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

JANET U. MARATITA, Representative, and PETE P. REYES, Senator,
Petitioners,

v.

FRANCISCO Q. CRUZ, Senator,
Respondent.

SUPREME COURT NO. 2013-SCC-0028-CQU

OPINION

Cite as: 2013 MP 15

Decided November 14, 2013

Ramon K. Quichocho, Saipan, MP, for Petitioner Janet U. Maratita; and Robert T. Torres, Saipan, MP, for Petitioner Pete P. Reyes.

Jose A. Bermudes, Counsel, Commonwealth Senate, Saipan, MP, for Francisco Q. Cruz, Respondent.

Joey P. San Nicolas, Attorney General, and Gilbert J. Birnbrich, Assistant Attorney General, Office of the Attorney General, Saipan, MP, for Amicus Curiae, the Commonwealth of the Northern Mariana Islands.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; HERBERT D. SOLL, Justice Pro Tem; TIMOTHY H. BELLAS, Justice Pro Tem.

PER CURIAM:

¶ 1 This certified question is the outgrowth of a disagreement between Representative Janet U. Maratita and Senator Pete P. Reyes (collectively, "Petitioners"), and Senator Francisco Q. Cruz ("Respondent") over the meaning of "last election" in article II, section 9 of the Constitution of the Commonwealth of the Northern Mariana Islands ("§ 9"). Petitioners argue this phrase means the most recent election, the November 2012 election, while Respondent claims this phrase references the election in which the departing senator was elected, the November 2009 election. For the following reasons, we hold the term "last election" in § 9 refers to the most recent election, the November 2012 election.

I. Factual and Procedural Background

¶ 2 In 2009, Tinian held an election for two Senate seats, which were won by Francisco Q. Cruz and Jude U. Hofschneider ("Hofschneider"). The next highest vote recipient was Joaquin H. Borja, as certified by the Commonwealth Election Commission.[1]

¶ 3 In 2012, Tinian held another election, this time for one Senate seat, which was won by Francisco M. Borja. As before, Joaquin H. Borja received the next highest number of votes.

¶ 4 The following year, Senator Hofschneider succeeded to the position of Lieutenant Governor, pursuant to article III, section 7 of the Commonwealth Constitution; this created a vacancy in the Senate. Under § 9, Governor Eloy S. Inos appointed Joaquin H. Borja to fill this vacancy.

¶ 5 Unclear as to whether the appointment was because Joaquin H. Borja was the unsuccessful candidate who received the largest number of votes in the 2009 election or, instead, the 2012 election, Representative Janet U. Maratita and Senator Francisco Q. Cruz filed a certified question petition with this Court asking us to resolve the issue. Subsequently, in an amended petition, Senator Pete P. Reyes joined Representative Maratita as a petitioner.

¶ 6 We issued an order with an expedited briefing and hearing schedule based upon the representations of the parties regarding the need for an expedited decision. Due to the importance of the question raised in relation to the executive branch, we also invited the Office of the Attorney General to submit an amicus curiae brief, which ultimately took the same position as the Respondent.

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[1] The Commonwealth Election Commission certification should indicate that the governor appointed Senator Joaquin H. Borja pursuant to article II, section 9 ("§ 9"), and not because Senator Borja was elected in 2009. By definition, the term of all persons appointed pursuant to § 9 expires in less than two years, unless a term of office has been enlarged beyond four years through constitutional amendment.

II. Jurisdiction

¶ 7 We have jurisdiction to hear certified questions arising from disputes between or among Commonwealth officials. NMI CONST. art. IV, § 11. In so doing, however, the Constitution limits that review to questions where:

(1) A dispute exists between or among elected or appointed Commonwealth officials;
(2) The dispute implicates the constitutional or statutory powers or responsibilities of these officials;
(3) The parties to the dispute set forth the stipulated facts upon which the issue arises; and
(4) The officials submit the legal questions arising from their dispute to this Court.

Id.; *In re Benavente and Bennett*, 2008 MP 4 ¶ 5.

¶ 8 The Commonwealth contests whether the parties have properly established standing for the purposes of presenting a certified question. In particular, it argues that the *Benavente* decision is analogous to the case-at-bar and should require us to dismiss this case because the parties have not presented a proper "dispute." NMI CONST. art IV, § 11.

¶ 9 In *In re Benavente*, which addressed whether two members of the Public School System's Board of Education ("Board") could certify a question regarding the governor's appointment of a non-voting teacher representative to the Board, we rejected the certified question for lack of jurisdiction. We did so for two reasons. First, *In re Benavente* explained that the "constitutional or statutory powers or responsibilities" of the two Board members were not "implicated" when the appointment power for the teacher representative was reserved to – and retained by – the governor. *In re Benavente*, 2008 MP 4 ¶ 10. The Board's powers were not implicated because, as here, the governor did not have discretion in appointing a teacher representative. On the contrary, the Commonwealth Constitution mandated the governor "appoint the teacher representative selected by the exclusive bargaining representative of the PSS teachers." *Id.* ¶ 10 n.5. Second, *In re Benavente* observed how both parties recognized that they were not the teacher's exclusive bargaining representative. Thus, while these two Board members undoubtedly had an interest in who they served with on the Board, this interest did not transform a disagreement about the selection process for the teacher representative into a "dispute." NMI CONST. art IV, § 11.

¶ 10 Though containing similarities to this case, *In re Benavente* is distinguishable. *In re Benavente* concerned the appointment of a non-voting board member – a member lacking any legal authority to enact "policy [or] exercise control over the public school system." NMI CONST. art XV, § 1(b). Members of the legislature, in contrast, have, as their core constitutional responsibility, both the right and duty to make laws. That responsibility is implicated when, as here, a vacancy is filled because the appointment affects the voting rights of the members of the respective legislative body. As a result, *In re Benavente* does not control.

¶ 11 With that distinction in mind, the constitutional prerequisites for a certified question are met in this case. First, the parties are elected Commonwealth officials who dispute the meaning of the constitutional criterion for selecting a replacement senator when the outgoing senator has less than half a term left in office. Second, as we discussed above, this dispute "implicates" the parties' constitutional powers because the selection directly affects the composition of the legislature in a manner not presenting a political question, which we would decline to answer. *See generally Rayphand v. Tenorio*, 2003 MP 12 ¶¶ 40-42 (discussing the political question doctrine). More specifically, this appointment had the effect of "implicat[ing]" the constitutional power to pass bills by other members of the Senate. Thus, because there are two members of the Senate who contest the meaning of "last election" in this matter, and the dispute implicates those senators' constitutional power, the parties have presented a valid "dispute." *Id.* Third, the parties have set forth the stipulated facts triggering the dispute. *Maratita v. Cruz*, 2013-SCC-0028-CQU (NMI Sup. Ct. July 11, 2013) (First Amended Joint Certification Petition at 2-3) ("Certification Petition"). And, fourth, the parties submitted the question for our review. *Id.* at 2.

¶ 12 Because the parties have satisfied the constitutional prerequisites, we have jurisdiction to answer their question, a question that has arisen again since the parties' filed their petition. Indeed, this dispute arrives on our doorstep in the wake of Senator Juan M. Ayuyu's recent decision to resign from the Senate. We, therefore, invoke our discretionary jurisdiction due both to this question's import and the frequency with which it can arise in the Commonwealth. *See* NMI Sup. Ct. R. 14(c)(2)(C) ("The Court may refuse to address the certified question and dismiss the Certification [Petition] at its sole discretion and without cause.").

III. Discussion

¶ 13 Having exercised jurisdiction, we move to the parties' question, which asks us to construe what "last election" means in § 9:

> Under NMI Const. art. II, § 9, when a senator leaves a vacancy in the Senate, and less than one-half of his or her term remains, must the Governor appoint the unsuccessful candidate for the office in the *last election* [i.e., the most recent election], or the unsuccessful candidate for the office in the *same election* as the outgoing senator?

Certification Petition at 2.[2]

¶ 14 The Petitioners advance the first interpretation that "last election" means the most recent election. Respondent and the Commonwealth, in contrast, back the second construction, that "last election" refers to the election in which the vacating senator won his or her office.

¶ 15 We begin our inquiry by examining the language of the Commonwealth Constitution, which we construe according to its "plain, commonly understood meaning . . . ," *Camacho v. NMI Retirement Fund*,

[2] We may rephrase certified questions "[t]o more accurately reflect the issue presented in th[e] case." *Palacios v. Yumul*, 2012 MP 12 ¶ 1.

1 NMI 362, 367 (1990) (citations and quotations omitted), where the language is clear and unambiguous. When that language is susceptible to two or more plausible meanings, however, we may consider context, *Aguon v. Marianas Pub. Land Corp.*, 2001 MP 4 ¶ 30, history of the provision's drafting, *Aldan-Pierce v. Mafnas*, 2 NMI 122, 142 n.23 (1991), and relevant canons of construction to determine which meaning was intended. *See Pangelinian v. NMI Retirement Fund*, 2009 MP 12 ¶¶ 18-19 (applying multiple canons to construe an ambiguous constitutional provision).[3]

¶ 16 Section 9 directs that when a senator leaves office with less than half of his or her term remaining, the governor must appoint the candidate who received the most votes in the last election:

> A vacancy in the legislature shall be filled by special election if one-half or more of the term remains. If less than one-half of the term remains, the governor shall fill the vacancy by appointing the unsuccessful candidate for the office in the *last election* who received the largest number of votes and is willing to serve or, if no candidate is available, a person qualified for the office from the district represented.

NMI CONST. art. II, § 9 (emphasis added).

¶ 17 As written, the clause, "the unsuccessful candidate for the office in the last election," enjoys two plausible meanings. On the one hand, if, as Petitioners maintain, this clause is viewed purely in a chronological sense, it could mean that the governor must appoint the unsuccessful candidate (with the greatest number of votes) in the most recent election, regardless of whether this Senate position came up for election in the most recent election. This is how the phrase in § 9 applies to vacancies in the House of Representatives, since representatives must run for office every election cycle. On the other hand, if, as Respondent and the Commonwealth assert, the terms "last election" modifies "the office" and "the office" means the particular seat the senator holds, the provision could mean that the governor must appoint the unsuccessful candidate (with the greatest number of votes) in the last election for that particular Senate seat.

¶ 18 To reconcile that textual ambiguity, we proceed to consider context. *Aguon*, 2001 MP 4 ¶ 30. § 9 applies the same procedure for filling vacancies in both the Senate and the House of Representatives. In doing so, it expressly codifies a strong preference towards putting the decision to the voters, even though vesting appointment power with the governor is a less costly alternative. For instance, when more than half of a lawmaker's term remains, a special election determines who serves the remainder of the vacating legislator's term. And when less than half a term remains, the governor has limited discretion in appointing a replacement: the drafters required the governor to appoint the runner-up in the "last election." NMI CONST. art. II, § 9. If, however, no qualified runner-up is available, then the governor is afforded discretion to pick a qualified successor from the district in which the vacancy occurred.

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[3] Generally, we apply the same canons of construction to both constitutional and statutory questions. *Palacios*, 2012 MP 12 ¶ 4.

¶ 19 The drafters' judgment regarding vacancies constitutes a clear intent to seek the will of the people under most circumstances. That leaves the question of whether the drafters intended to seek the decision of voters a few years back or more recently. The clause providing for special elections suggests an answer: by mandating a new decision by the voters to fill longer remaining terms, the drafters sought a current expression of voter sentiment. And if the drafters clearly preferred a more recent decision by voters when filling a longer vacancy, would they, in contrast, intend that a replacement for a shorter vacancy come from an expression during a much more distant election? We think not.

¶ 20 Both the Respondent and the Commonwealth argue for a more distant expression of voter intent. Their main argument focuses on the nature of our bicameral legislature. They cite to Committee Recommendation No. 3 for the proposition that because the drafters intentionally selected staggered elections for the Senate, 2 JOURNAL OF THE NORTHERN MARIANA ISLANDS CONSTITUTIONAL CONVENTION OF 1976 393-98 (Nov. 4, 1976) [hereinafter "Committee Recommendation No. 3"], they must have also intended for the runner-up selected to fill a vacancy to come from the same election as the outgoing legislator. Otherwise, it is possible a political movement could seize control of the Senate in a single election.[4]

¶ 21 The theory underlying the staggering of elections, as the Committee Recommendation No. 3 indicates, is two-fold. First, staggered elections provide voters frequent opportunities to express their will. *See* Steven G. Calabresi, *The Virtues of Presidential Government: Why Professor Ackerman Is Wrong to Prefer the German to the U.S. Constitution*, 18 CONST. COMMENT. 51, 57 (2001) (criticizing Germany's constrained parliamentary regime for "inadequate sampling of public opinion" because, unlike the Commonwealth's electoral system, Germany only has elections every four or five years). And, second, staggered elections prevent a political movement from seizing control of the legislature in a single electoral cycle. Bruce Ackerman, *The New Separation of Powers*, 113 HARV. L. REV. 633, 644 (2000) (writing that it is a democratic principle to prevent one party from sweeping into absolute power in a single election; it must instead win several elections "before it can gain plenary lawmaking authority").

¶ 22 But the theory undergirding staggered elections in the Senate cannot, in our view, override the express preference of the drafters for a more recent expression of voter sentiment enshrined in the Special Election Clause of § 9. In constitutional interpretation, immediate context prevails. *Palacios*, 2012 MP 12 ¶ 4 ("'[W]e must read constitutional language in the context of the entire provision at issue.'") (quoting *Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6) (alteration in original); *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247, 2266; 186 L. Ed. 2d 239, 264 (2013) (stating that a

[4] Under a particular scenario, every senator from Tinian could gain their position in a single election. That is, following each cycle in which two senators stand for election, if the senator not up for election subsequently resigns or is removed from office, the replacement senator, under the Petitioners' view of § 9, would be the candidate who took third in the most recent election. Then all three senators would come from the most recent election.

common rule of "'construction [is] that the specific governs the general.'") (quoting *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012)). And here, while the possibility of all senators (in a senatorial district) coming from a single election gives us pause, we believe the drafters' preference for filling vacancies through appointment, as indicated by the Special Election Clause, is towards individuals who receive substantial, recent public support at the ballot box (as the runner-up candidate) – as opposed to support from a much more distant election.

¶ 23 The parties also raise arguments related to constitutional qualifications for office under article II, section 2 of the Commonwealth Constitution ("§ 2"). But these are largely irrelevant for purposes of the discussion here because a runner-up candidate would still have to satisfy § 2 qualifications when sworn into office. For that reason, while it may be more likely that a candidate from a more recent election could satisfy these requisites, we do not think the presence of constitutional qualifications for office provides much illumination of the drafter's intent regarding the question at hand.

¶ 24 That leaves one additional source of evidence to examine: the *Analysis of the Constitution of the Northern Mariana Islands* ("Analysis"),[5] which both parties declare favors their interpretation. Normally the Analysis "is extremely persuasive authority . . . [for] discern[ing] the intent of the [drafters] when the language of the Constitution presents an ambiguity," *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71, but not here because it offers just two observations related to the issue at hand, both of limited value.

¶ 25 The first is that the Analysis does not explicitly address election cycles involving two Senate openings in the same senatorial district election. For instance, in speaking about the "unsuccessful candidate for the office in the last election who received the *largest* number of votes," NMI CONST. art. II, § 9 (emphasis added), the use of "largest" is re-stated as "second highest" in the Analysis:

> The governor fills seats that become vacant with less than one-half of the term remaining. The governor must appoint the unsuccessful candidate for the seat in the last election who received the highest number of votes and who is able and willing to serve. *This means* that the governor must first offer the seat to the candidate who has the *second highest* number of votes in the election . . . .

Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 50 (1976) (emphasis added).

¶ 26 This oversight, as the parties' arguments suggest, could favor either interpretation. On the one hand, the use of "second highest" could mean the drafters viewed the provision as referring to a specific senate seat, in which case there would be no need to discuss a candidate receiving the third highest vote total. On the other hand, the Analysis' use of "second highest" is confusing because half of all senate

[5] "The Analysis is a memorandum, approved by the Constitutional Convention following the adoption of the constitution in 1976[] that provides an explanation of each section in the Commonwealth Constitution and summarizes the intent of the Convention in approving each section." *Dep't of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 7 (citing *Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands* 1 (1976)).

elections involve two open seats in a particular senatorial district. In each of those elections, assuming we accepted either parties' contentions for how to construe "last election," the candidate with the second highest vote total may have already won an office and, therefore, not be available for the governor to appoint.[6] We do not believe the drafters intended such an illogical result. Therefore, arguments based upon this point are unavailing for both parties.

¶ 27 The second insight derives from the Analysis' treatment of "seat" and "office" as synonyms. For example, in discussing § 9, the Analysis routinely used "seat" in lieu of "office:

> *Seats* that become vacant with one-half or more of the term remaining are filled by a special election . . . .
>
> The governor fills *seats* that become vacant with less than one-half of the term remaining . . . .
>
> This means that the governor must first offer the *seat* to the candidate who had the second highest number of votes in the election regardless of party affiliation. If that candidate is unavailable or unwilling to serve, the governor must then offer the *seat* to the candidate who had the third highest number of votes in the election.

Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 50-51 (1976) (emphasis added) (using "seat" instead of "office" on eight occasions); *see also* Committee Recommendation No. 3 (using "seat" rather than "office"). That interchangeability is relevant, according to the Commonwealth's amicus brief, because while the scope of "office" may have a potentially broad meaning, "seat," as a matter of common usage, tends to have a narrower meaning – a meaning limited to each legislator's specific position. Commonwealth Amicus Br. 6-7. Superficially, this argument has appeal, but it does not hold up when reviewing the definitions for "seat" and "office." "Seat" means "[m]embership and privileges in an organization." BLACK'S LAW DICTIONARY (9th Ed. 2009). Membership, in turn, means either "[t]he state of being a member" or "[t]he total number of members in a group." WEBSTER'S SECOND NEW RIVERSIDE UNIVERSITY DICTIONARY 740 (1984). The first definition, which treats "seat" as specific, supports Respondent's view that the drafters viewed "office" as a particular position. But the second definition, which defines "seat" as a broad term, reinforces Petitioner's point. Similarly, the term "office" is vaguely defined as a "position of duty, trust, or authority, especially one conferred by a governmental authority for a public purpose." BLACK'S LAW DICTIONARY. Both of these terms seem to imply a broader, more general connotation regarding membership in a legislative

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[6] The use of the term, "runner-up," also lends to this view. The document that uses this term defines it as the "[o]ne who takes second place." *Briefing Papers for the Delegates to the Northern Marianas Constitutional Convention*, Vol. I, No. 3 at 67. Thus, in elections with two senate openings in a senatorial district, the "runner-up" could be the candidate who received the second-highest number of votes. In these circumstances, the people would have already elected this candidate to serve in the Senate; so in the event of a new vacancy, he or she would not be available to fill it. Therefore, this reading makes little sense.

body, such as the Senate. But because the definitions of "seat" or "office" could support either view, we find these arguments unpersuasive.

¶ 28 As a result, we are left with the animating principle of § 9. The drafters intended those individuals who filled vacancies to receive substantial, recent public support at the ballot box – support measured immediately under some circumstances, and as close to that as reasonable under most others. Therefore, we hold, despite legitimate bicameralism concerns, that when § 9 references to the "last election," it means the most recent chronological election.

IV. Conclusion

¶ 29 For the foregoing reasons, we hold the term "last election" in Article II, § 9 of the Constitution of the Commonwealth of the Northern Mariana Islands refers to the most recent expression of the electorate, in this case the November 2012 election.

SO ORDERED this 14th day of November, 2013.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
HERBERT D. SOLL
Justice Pro Tem

/s/
TIMOTHY H. BELLAS
Justice Pro Tem