candidate of the Northern Islands).

Constitution or the parallel statutory provision – 1 CMC § 6305 – we must examine the Northern Marianas Islands Election Law to determine the meaning of these terms.[12]

¶ 26   We look first to the statutorily-provided definition of domicile and residence.[13] "Domicile" is defined in 1 CMC § 6003(i) as "that place in which a person maintains a residence with the intention of continuing that residence for an unlimited or indefinite period, and to which that person has the intention of returning whenever absent, even for an extended period." Residence is defined in 1 CMC § 6603(r) as:

> That place in which a person's habitation is fixed, and to which, whenever a person is absent, the person has the intention to return; however, a person who is temporarily out of the Commonwealth or the election district for reasons of business, education, government representation, military service, medical referral, medical reasons, natural disaster, or environmental conditions, or employment by the Commonwealth, even for an extended period shall be considered a resident of the Commonwealth and the election district if during that period, he maintains a domicile in the Commonwealth and election district.

Unfortunately, examining these two provisions exposes their limited utility. Specifically, 1 CMC § 6603(i) defines domicile as "that place in which a person maintains a residence with the intention of continuing that residence," while 1 CMC § 6603(r) states that a party shall be considered a "resident of the Commonwealth and the election district if . . . he maintains a domicile in the Commonwealth and the election district." In other words, domicile is defined in terms of residence, and residence is defined in terms of domicile. The circular result created by the definitions in § 6603(i) and (r) sheds little light on the meaning of resident and domiciliary.[14]

¶ 27   Left with this unclear path for determining the intended meanings of residence and domicile, we follow the established canon of construction that when a term cannot be discerned from a particular clause, we look to usage of the term in other parts of the same statute.[15] Thus, to inform our analysis of

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[12]   Our interpretation of this Committee report is consistent with the superior court's treatment of this issue over fifteen years ago. *See Ruben v. Ogumoro*, Civ. 94-14 (NMI Super. Ct. 1994) (Opinion at 10).

[13]   While this Court has already concluded that Rebuenog is a Northern Island resident, we examine residency statutes to the extent necessary to help determine the intended meaning of "domiciliary."

[14]   The terms "residency" and "residence" are used interchangeably in Commonwealth election statutes, and thus attributing a different meaning to each of these usages is not an effective way to differentiate between the definitions provided in these subsections. *See* 1 CMC § 6204 ("For the purposes of this part, there can be only one residence for an individual, but in determining residency, a person may treat oneself separate from the person's spouse.")

[15]   "To discover the true construction of any particular clause of a statute, the first thing to be attended to, no doubt, is the actual language of the clause itself, as introduced by the preamble; second, the words or expressions which obviously are by design omitted; third, the connection of the clause with other clauses in the same statute, and the conclusions which on comparison with other clauses, may reasonably and obviously be drawn." *People v. Patterson*, 410 N.W.2d 733, 744 (Mich. 1987) (citing 2A Sands, Sutherland Statutory Construction § 46.05 (4th ed. 1985).

the meaning of domiciliary (and residence) we look to other sections in the Northern Mariana Islands Election Law containing these terms.

¶ 28   While the definition of domicile given in 1 CMC § 6603(i) offers some insight into how the legislature envisioned this term, other provisions are instructive. Section 6202 establishes five requirements to consider when determining one's domicile.[16] Aldan argues that the three-year domiciliary requirement "as written would undoubtedly require any candidate for Northern Islands Mayor to have been physically living on the Northern Islands for the three years prior to the November 2009 election." Appellant's Supp. Br. at 7. The Commonwealth Constitution and the Northern Mariana Islands Election Law do not support this position. Nowhere in this statute (or any Commonwealth election statute for that matter) is permanent physical presence required. Instead, 1 CMC § 6202 stresses that a person's domicile is the place "where the person resides when not called elsewhere to work or for other temporary purposes," and that the intent of the party to acquire a new domicile is a critical factor in a domicile determination. Moreover, while Aldan argues that Rebuenog has been on Saipan for too long for her absence from the Northern Islands to be considered "temporary," the domicile statutes themselves state otherwise. As correctly stated by the trial court, a court "must apply the definition of 1 CMC § 6003 in conjunction with the factors set forth in 1 CMC § 6202." Final Order Declaring Plaintiff Rebuenog Qualified Mayoral Candidate of the Northern Islands at 3. Significantly, Section 6003(i) explicitly states that an individual can be away from a place "even for an extended period" and still remain a domiciliary of that place. 1 CMC § 6003(i). Thus, we find that extended absences do not automatically change one's domicile.

¶ 29   In reaching its conclusion that Rebuenog was a qualified mayoral candidate, the trial court cited the constitutional and statutory authorities governing mayoral qualifications, then determined whether Rebuenog met the resident and domiciliary requirements by applying the requirements in 1 CMC § 6202 in conjunction with the definition given in 1 CMC § 6003(i). This is the proper procedure to apply, and even under the de novo standard of review required for matters of constitutional and statutory construction, we find no error in the trial court's methods.

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[16]   1 CMC § 6202 reads:

A person's domicile shall be determined in accordance with the following:
   (a) Each person has a domicile;
   (b) Each person has only one domicile;
   (c) A person's domicile is the place where the person resides when not called elsewhere to work or for other temporary purposes;
   (d) A person cannot lose a domicile until he or she acquires a new domicile; and
   (e) A person's domicile may be changed by joinder of acts and intent.

¶ 30   Accordingly, the only remaining issue is whether the trial court's factual findings concerning domicile were clearly erroneous. We find that they were not. The trial court examined each requirement of 1 CMC § 6202, and we find that the court had a rational basis for reaching each conclusion. It attached considerable weight to Rebuenog's testimony concerning her intent to return to the Northern Islands. Specifically, the court stated that it "finds [Rebuenog's] testimony to be consistent and emphatic regarding her intent to return back to the Northern Islands. *Id.* at 5. Applying § 6202(b) and (e), the court found that Rebuenog began life as a domiciliary of the Northern Islands, and remained a domiciliary of the Northern Islands because she "never desired to remain in Saipan." *Id.* at 6. Applying § 6202(d), the court found that even though Rebuenog "is physically located in Saipan, her domicile has not changed" because "she has never disclaimed her domicile in the Northern Islands nor her intent to return to the Northern Islands" and that she has "stated time and time again that she would move back to the Northern Islands as soon as the CNMI would allow her to do so." *Id.* Facts sufficient to permit the trial court to rationally reach these conclusions have been discussed previously, and need not be repeated here. *See supra* ¶ 21-22.

¶ 31   While the Commonwealth Constitution and the Northern Mariana Islands Election Law require that a mayoral candidate be a resident and domiciliary of the island or islands served by the mayor, nowhere in these authorities does it state that three years of continuous physical presence is required. Instead, the resident and domicile definitions provided by the legislature focus mainly on the intent of the party, and where a person resides when not called elsewhere for other temporary purposes, even when these callings are for an extended period of time. We hold that the trial court properly interpreted the mayor qualification requirements and that there were sufficient facts to support the trial court's conclusion that Rebuenog is a qualified mayoral candidate.

III

¶ 32   Having established that Rebuenog is a qualified voter and mayoral candidate, we now consider whether the procedures adopted by the trial court for removing illegal votes from the mayoral election and declaring Rebuenog the election winner violated Commonwealth election law. Since this question rests primarily on the proper interpretation of 1 CMC §§ 6602(b) and 6606, the trial court's decision is subject to de novo review. *Nansay Micronesia Corp. v. Govendo*, 3 NMI 12, 16 (1992). To the extent that review of trial court credibility determinations is necessary to resolve this matter, such determinations are considered findings of fact and are subject to a "clearly erroneous" standard of review. *See Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 688 (1989) ("[C]redibility determinations are reviewed under the clearly-erroneous standard because the trier of fact has had the opportunity to observe the demeanor of the witnesses.") (citations and quotations omitted); *see also*, *Commonwealth v. Seman*, 2001 MP 20 ¶ 10

("Questions of credibility are for the trier of fact to decide and are generally immune from appellate review.").

¶ 33   Aldan challenges the procedures that the trial court used to determine the election outcome. His main arguments are that the trial court failed to make proper credibility determinations for all challenged voters, subtract from the election all votes made by illegal voters, provide a final tally of discredited votes,[17] and declare a winner with mathematical certainty. Rebuenog responds that the trial court properly deducted illegal votes when it could determine who the illegal voters had voted for in the election and that there were insufficient remaining illegal votes to change the election outcome. For the reasons set forth below, we find the trial court adopted proper procedures for determining how illegal votes were cast, but hold that the trial court's certification order declaring Rebuenog the winner was unlawful because the trial court could not be certain which candidate received the most legal votes. In reaching our decision we first examine the election procedures required under the Northern Mariana Islands Election Law. We then determine whether the trial court complied with these requirements. Finally we determine the proper election outcome under the trial court's factual findings.

A.   Northern Mariana Islands Election Law Provides Two Election Contest Remedies

¶ 34   The election contest giving rise to this appeal presumably arises from a challenge to the election results brought under 1 CMC § 6601(a)(3),[18] which states that a Commonwealth voter may contest an election if "[i]llegal votes cast were sufficient to change the result of the election of any person who has been declared elected." "Illegal votes" are any votes "cast by a person who is not qualified to vote because of failure to meet age, domiciliary or residency requirements . . . ." 1 CMC § 6601(a)(3). The legislature has provided two remedies for a cause of action brought pursuant to 1 CMC § 6601(a)(3). One remedy permits the court to declare an election winner "[i]f it is adjudged that a person other than the defendant has the largest number of legal votes cast in any election contest . . . ." *Id.* § 6606. A second remedy is provided in 1 CMC § 6602(b), which states that:

> An election may not be set aside on account of illegal votes cast, unless the number of votes given to the person enabled him to win or tie the election and, if the illegal votes were taken from him, would reduce his legal votes so that he would have less votes than necessary to win or tie the election.

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[17]   Because page twelve of the trial court's Final Order sets forth the trial court's credibility determinations for all 17 voters, presumably Aldan is arguing that a credibility determination was needed for Jesus Wabol.

[18]   The need for this assumption is compounded by the fact that in her Verified Complaint, Rebuenog did not assert the specific statutory provision that formed the basis for her cause of action. Specifically, she stated that this "proceeding is a challenge under 1 CMC §§ 6601 et seq." ER at 1. However, we are not asked to determine whether this satisfies notice pleading requirements.

This Court's disposition of this case is grounded in large part in our interpretation of these two statutorily-provided remedies.

¶ 35   In interpreting these two remedy provisions we are guided by the "established canon of construction that all parts of an enactment should be harmonized with each other as well as with the general intent of the whole enactment, and meaning and effect given to all provisions." *Carrols Dev. Corp. v. Ross*, 85 A.D.2d 104, 108 (N.Y. App. Div. 1982) (citation omitted); *see also*, *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 834 (9th Cir. 1996) ("We have long followed the principle that statutes should not be construed to make surplusage of any provision.") (quotations omitted). Thus, "[p]art of the task of statutory interpretation is to seek to interpret the statute in a way that includes every word and clause." *Hennepin County Med. Ctr. v. Shalala*, 81 F.3d 743, 748 (1996).[19] Mindful of these principles we examine 1 CMC §§ 6602(b) and 6606 and the remedies provided therein.

¶ 36   Under 1 CMC § 6606 a court may declare an election winner if "it is *adjudged* that a person other than the defendant has the largest number of *legal votes* cast in any election." 1 CMC § 6606 (emphasis added). Since all votes are either legal or illegal, to make the determination required by § 6606, illegal votes must be separated from total votes in order to determine the total number of legal votes. Unfortunately, the word "adjudged" is not defined in the statute, and Commonwealth election law gives no indication of how a court should determine who has the largest number of legal votes. However, the fact that the relevant figure under § 6606 is total *legal* votes presupposes that the trial court has first determined the number of illegal votes cast in the election. Indeed, it would be impossible to determine the number of legal votes without first identifying the number of illegal votes. Accordingly, to determine the proper election remedy, the first step is for the trial court to determine the number of illegal voters and corresponding number of illegal votes.

¶ 37   Once this first step is completed, the second step under § 6606 is to determine whether a candidate other than the defendant has the largest number of legal votes. While the method for determining how to separate legal votes from illegal votes is discussed in section III(B), *infra*, significant at this juncture is the existence of a concrete remedy: under § 6606 a winner must be declared if he or she has the largest number of *legal* votes cast. However, a party can only be declared to have the largest number of legal votes if – after the trial court has determined the number of illegal votes and attempted to attribute them – the margin of victory[20] is greater than the number of unattributed illegal votes. If illegal

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[19]   Given our complimentary reading of these two provisions, our interpretation conforms to this Court's well-established practice of strictly construing election statutes. *Mundo v. Commonwealth Superior Court*, 4 NMI 392, 395 (1996).

[20]   The "margin of victory" refers to the difference between the number of legal votes received by the winning candidate and the losing candidate. Accordingly, in election contests involving illegal votes, there are two margins of victory: the original margin of victory as determined by the CEC, and a second margin of victory, as determined

votes remain included in the vote total, and the illegal votes exceed margin of victory, then it is impossible to know with certainty who received the largest number of legal votes.[21] Accordingly, if the margin of victory is greater than the number of illegal votes a winner can be declared; however, if this requirement is not met, § 6606 cannot by applied to produce an election winner.

¶ 38   Fortunately, by enacting 1 CMC § 6602(b), the legislature provided a separate remedy for situations where § 6606 is incapable of rendering the election outcome.[22] While § 6602(b) – phrased in the negative – can be somewhat awkward, its meaning is clear when examined clause by clause, using the information obtained from applying § 6606; namely, the number of legal votes each candidate received and the number of illegal votes that cannot be subtracted from either candidate. As noted above, 1 CMC § 6602(b) reads:

> An election may not be set aside on account of illegal votes cast, unless the number of votes given to the person enabled him to win or tie the election and, if the illegal votes were taken from him, would reduce his legal votes so that he would have less votes than necessary to win or tie the election.

Although this provision is phrased in the negative, it makes clear that an election may be set aside on account of illegal votes cast if the illegal votes, if taken from the original election winner, would cause that person to either lose the election or be tied.

¶ 39   Accordingly, two conditions must be satisfied before a court can apply § 6602(b). First, the court must know the number of illegal votes; and second, illegal votes must somehow be subtracted from the total votes. That these are *precisely* the two determinations required to apply § 6606 supports this Court's conclusion that § 6602(b) was intended by the legislature to be read in conjunction with § 6606. As prescribed in the statute, the third step the trial court must follow – after determining the number of illegal voters and subtracting illegal votes from each candidate's total votes – is that if relief cannot be granted under § 6606, the number of illegal votes that cannot be attributed to either candidate must be subtracted

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by the trial court during its § 6606 analysis. In the present case, the CEC declared Aldan the election winner by one vote; thus, the original margin of victory was one vote. The trial court declared Rebuenog the winner by two votes; thus, the new margin of victory is two votes.

[21]   A simple example illustrates this fact. Suppose an election contest in which candidate A received 100 legal votes and candidate B received ninety-five legal votes. The resulting margin of victory is five votes. If there are fifteen illegal votes that cannot be attributed to either candidate, then it is impossible to know with certainty which candidate received the most legal votes. Candidate A may have received as few as eighty-five legal votes (thus losing the election).

[22]   Of course, the logical corollary to this statement is that when a winner can be declared under § 6606, a court will never grant relief under § 6602(b). Indeed, this is consistent with the text of § 6606 itself, which states that when the conditions therein are satisfied, "the court *shall* declare [the winner]." 1 CMC § 6606 (emphasis added).

from the original winner's legal votes.[23] If this changes the outcome of the election, a new election is required. Stated differently, if the new margin of victory is less than or equal to the number of illegal votes that cannot be attributed to either candidate, the election must be set aside and a new election ordered.

¶ 40   This is not only the most logical way for 1 CMC §§ 6602(b) and 6606 to co-exist, but taken together they provide a remedy for any election contest. To summarize, a court faced with a challenge on the basis of illegal votes faces a four-step process. First, the trial court must determine the number of illegal voters. Second, the court must subtract from each candidate illegal votes that the court can attribute as being cast for a specific candidate. This is the only way to determine whether relief can be granted under § 6606; that is, to determine whether one candidate received more legal votes. Third, if the number of unattributed illegal votes – votes that cannot be subtracted from either candidate – is less than the new margin of victory, a winner must be declared under § 6606. Forth, if the number of unattributed illegal votes is greater than or equal to the new margin of victory, then there is no way to know who received more legal votes, and under § 6602(b) a new election must be ordered.[24]

¶ 41   In the instant case, the trial court correctly followed the first step required under § 6606 by determining the number of illegal voters who had voted in the election. It ruled that there were eighteen illegal voters. This determination is not contested on appeal, and we will not disturb it. Accordingly, in accordance with the procedure required under § 6606, we must next examine the trial court's procedure for separating illegal votes from legal votes and subtracting illegal votes from the candidates who received those votes.

B.   The Trial Court's Method of Deducting Illegal Votes Was Proper

¶ 42   After the trial court determined the number of illegal voters who had voted in the election, it had to determine how to treat these votes. It explained that it "had to decide how the vote would affect the overall election contest. In other words, the Court had to determine whether the illegal voters' testimony was credible, and if so, their vote would be stricken from the Northern Islands Mayoral Election Contest." Final Order at 7. The trial court determined that "the best way to do this would be to give each party the

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[23]   To reiterate, this number of legal votes would equal the initial vote total ("votes" – to use the language in the statute), minus the number of illegal votes that were subtracted from the winning candidate. Unattributed illegal votes are those votes for which the trial court cannot determine who the voter voted for in the election and thus the votes cannot be subtracted from either candidate. Under § 6602(b), these illegal votes must be subtracted from the original winner's legal votes.

[24]   In an election with only two candidates, if the number of unattributed illegal votes is greater than or equal to the margin of victory, and under § 6602(b) these illegal votes must be subtracted from the original election winner's legal vote total, once the remaining illegal votes are subtracted the outcome of the election will always change.

opportunity to challenge the testimony of the witness to determine if the voter's testimony was credible." *Id.* Unfortunately, the trial court did not cite any authority to explain why it chose the method it did.

¶ 43   What process a trial court must employ to deduct illegal votes is an issue of first impression for this Court, and to reach a decision we deem it prudent to examine Commonwealth election law, and to the extent the necessary process is not contained therein, examine how other jurisdictions have treated this issue. The trial court faced a difficult task; as "[i]n deciding among the available methods of deducting votes, courts are making a policy choice among imperfect options." 119 Harv. L. Rev. 1155, 1164, *Developments in Law: Voting and Democracy* (2006). Such procedures are critical because how illegal votes are accounted for will oftentimes determine whether relief is granted under § 6602(b) or § 6606; that is, whether a winner is declared or a new trial is ordered. Courts faced with this issue have resorted to one of three main approaches: proportional deduction, the "elimination of uncertainty" approach, and the "direct evidence" approach. 119 Harv. L. Rev., 1155, 1157-59. Each method has its own strengths and shortcomings, and thus will be examined in turn.

¶ 44   Arguably the most popular method for deducting illegal votes is the proportional approach. This generally involves deducting illegal votes from the vote totals of each candidate in proportion to the total votes received by each candidate in the precincts or districts where the contaminated votes were cast. *Hammond v. Hickel*, 588 P.2d 256, 260 (Alaska 1978) (citations omitted). A number of courts have adopted this approach.[25] However, the proportional approach "only functions neutrally in elections where more than one precinct has experienced invalid votes." *Huggins v. Superior Court*, 788 P.2d 81, 85 n.3 (Ariz. 1990). This is so because applying this approach in a single district election – or an election where all contested votes are from one precinct – in effect presents a court with a Hobson's choice: either certify the current election results, or deduct illegal votes from each candidate's vote total in proportion to the total number of votes that each candidate received. This apparent choice is of course no choice at all because the new result would always necessarily affirm the earlier result. Since all of the illegal votes cast in the Northern Islands mayoral election were from Precinct 4d, the proportional approach cannot be applied in the present case.

¶ 45   A second method employed by courts is the so-called "elimination of uncertainty" model. Under this approach, a court will order a new election if the total number of illegal votes exceeds the winner's margin of victory. Multiple courts have also adopted this approach. *See Crow v. Bryan*, 113 S.E.2d 104, 105-07 (Ga. 1960) (voiding election results and ordering new election where 113 legal voters were improperly stricken from registered voter list and not permitted to vote and the margin of victory was

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[25]   *See, e.g.*, *Grounds v. Lawe*, 193 P.2d 447, 453 (Ariz. 1948); *Ellis ex rel. Reynolds v. May*, 58 N.W. 483, 488-89 (Mich. 1894); *Heyfron v. Mahoney*, 24 P. 93, 95-96 (Mont. 1890); *Drinkwater v. Nelson*, 187 N.W. 152, 154 (N.D. 1922).

forty-five votes); *McCavitt v. Registrars of Voters*, 434 N.E.2d 620, 623 (Mass. 1982) (ordering new election where absentee ballots failed to strictly comply with absentee voting law but were cast by good faith voters); *Creamer v. City of Anderson*, 124 S.E.2d 788, 791 (S.C. 1962) (citing with approval the rule applied "for more than a century and a half in cases involving election to public office," which states that "to safeguard the purity of elections . . . the matter [must be sent] back to the people whenever so many illegal votes have been cast that their deduction from the winning side would affect the result"). While Hawaii has also adopted this approach, the Hawaii Supreme Court stressed that their decision was based on a statute expressly providing this remedy. *Akizaki v. Fong*, 461 P.2d 221, 224 (Haw. 1969) ("Because of the commingling of valid and invalid absentee ballots, there is simply no way to determine what the actual result of the election was, . . . in such a situation HRS § 12-103 directs the court to invalidate the election.").

¶ 46   This voting model has its benefits and drawbacks. Some courts believe it allows a determination "with certainty [of] which candidate . . . received the greatest number of unquestionable votes." *Creamer*, 124 S.E.2d at 791 (quotations omitted). However, this approach carries negative aspects including that a second election is not immune from illegal ballots and is costly and thus favors better financed candidates. *Huggins*, 788 P.2d at 84. Also, votes that may have been counted in the first election may be lost in the second election and not counted, voters may have moved or died between elections and voter interest may wane causing fewer voters to cast ballots. *Id.* While the weight attached to each of these factors may vary in the case of the Northern Islands mayoral election – especially given the relatively small number of voters – it remains true that it is likely not possible to exactly replicate voting conditions from the first election.

¶ 47   The "elimination of uncertainty" model cannot be applied in the CNMI because it would render 1 CMC § 6606 meaningless. It is an "elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Colautti v. Franklin*, 439 U.S. 379, 392 (1979). Under this model, a new election would be ordered whenever the total number of illegal votes is greater than the margin of victory. To ground this model in the context of our statutory analysis, adopting this model would mean that a court would carry out step one (determining the number of total illegal voters), then determine whether the number of illegal votes is greater than the margin of victory (steps three and four).[26] However, this approach skips step two because no attempt is made to determine who voters voted for and to subtract these votes from the appropriate candidate. This approach has the benefit of protecting voter secrecy and avoids the problems associated with assessing witness credibility and voter choice. However, it conflicts with Commonwealth election law because § 6606 requires a winner to be declared if

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[26]   *Supra* ¶ 40.

the candidate who received the most votes can be determined. This outcome could never occur under the "elimination of uncertainty" model.[27]

¶ 48   The third approach adopted by courts is the so-called "direct evidence" approach, under which a trial court hears evidence – generally voter testimony concerning who they voted for in the election – to determine whether the voter challenging the election results actually received the most votes. The trial court, while not referring to this approach explicitly, adopted procedures consistent with this approach. Applying this approach raises two related issues: how to determine who illegal voters voted for, and what to do with illegal votes that cannot be attributed to either candidate.

¶ 49   In some jurisdictions it is firmly established that courts can adduce voter testimony in order to determine how illegal votes were cast. For example, in *Jaycox v. Varnum*, 226 P. 285 (Idaho 1924), illegal voters were put on the witness stand and asked to disclose who they voted for, and the court noted that the trial court's determination in this matter would not be overturned absent an abuse of discretion. *Id.* at 287. *See also Wilkinson*, 64 A.2d 266, 274 (Md. 1949) (stating that direct or circumstantial evidence must be offered to prove how illegal voters voted); *Nebraska v. Brogan*, 119 N.W.2d 147, 152 (Neb. 1963) (requiring appellant to "show for whom the illegal votes were cast" as long as this is not impossible).

¶ 50   More recently, two Texas courts relied on voter testimony to resolve election contests. In *Medrano v. Gleinser*, 769 S.W.2d 687 (Tex. Ct. App. 1989), six illegal votes were cast in an election where the margin of victory was one vote. Five illegal voters stated who they voted for, and the court noted that "[h]ad there been no other evidence of illegal votes cast in the race in question, and assuming the trial court had no reason to doubt the testimony of these five witnesses," their votes would be deducted and "the election would be declared a tie." *Id.* at 689. However, a sixth voter, who was a convicted felon, stated that he voted for the appellee. While the appellant claimed that the trial court must believe this assertion and deduct a vote from the appellee, the court disagreed. The court stated that it had "the power to believe or disbelieve all or part of a witness' testimony" and that given the "confidential nature of the electoral process" only the voter himself "knows how he actually voted in the race in question." *Id.* at 689-90. Accordingly, in ordering a new election, the court held that "the trial court reasonably could have refused to believe [the voter's] testimony . . . and *thus found that it could not*

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[27]   We recognize that in one sense, the "elimination of uncertainty" model is adopted whenever § 6602(b) is applied because under this statute a new election will always be ordered when the number of *remaining* illegal votes is greater than the new margin of victory; that is, when a new winner is not declared under § 6606. However, characterizing the election contest process in this matter is largely a matter of semantics. We do not adopt the "elimination of uncertainty" model because it disregards § 6606.

ascertain the true outcome of the election. Id. at 690 (emphasis added). By statute,[28] the court therefore declared the election void. *Id.* at 690. This process was again followed in *Green v. Reyes*, 836 S.W.2d 203 (Tex. Ct. App. 1992), in which the trial court ordered a new election after the number of illegal votes that could not be attributed to any candidate exceeded the margin of victory.

¶ 51   The Northern Mariana Islands Election Law requires a trial court to try and determine which candidate received the most legal votes in an election. There are a limited number of options – and none without drawbacks – for fulfilling this mandate. As noted above, the proportional method is inapplicable in this case because all illegal votes were cast in one precinct. The "elimination of uncertainty" approach is untenable because it renders § 6606 inoperable. Accordingly, this Court finds that the trial court did not err by having voters disclose who they voted for in the election, and then attempting to judge the credibility of each voter. Far from a novel innovation, the process of examining voters has been applied by courts in *Jaycox, Wilkinson*, *Medrano*, and others. More importantly, examining illegal voters and deducting their votes from the appropriate candidate is consistent with both § 6602(b) and § 6606, and makes both statutes operative. If a trial court can subtract illegal votes from the respective candidates and determine which candidate received the most legal votes, the election winner can be declared and a costly and time-consuming new election can be avoided. In contrast, if § 6606 cannot be satisfied, § 6602(b) provides an alternate remedy.

¶ 52   In endorsing the trial court's approach this Court acknowledges two inherent weaknesses in this process. First, asking voters to reveal their vote compromises voter secrecy. Under 1 CMC § 6521, "[e]ach qualified voter has the right to cast a secret ballot in private." However, longstanding Commonwealth precedent establishes that this secrecy right is limited to qualified voters. *King v. Board of Elections*, 2 NMI 398, 405 (1991). Thus, voter secrecy protections do not apply to illegal voters and the trial court, *after* determining that a voter was an illegal voter, was permitted to ask that voter to disclose his or her vote.

¶ 53   Second, some courts have found that voter testimony, even when offered, is highly suspect. *See Huggins*, 788 P.2d 81, 83 ("We . . . attribute comparable weakness to the testimony of illegal voters asked to disclose accomplished votes."); *cf. People ex rel. Boyer v. Teague*, 11 S.E. 665, 627-28 (N.C. 1890) (stating that where legal votes were improperly excluded from the election, "it would obviously be dangerous to receive and rely upon their subsequent statements as to their intentions, after it is ascertained precisely what effect their votes would have upon the result.") (citations omitted). As discussed more fully below, it is mindful of these arguments that we decline to follow precedent from other jurisdictions

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[28]   The applicable Texas statute reads: "(a) If the tribunal hearing an election contest can ascertain the true outcome of the election, the tribunal shall declare the outcome. (b) The tribunal shall declare the election void if it cannot ascertain the true outcome of the election." Tex. Elec. Code § 221.012.

compelling trial judges to deduct a vote for each voter that testifies. Instead, as followed by the court in *Medrano*, a trial court may issue a finding that it cannot determine who a voter voted for in an election, and thus the ballot must remain an illegal and undeducted vote. It is also in part mindful of this concern that we reject Aldan's argument that a trial court's finding that a witness is not credible means that a vote must be subtracted from the other election candidate. We believe that compelling a trial judge to determine who each voter voted for ignores the reality that in some situations the trial judge may not be able to tell.

C. The Trial Court Certification Order Was Improper

¶ 54   Having determined that the trial court's procedure for determining how illegal votes were cast was proper, we must now assess the fate of the seven illegal votes that the trial court did not subtract from either candidate. Since the trial court declared a margin of victory of two, and this total included seven votes by illegal voters, these votes have a determinative effect on the election outcome. Aldan argues that the trial court failed to properly subtract all illegal votes from the candidates. Rebuenog responds that an "election contest is not an exercise in purity of process," and suggests that the trial court's election determination should stand despite the imperfection of having illegal votes included in the final vote totals. Brief of the Appellee at 8. The trial court permitted these seven illegal votes to remain in the election vote total, and declared Rebuenog the winner under § 6606. Final Order at 18. We find the trial court's action improper.

¶ 55   Other courts have faced the difficult question of what to do with illegal votes when the court cannot determine who the illegal votes were cast for in an election. Courts have observed that where the number of remaining illegal votes is sufficient to affect the election result, a court can declare an election void, divide the votes between the candidates in proportion to the whole vote of each, or deduct all illegal votes from the candidate with the highest vote total. *Wilkinson v. McGill*, 64 A.2d 266, 271-72 (Md. Ct. App. 1949) (citing McCrary on Elections at 366 (4th ed. 1897)); *see also*, *Nebraska v. Boehner*, 119 N.W.2d 147, 152 (Neb. 1963) ("In purging of polls of illegal votes, the general rule is that, unless it be shown for which candidate they were cast, they are to be deducted from the whole vote" in proportion to the total vote received by each candidate.) (citations omitted). For the reasons already stated above, when determining how to treat all illegal votes, we reject the proportional method. Instead, § 6602(b) requires that all remaining illegal votes must be subtracted from the original winning candidate, and if this alters the election outcome, the election must be set aside and a new election ordered.

¶ 56   Thus, the final step before declaring the proper election remedy in this case is to determine the number of illegal votes which the trial court could not attribute to either candidate. The trial court declared that Rebuenog received 64 votes and Aldan received 62 votes. Final Order at 17. This tally

includes the votes of seven illegal votes. Since the fate of these votes is vital to determining the election outcome, we will address each vote in turn.

¶ 57 The trial court declared that Cabrini Celina Somol Hambros, Santiago Litulumar Saures, and Juan Iguel were illegal voters. Each of these voters testified that they voted for Aldan; however, the trial court found that each of these voters was not credible and thus did not deduct a vote from either candidate. This Court believes that if the trial court could have determined which candidate a voter voted for in the election, it would have subtracted a vote from that candidate. Given that the trial could did not strike a vote from either candidate, we conclude the trial court simply could not determine whether each voter cast a ballot for Aldan or Rebuenog. Accordingly, the votes cast by Ms. Hambros, Mr. Saures, Mr. Iguel are illegal votes that cannot be subtracted from either candidate's vote total.

¶ 58 In reaching this determination we pause to further explain why the approach favored by Aldan is untenable. At trial, if a voter was deemed credible, a vote was subtracted from the candidate that the voter said that he or she voted for in the election. If a voter was deemed not credible, no vote was subtracted. Aldan argues that since there were only two candidates, a procedure should be adopted whereby if a voter is deemed not credible, a vote is subtracted from the other candidate (since presumably the voter lied about who he or she voted for in the election).[29]

¶ 59 We believe this argument reads too much into the trial court's opinion. As noted by the court in *Medrano*, "the trial court reasonably could have refused to believe [the voter's] testimony . . . and thus found that it could not ascertain the true outcome of the election." 769 S.W.2d at 690. Stated alternatively, Aldan's approach rests on the assumption that the trial court's adverse credibility finding is equal to a finding that a voter lied and necessarily voted for the opposite candidate. However, Aldan's argument ignores the possibility that by deeming a witness not credible, the trial court was simply expressing its view that it could not determine who a voter voted for in the election. Indeed, we believe this is the proper interpretation of the trial court's decision. As previously noted, this Court believes that if the trial court knew who an illegal voter cast a ballot for, it would have deducted this ballot from the appropriate candidate's vote total. We believe it utterly improbable that the trial court, confident that a voter voted for a specific candidate, would nevertheless allow this ballot to remain in a candidate's vote total.

¶ 60 Returning to the issue of remaining illegal votes, the trial court declared that Jacinta Ayuyu Kaipat and Linda Cruz Santos were not credible witnesses. Aldan argues that that trial court concluded that Kaipat and Santos were not credible based on a mistaken belief that Aldan had conceded this point. Aldan also argues that because detailed factual findings were not issued concerning this credibility

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[29] The Court notes that Aldan cites no authority in which this approach was followed.

finding, the trial court's finding should be reviewed de novo, as opposed to under the "clearly erroneous" standard generally associated with credibility determinations.

¶ 61   This Court rejects both of Aldan's arguments. In declaring both witnesses not credible, the trial court stated, "Defendant agrees that the credibility of Jacinta Ayuyu Kaipat and Linda Cruz Santos was called into question. The Court agrees with counsel and thus finds Jacinta Ayuyu Kaipat's and Linda Cruz Santos's votes will not affect the election contest." Final Order at 9. While neither the trial court nor Rebuenog cite to where in the record this purported concession occurred, this Court believes that whether or not the credibility was conceded is irrelevant. The trial court's decision expressly states that the court "agrees with counsel and thus finds" Ms. Kaipat and Ms. Santos not credible. *Id.* This statement reflects that the trial court itself found each voter not credible. Moreover, we do not believe that the trial simply abdicated any exercise of independent judgment and made its determination wholly dependant on the parties' perception of the proffered testimony. Aldan's argument would likely be more persuasive if, as a result of a purported concession or stipulation, the trial court did not hear any witness testimony whatsoever.

¶ 62   With respect to Aldan's second argument, he appears to argue that the trial court never issued a credibility determination, or alternatively, that that the credibility determination is not entitled to deference because it was not supported by factual findings. This Court rejects both arguments. First, in addition to the language quoted in the previous paragraph illustrating the Court's conclusion that the witnesses were not credible, the court unambiguously conveyed this conclusion by stating that "[w]ith respect to Jacinta Ayuyu Kaipat [and] Linda Cruz Santos . . . the Court cannot accept the credibility of the witness' testimony. Therefore the Court will not allow these disqualified voter's votes to affect the outcome of the election contest." Final Order at 12. Credibility determinations are reviewed under the "clearly erroneous" standard because the trial judge in this case had the opportunity to observe the demeanor of the witnesses. *See Harte-Hanks Commc'ns*, 491 U.S. at 688. Aldan provides no direct legal support for his argument that the trial court's credibility determination should be granted less deference because additional factual findings were not present, and upon review of the record we believe there was sufficient evidence to support the trial court's credibility finding.[30] Accordingly, we recognize the trial court's finding that Ms. Kaipat and Ms. Santos were not credible, and conclude that the votes cast by these two voters are illegal votes that trial court was unable to subtract from either candidate's vote total.

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[30]   This conclusion is also supported by the Rule 52 of the NMI Rules of Civil Procedure. Specifically, this rule, entitled "Findings by the Court; Judgments on Partial Findings," states that "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." NMI R. Civ. P. 52(a). Here, we grant deference to the trial court's credibility findings.

¶ 63   With respect to the sixth illegal voter, Alvin Kaipat Buekis testified that he could not remember who he voted for in the Northern Islands Mayoral Election. Final Order at 7 n. 3. If a voter cannot remember who he cast his ballot for in an election, a trial court is certainly incapable of making such a determination. Accordingly, the vote cast by Mr. Buekis is an illegal vote and cannot be subtracted from either candidate's vote total.

¶ 64   The trial court found it unnecessary to determine who Mr. Wabol voted for and declined to make a credibility determination because it found that his vote would not affect the outcome of the election contest. The same reasoning is true on appeal. Since the margin of victory is two votes, and there are six illegal votes that we have already determined cannot be attributed to either candidate, Mr. Wabol's vote is incapable of altering the election results such that the margin of victory would be greater than the number of remaining illegal votes.

¶ 65   Now that all votes have been accounted for, this Court finds that the trial court's order declaring Rebuenog the election winner is based on an improper application of the Northern Mariana Islands Election Law. Specifically, in its Final Order, the trial court stated that "Rebuenog is declared Mayor of the Northern Islands, because she had the largest number of legal votes in the November 7, 2009 Northern Islands Mayoral Election" pursuant to 1 CMC § 6606. Final Order at 18. This determination was improper because under § 6606, a winner can only be declared if it can be discerned with certainty who received the most legal votes. As established above, this can only be accomplished when the margin of victory is greater than the number of illegal votes that cannot be attributed to either candidate. Here, the trial court properly determined the number of illegal voters – eighteen. However, the trial court's conclusion shows that § 6606 was misapplied. Under § 6606, the court must determine whether a candidate other than the defendant has the largest number of cast legal votes. The trial court concluded that the final margin of victory was two: sixty-four votes to sixty-two votes. Final Order at 17. However, the opinion makes clear that this vote total includes seven illegal votes, at least six of which could not be subtracted from either candidate. Accordingly, as a matter of law, the ordered relief was inappropriate under 1 CMC § 6606 – since the number of illegal votes that had not been deducted from either candidate was larger than the margin of victory, it was not possible to know which candidate received the most legal votes.

¶ 66   Fortunately, because we affirm the process that the trial court used to determine illegal voters and illegal votes, there is no need to cause further delay by remanding this matter to the trial court for additional findings. Instead, this Court can apply the trial court's findings to the relevant statutory framework to determine the required remedy. First, under 1 CMC § 6606, we determine the number of illegal votes cast. As noted, the trial court determined that there were eighteen illegal votes. Second, we must deduct all illegal votes that can be attributed to a specific candidate in order to try and determine

which candidate received the most legal votes. In this case, the margin of victory is two votes, there are six illegal votes that cannot be subtracted from either candidate, and Mr. Wabol's vote is unknown. Third, since the number of unattributed illegal votes is greater than the margin of victory, a winner cannot be declared under 1 CMC § 6606. Accordingly, we proceed to 1 CMC § 6602(b), which requires that the election be set aside since the number of unattributed illegal votes is greater than the margin of victory. Thus, pursuant to 1 CMC § 6602(b), a new election must be held.

¶ 67   This Court is mindful of the costs and hardships associated with ordering a new election and we recognize the interests of both candidates, as well as all Northern Islands voters, in having an election winner declared as soon as possible. However, financial difficulties and expediency concerns, while important, must take a backseat to the right of Northern Islands voters to be represented by a candidate of their choosing. By enacting both 1 CMC §§ 6602(b) and 6606, the legislature evinced a clear preference that a new election is preferable to permitting a candidate to assume office when it cannot be known whether he or she received the most legal votes. It is not the province of this Court to weigh in on this policy preference. While this Court finds that ordering a new election in this case is the only action consistent with Commonwealth election law, it is the legislature's duty to enact new legislation if it feels a new balance must be struck between election finality, cost concerns, and ensuring that the election winner is the candidate with the most legal votes.[31]

IV

¶ 68   For the forgoing reasons, we affirm the trial court's ruling that Rebuenog is a Northern Islands resident and therefore had standing to bring this election contest. We further agree with the trial court that Rebuenog is a qualified mayoral candidate. While the procedures adopted by the trial court to deduct illegal votes from the election results were proper, we hold that the trial court erred by declaring Rebuenog the election winner under 1 CMC § 6606. Under 1 CMC § 6602(b), the election must be set aside because that court was unable to determine which candidate received the most legal votes. Accordingly, we VACATE the trial court order declaring Rebuenog the election winner and order the Commonwealth Election Commission to conduct a new mayoral election as soon as possible. In this election only the qualified voters – as determined by the trial court – are permitted to vote.

SO ORDERED this 29th day of January 2010.

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[31]   We also vacate the trial court's order finding Aldan and CEC jointly and severally liable under 1 CMC § 6608. Under this section, such liability is appropriate "[i]f the election results are reversed." 1 CMC § 6608(a). Here, we do not reverse the election results, but instead order a new election. Accordingly, § 6608(a) is inapplicable.

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MIGUEL DEMAPAN
Chief Justice

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JOHN MANGLONA
Associate Justice

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EDWARD MANIBUSAN
Justice Pro Tem