

*HOTL, et al., v. 7<sup>th</sup> Koror State Legislature, et al.*, 14 ROP 52 (2007)  
**HOUSE OF TRADITIONAL LEADERS, et al.,**  
**Appellants,**

v.

**SEVENTH KOROR STATE LEGISLATURE, et al.,**  
**Appellees.**

CIVIL APPEAL NO. 06-006  
Civil Action No. 05-125

Supreme Court, Appellate Division  
Republic of Palau

Decided: January 29, 2007<sup>1</sup>

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Counsel for Appellant: Moses Y. Uludong

Counsel for Appellee: Raynold B. Oilouch

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; KATHLEEN M. SALII, Associate Justice; and ROSE MARY SKEBONG, Associate Justice Pro Tem.

Appeal from the Trial Division, the Honorable LARRY W. MILLER, Associate Justice, presiding.

PER CURIAM:

## **BACKGROUND**

The validity of amendments to the Koror State Constitution is the subject of this appeal between the House of Traditional Leaders (Appellants) and the 7<sup>th</sup> Koror State Legislature (Appellees). These amendments were adopted by legislative resolution, pursuant to Article XI of the Koror State Constitution. The Koror State Constitution, Article XI, Sections 1 and 2, establishes the procedures necessary to amend the constitution:

Section 1. PROPOSAL. Any amendment to this Constitution may be proposed by popular initiative or by the Legislature as herein provided:

(1) By a petition filed by not less than twenty-five percent (25%) of the registered voters of the State of Koror; or

(2) By a resolution adopted by not less than three-quarters (3/4) of the members of the Legislature of the State of Koror.

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<sup>1</sup>Upon reviewing the briefs and the record, the panel finds this case appropriate for submission without oral arguments pursuant to ROP R. App. P. 34(a).

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Section 2. RATIFICATION. Any proposed amendment to this Constitution shall become effective when approved in a State-wide referendum by a majority of the votes cast on that amendment.

Following the requirements of Article XI, Section 1(2), the amendments in dispute in this appeal were proposed and adopted by the 7<sup>th</sup> Koror State Legislature (KSL) as Resolution No. 7-37 on March 9, 2005. A majority of the Koror voters then approved the proposed amendments, pursuant to Article XI, Section 2, in the November 8, 2005, general election.

The issue of the constitutional validity of the amendments came before the trial court on cross-motions for summary judgment on December 21, 2005. The trial court ruled in favor of the Koror State Legislature's motion for summary judgment, finding that the legislative manner in which the constitutional amendments had been adopted did not detract from their validity. The Appellants, House of Traditional Leaders (HOTL), initially raised other complaints, but they voluntarily dismissed all of their other claims in order to finalize and appeal the instant judgment.

Prior to the actions in this suit, Articles VI, VII, and VIII of the Koror State Constitution gave HOTL an expansive role in the legislative affairs of that state. Before the amendments, the Koror Constitution deemed HOTL "the supreme authority of the State of Koror," (Koror Const. Art. VI, §1) and some of the many roles of HOTL included the **154** power to submit proposed bills to the Legislature, to veto bills passed to it by the Governor, to line-item veto appropriations bills, to engage in dialogue with other state and foreign entities, and to approve any major agreement to which Koror State was a party. The constitutional amendments put forth by Resolution No. 7-37 substantially circumscribed this authority of HOTL. The amendments took away the general legislative powers of HOTL and left them with a more consultative role. The main constitutional responsibilities of HOTL are now limited to proposing bills to the Legislature and engaging in dialogues with other bodies.

In their appeal, Appellants lodge two central objections. First, they argue that the trial court erred in finding that the legislative manner in which the amendments were passed does not affect their constitutionality. Appellants contend that amendments changing the status of traditional leaders can only be passed by citizens' initiatives, not legislative resolutions. Second, Appellants argue that although the Koror States citizens were granted the right to determine what role traditional leaders would play in the structure of their state government, once that role was determined, it could not be changed.

The Trial Division, Associate Justice Miller presiding, granted summary judgment in favor of the 7<sup>th</sup> Koror State Legislature. For the reasons set forth below, we affirm.

## STANDARD OF REVIEW

This Court reviews grants of summary judgment *de novo*, considering whether the trial court correctly found that there was no genuine issue of material fact and whether, drawing all inferences in the light most favorable to the nonmovant, the moving party was entitled to

*HOTL, et al., v. 7<sup>th</sup> Koror State Legislature, et al.*, 14 ROP 52 (2007) judgment. *Giraked v. Estate of Rechucher*, 12 ROP 133 (2005). The same standard applies where, as here, there are cross-motions for summary judgment. *Becheserrak v. ROP*, 5 ROP Intrm. 63, 65 (1995).

## DISCUSSION

Appellants first argue that the trial court erred in finding that the adoption of Resolution 7-37 by the Koror State Legislature (KSL), which commenced the process of amending the Koror Constitution, did not influence the resulting amendments' constitutionality. Specifically, the trial court found that, "the manner in which these amendments were proposed and adopted [does not have] any particular bearing on their constitutionality." Trial Decision at 2. Appellants claim that the adoption of Resolution 7-37 by the KSL was a government act of the sort expressly prohibited by ROP Constitution Article V, §1, which states:

The **government** shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with the Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of government. (Emphasis added.)

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Article IV, §2 of the Koror State Constitution addresses the same subject in a similar manner.

Appellants argue that amendments derived from Resolution 7-37, a legislative action of the Koror State government, are prohibited by national and state constitutional measures because the passage of that resolution constituted government action revoking certain functions of traditional leaders. On the other hand, Appellants concede that Article V would not have been violated if the amendments had been proposed by a "citizen initiative or any other manner than legislative resolution," thereby acknowledging that Appellants' objections relate solely to the legislative manner in which the amendments came to fruition. Appellant's [sic] Opening Br. at 11. Appellants' argument has no merit. Amendments to the Koror State Constitution can follow either path designated by that constitution; amendments can be initiated by either voter petition or legislative resolution. The fact that amendments were generated by the adoption of a legislative resolution does not then subject the resulting amendments to "greater or different scrutiny than if they had been proposed through a popular initiative." Trial Decision at 2. The language of the Koror State Constitution, Article XI, Sections 1 and 2, further supports this view. Appellants have failed to present any language in the Koror State Constitution which would distinguish amendments proposed by petition from those amendments adopted through legislative resolution. The Koror State Constitution allows either course of action to propose amendments and both types of proposals must face the same state-wide referendum to win final ratification from the Koror State voters.

Of note, Article XI of the Koror State Constitution has faced previous scrutiny by this Court in *Koror State Government v. Katsutoshi Becheserrak, et. al.*, 6 ROP Intrm. 74, 78 (1997). This Court held:

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On its face, all that is required to amend the Koror State Constitution is either petition by 25% of the voters or a resolution by 75% of the Legislature and approval by the majority of voters on the referendum. The requirements of Article XI concerning constitutional amendment are independent of any other requirements of the Koror State Constitution.

This prior recognition that Article XI is independent of other requirements discounts Appellant's [sic] argument that the Koror State Constitution requires amendments affecting the status of traditional leaders to be passed by citizens' initiatives rather than legislative resolutions.

Nor does case law support Appellants' contention that there is a difference between amendments proposed by the legislature and amendments promulgated by citizens' initiatives. Numerous cases in U.S. jurisprudence establish the principle that where legislative power is vested both in the people, through the right of initiative and referendum, and in the legislature, "there is no superiority of power as between the two." 33 **156** ALR 2d 1118, 1121 (1954).<sup>2</sup>

When the legislature and the people share power, both groups act as "co-ordinate legislative bodies. In the absence of special constitutional restraint, either may amend or repeal an enactment by the other." *Id.* In the case at hand, not only did the KSL pass a constitutional amendment, but the citizens of that state also approved that amendment in a referendum. The language of the Koror Constitution suggests nothing that would require citizens to act alone in amending portions of the constitution dealing with traditional leaders.

The amendments also do not prevent traditional leaders from being "recognized, honored, or given a formal or functional role" in the Koror State Government. As the trial court explained, citing *Becheserrak v. Koror State Gov't*, Civil Action No. 166-86, slip op. at 8, (Mar. 17, 1995), *rev'd on other grounds*, 6 ROP Intrm. 74 (1997), "Even taking the language of Article V, Section 1, at face value, the Court does not believe it requires that traditional leaders be accorded any particular role in the government." A plain reading of Article V indicates that this article merely intends to ensure that no impediments are placed in the way of traditional leaders holding a governmental position. Instead of preventing the traditional leaders from holding office, the amendments merely adjust the role played by HOTL in the current structure of the Koror State government. There is no implication that if persons from HOTL attempted to run for office in their individual capacity that they would be denied this opportunity.

Finally, and importantly, it is a well-established principle in constitutional law that, "If there is a real inconsistency between a constitutional amendment and an antecedent provision, the amendment must prevail because it is the latest expression of the will of the people." 16 Am. Jur. 2d *Constitutional Law* § 63 (1998). As the lower court pointed out in its decision, "it is logically impossible for the Court to find that an amendment to the Koror Constitution is invalid

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<sup>2</sup>This Court, in the absence of Palauan statutory or decisional law and, where applicable, principles of Palauan customary law, follows the rules of common law as articulated in Restatements of law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States. 1 PNC § 303; *see also Renguul v. Airai State Pub. Lands Auth.*, 8 ROP Intrm. 282, 284 (2001).

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with reference to a pre-existing provision of that same Constitution.” Trial Decision at 3-4. This “last-in-time” rule nullifies Appellants’ arguments that the amendments fail to satisfy the requirements of the Koror State Constitution.

Appellants next claim that the court erred in finding that the Koror State citizens have the right to change the role of traditional leaders in the structure of their state government once that role has been established. From Appellants’ perspective, the Constitution functions as a one-way valve on issues of protected traditional rights, allowing state governments to give traditional leaders a role in government, but forbidding any action to revoke that role once bestowed. They attempt to support their claim with reference to Article XI, §1, of the ROP **157** Constitution, which controls state governments and provides in part:

The structure and organization of state governments shall follow democratic principles, traditions of Palau, and shall not be inconsistent with this Constitution.

Taking the phrase, “shall not be inconsistent with this Constitution,” in conjunction with Article V of the ROP Constitution, which protects traditional rights, the Appellants contend that once the structure of the Koror state government was established in 1997, the role of the traditional leaders became a vested traditional right under the protection of Article V of the ROP Constitution. Any attempt to deviate from that established role, they argue, would violate the mandate of ROP Constitution, Article XI, §1, requiring that state constitutions “not be inconsistent with this [national] Constitution.”

We agree with the Trial Division that it seems “unquestionable that, under the Palau Constitution, the right of the people to choose the structure of their government also includes the right to change that structure if they so choose.” Trial Decision at 9-10. This Court has previously shed light on its understanding of ROP Constitution Article XI, § 1, in *Ngara-Irrai v. Airai State Government*, 6 ROP Intrm. 198, 203 (1997), stating:

We reject, however, a rigid interpretation of the constitutional requirements of Article XI, § 1, that would require the Court to specify exactly how the States are to divide governmental positions between elected and traditional leaders. Nothing in Article XI, § 1, indicates how governmental powers are to be apportioned and any such formula adopted by the Court would be inconsistent with the Framers’ intention “to leave the choice of structure of local government to each municipality.” Palau Constitutional Convention, Standing Committee Report No. 34 (March 5, 1979) at 3.

Although Appellants attempt to frame their argument under the third clause of Article XI, § 1, of the ROP Constitution, and thereby escape precedent set by earlier decisions of this Court, precedent still controls the issue at hand. This Court has held in *Teriong v. State of Airai*, 1 ROP Intrm. 664, 680 (1989), that a corollary of the right to vote “is that the people have the right to vote on an amendment or change to their constitution in a referendum.” Adopting Appellant’s interpretation of ROP Const. Article XI, §1, would subject the right to change the state constitution to illusory limitations and restrictions not supported by the ROP Constitution, insofar as that right is exercised to remove HOTL from power.

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**CONCLUSION**

For the reasons set forth above, we affirm the Trial Division's entry of summary judgment in favor of the Koror State Legislature.