Tellei v. Palau Election Comm'n, 15 ROP 162 (Tr. Div. 2008)

PATRICK TELLEI,
Plaintiff,

v.

PALAU ELECTION COMMISSION and MELEKEOK STATE LEGISLATURE,
Defendants.

CIVIL ACTION NO. 07-358

Supreme Court, Trial Division
Republic of Palau

Decided: March 24, 2008
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KATHLEEN M. SALII, Associate Justice:

INTRODUCTION

Patrick Tellei ("Plaintiff") sued the Palau Election Commission ("Election Commission" or "PEC") and Melekeok State Legislature ("MSL") for declaratory relief regarding MSL Public Law No. 6-12 ("MSPL No. 6-12"), which was enacted on or about March 30, 2007, and which was enacted to establish procedures for the circulation and filing of any petitions circulated by initiative of the people of Melekeok to amend their constitution. Plaintiff also seeks declaratory relief regarding MSL Resolution No. 6-16-7S, the MSL's resolution that was passed on or about March 28, 2007, proposing amendments to the constitution. Finally, Plaintiff seeks orders to have his petition placed on the next general state election.

The matter proceeded to trial on February 26, 2008, and the parties submitted written closing arguments on March 3, 2008.[1] Having heard the testimony at trial, examined the other evidence adduced by the parties, and heard the arguments of counsel, the Court, pursuant to Rule 52 of the Rules of Civil Procedure, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

The facts in this case are relatively uncomplicated. At a public meeting at Bailechesau in Melekeok State on March 24, 2007, Plaintiff announced that he was proposing amendments to the Melekeok State Constitution ("State Constitution"), and circulated a petition for signatures. At the time of that public meeting, there was no existing state law relating to petitions to amend

[1] In the written arguments, Plaintiff moved to strike MSL's argument based on RPPL No. 722 on the grounds that the law was never specifically raised. MSL's Answer to the complaint and the affirmative defenses stated, particularly in Paragraph 10 of the Answer, that the complaint should be dismissed because it violates the laws of the Republic of Palau as well as the Melekeok State Constitution and laws. The Court finds this sufficient to put Plaintiff on notice that MSL would be arguing the applicability of, among other laws, RPPL No. 7-22.

the constitution, nor was there any proposed legislation to amend the constitution.

At this public meeting, which the Speaker of MSL, Danny Ongelungel, attended, Plaintiff informed the Speaker of the petition he was circulating and the reason for the petition. The Speaker then informed Plaintiff that MSL would be enacting legislation regarding petitions to amend the State Constitution.

Article XIII, Section 1 of the State Constitution states:

> This Constitution may be amended at any time by a ⊥164 majority of the people voting on the amendment pursuant to law so approved. Any amendment to this Constitution may be proposed according to any one of the following manners:
>
> (a) By petition of at least one fourth (1/4) of all registered voters of the State of Melekeok; or
>
> (b) By a resolution adopted by at least three-fourth (3/4) of the membership of the State Legislature of Melekeok.

While Plaintiff was circulating the petition, MSL held a session on or about March 28, 2007, wherein State Bill No. 6-25-7S was introduced, which eventually became MSPL No. 6-12 when it was approved on March 30, 2007. Copies of this law were transmitted to the Election Commission and a copy was retained at the Melekeok State Government office. There is no evidence, however, that notice of the bill and its purpose, or passage into law, was given to the public.

MSPL No. 6-12 requires, *inter alia,* that any petition that proposes to amend the State Constitution must be in both Palauan and English languages, but if the petition is submitted in only one language, the initiator has ten days to submit a translation to the Election Commission as well as to the Governor. The state law further requires that each circulator of the petition submit an affidavit with information identifying which signatures the circulator obtained, and that the absence of a circulator's affidavit will invalidate the entire petition. The petition must also contain a printed name of each signatory, a signature, a residence and telephone number, and the date of signing of the petition.

The petition at issue here is in Palauan, with no English translation provided as required by MSPL No. 6-12. In addition, the signatures are undated and do not contain other information required in the law, and there were no circulator affidavits attached.

Also at the March 28 MSL session, Resolution No. 6-16-7S was passed, relating to proposed amendments to the State Constitution. As Speaker Danny Ongelungel candidly conceded, the Resolution did not meet the requirements of MSPL No. 6-12 when it was enacted. Not only was there no public notice regarding this resolution, the resolution is in English, despite the requirement of the State law that it be in both Palauan and English. In addition to this deficiency, the Resolution does not contain an explanation of the intent and effect of the

proposed amendment. Although the resolution was passed by the MSL, it was never placed on the ballot for the general election. According to Speaker Ongelungel, MSL was going to repeal the resolution as the election date drew near.

Plaintiff continued to acquire signatures between March and August of 2007. On August 16, 2007, Plaintiff submitted the petition to the Election Commission, with a total of 193 signatures thereon. As of this date, there were officially a total of 494 registered voters of the State. At a minimum, to comply with Article XIII, Section 1(a), a total of 124 signatures of registered voters is required.
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The Election Commission, as part of its duties, verified the signatures on the petition after removing the duplicate names or the names of non-registered state voters and verified that a total of 174 signatures were valid. However, the Election Commission informed Plaintiff that, while the requirements of the State Constitution had been satisfied regarding an initiative petition to propose amendments, MSPL No. 6-12 established the procedures for the circulation and filing thereof. The Election Commission then, on August 24, 2007, informed Plaintiff in writing that it would take no further action on the petition due to several deficiencies in the documentation as required by MSPL No. 6-12, and again reiterated this position by letter of September 6, 2007. The state election was slated to take place on December 11, 2007. However, following the filing of this action on November 30, 2007, the election has been postponed.

Plaintiff followed the requirements set forth in Article XIII, Section 1 of the State Constitution[2] in drafting the petition to propose amendments to the Constitution. It is undisputed that he did not comply with the requirements of the State law regarding petitions.

DISCUSSION

Article XII, General Provisions, Section 2, provides that the people of Melekeok may pass laws by way of legislation to be voted on in a referendum for adoption. If the proposed legislation receives a majority vote in the referendum, it becomes law. The enactment of a proposal into law by initiative may be initiated and approved by at least one-fourth (1 /4) of the registered voters, and must then be brought to the next general election.

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[2] At trial, there was disagreement as to whether an English version of the State Constitution was ever officially enacted. The Court has received as part of this case two slightly different translations of the State Constitution: the first is a copy of the State Constitution which states it was translated into English on September 30, 1983, and signed by members of the State Constitutional Convention, which was attached to the affidavit of the Speaker of MSL; the second is a copy received by the State Office upon request by the Court, which is undated and does not contain any information on whether this is the "official" English translation but may have been translated some time in 1993 by the Melekeok Translation Committee. While there are differences in the two translations, beginning with the preamble and continuing throughout the documents, the translations are nearly identical with respect to the language of the relevant provisions at issue herein.

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Article XIII, Amendments To This Constitution, Section 1, provides that the State Constitution maybe amended at anytime by a majority of the people voting on the amendment pursuant to law in one of two ways: either by a petition of at least one-fourth (1/4) of all registered voters of the State or by a resolution adopted by at least three-fourth (3/4) of the membership of the State Legislature. Section 2 provides that any proposed amendment shall be brought to a vote in a general election and, upon approval in accordance with the State Constitution and laws enacted for such purposes, shall become effective.

Plaintiff claims that the petition he circulated complied with the provisions of Article XIII of the State Constitution, and that this provision is self-executing. In support of this ⊥166 argument, Plaintiff relies on the general presumption that constitutional provisions are self-executing and cites to *Gibbons v. Etpison,* 4 ROP Intrm. 1 (1993), which stated that in interpreting a constitutional provision, the presumption is that every provision in the constitution has content and meaning that maybe given immediate effect. *Id*. at 4. The petition herein complies with Article XIII, Section 1 of the State Constitution, because at least one fourth of those who were registered voters as of August 16, 2007, signed the petition and the names were verified by the Election Commission pursuant to their rules and regulations.

Defendant, in arguing that Article XIII is not self-executing but requires enacting legislation, relies primarily on the holdings in three election cases that discussed both national and state constitutional provisions. In Kiuluul v. *Obichang,* 2 ROP Intrm. 201 (1991), the Speaker of Airai State Legislature filed a petition for a writ of mandamus to compel the Airai State Governor to conduct a recall election of one of the legislators after a petition was submitted. The Appellate Division held that the state's constitutional provision requiring the State Legislature to "provide for a recall election to be held pursuant to law" was not self-executing but required enabling legislation. *Id*. at 205. The Appellate Division upheld the lower court's findings that the terms "pursuant to law" and "as provided for by law" are synonymous. *Id*. at 203. In addition, it further found that similar terms, such as "in accordance with the laws" and "established by law," are "synonymous for constitutional expression of principles which anticipate or rely upon legislation for specific implementation." *Id*. at 204.

In *Gibbons,* a petition was circulated calling for an initiative to amend the Palau Constitution so that the Compact of Free Association could be approved by a simple majority of the voters. 4 ROP Intrm. at 2. President Etpison then signed RPPL 3-76 into law, which was the enabling legislation to carry out the will of the petitioners by providing the "necessary enabling legislation, dates, funding and political education for the referendum and plebiscite." *Id*. (citing RPPL 3-76 § 1(2)). Plaintiffs filed suit to enjoin the vote on the initiative, arguing that Article XIV, Section 1(b) of the Palau Constitution, regarding amendments to the Constitution through a popular initiative, is not self-executing and that no popular initiative could occur until the Olbiil Era Kelulau passed enabling legislation on how to conduct an initiative. *Id*. at 4. The specific constitutional provision that was challenged read, in part, that "[a]n amendment to this Constitution may be proposed by . . . popular initiative . . . by petition signed by not less than twenty-five percent (25%) of the registered voters." *Id*. at 4 (citing Palau Constitution, art. XIV § 1(b)).

The *Gibbons* Court, in concluding that Article MV, Section 1(b) is self-executing, began its analysis by first noting "that the right of the people to bring an initiative is 'one of the most precious rights of our democratic process and that it is the duty of the court to jealously guard it.'" *Id*. (citing *Gibbons v. Etpison,* Civ. Action Nos. 285-92 & 287-92, Slip Op. at 6 (Tr. Div. Oct. 8,1992)). The Appellate Division went on to note that in interpreting a constitutional provision, the presumption is that every provision in the constitution has content and meaning which may be given immediate effect. *Id*. However, two exceptions were noted, neither of which were present in the ballot initiative at issue:

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> 1) Where we cannot determine the scope or nature of the right from the language of the provision even with recourse to the full panoply of interpretive devices which courts normally use to divine the meaning of constitutional language; or 2) Where the provision reflects an intention of the framers that it not be implemented until legislative or other action is taken.

Id. The Court found that the only term in the challenged initiative clause that needed clarification was "registered voters." *Id*. at 5. In addition, it concluded that the fact "[t]hat 'registered voters' requires elucidation by this Court is not a sufficient reason to conclude that this provision is not self-executing." *Id*. "All that is required by the first prong of the test enunciated above is that the constitutional provision contain sufficient content for us to identify the scope and nature of the right articulated." *Id*.

In *Eberdong v. Borja,* 10 ROP 227 (Tr. Div. 2003), the Election Commission was presented with a petition for the recall of one of the hamlet legislators. *Id*. at 228. Article VIII, Section 11 of the Koror State Constitution provides that "[t]he electorate may recall an elected member of the Legislature pursuant to law. No member shall be recalled from office during the first term of office." *Id*. at 227-28. Following receipt of the petition, Koror State Legislature's Speaker then requested that the Commission wait for the adoption of a Koror State law that sets forth the grounds and procedures for are call petition. *Id*. at 228. The Commission adopted its own rules and regulations for conducting the recall, citing the authority granted to it under 23 PNC § 1005, which governs the conduct and supervision of state elections. *Id*. The State Legislature then filed suit seeking a declaration that Article VIII, Section 11 is not self-executing and sought to enjoin the scheduled election from going forward. *Id*. at 229.

The court held that Koror State's constitutional provision on recall elections was not self-executingbut required enabling legislation to establish, *inter* alia, a percentage required for a successful election. *Id*. at 230. The court further held, after reviewing the legislative history of that section, that the constitutional provision "'reflects an intention of the framers that it not be implemented until legislative or other action is taken.'" *Id*. at 231 (citing *Gibbons,* 4 ROP Intrm. at 4).

In this case, the Court first holds that Article XIII, Section 1(a) is self-executing. The Court recognizes that the language of Section 1 allows the people of Melekeok to amend their constitution at any time if "a majority of the people voting on the amendment *pursuant to law* so approve." Melekeok State Const. art. XIII, § I (emphasis added). In addition, Section 2 provides

that any proposed amendment shall be voted on in a general election of the State of Melekeok and, "upon approval in accordance with this Constitution and laws enacted for such purposes," shall be incorporated. Melekeok State Const. art. XIII, § 2. Although, pursuant to Kiuluul, these clauses seem to require additional enabling legislation, the same cannot be said for the clause regarding the act of proposing amendments. As noted by Plaintiff, the "pursuant to law" language does not modify the second sentence of Section 1 and Section 1(a), which ⊥168 provide that "[a]ny amendment to this Constitution maybe proposed according to any one ofthe following manners: (a) Bypetition of at least one-fourth (1/4) of all registered voters of the State of Melekeok." Melekeok State Constitution art. XIII, § 1. Such language is directly on point with that analyzed and found to be self-executing by the Appellate Division in *Gibbons.*

Second, Plaintiff argues that MSPL No. 6-12 is invalid for several reasons, including unconstitutionality of provisions requiring any circulators of a petition to be registered voters of Melekeok, that the Election Commission and the Office of the Attorney General take certain actions regarding the effect and operation of any proposed amendments, and the section establishing criminal penalties which may exceed the limits States have in enacting penalties. Because certain provisions are invalid, claims Plaintiff, the entire law must be invalidated.

Defendant urges the Court to sever any invalid sections of MSPL No. 6-12, if any are found, from the rest of the law. In support, it cites to *Termeteet v. Ngiwal State* where the court noted that "[t]he question whether portions of a statute which are constitutional shall be upheld while other portions are eliminated as unconstitutional involves primarily the ascertainment ofthe intention of the legislature." 5 ROP Intrm. 236, 237 n.3 (1996) (citing 16 Am. Jur. 2d *Constitutional Law* § 265 (1979)). In this case, Speaker Ongelungel testified that the primary reason why the law passed containing language regarding circulator affidavits was to avoid situations where the circumstances surrounding a signature were uncertain and questioned, as had occurred in the past at both the state and national levels.

As a threshold matter, the Court notes that PEC rejected Plaintiff's petition solely on the basis that Plaintiff failed to file affidavits of the circulators. The citizenship of the circulators, the actions of the Election Commission and the Office of the Attorney General, and the listed criminal penalties are not issues raised by the facts of this matter. Although "[t]he Palau Constitution does not limit the jurisdiction of this court to 'cases or controversies.'" *Nakamura v. Sablan,* 12 ROP 81, 85 (2005) (Ngiraklsong, C.J., concurring), the Appellate Division has declined "to enter into speculative inquiries of matters that lack concrete factual situations, fully developed and properly presented for determination." *Koror State Govt v. ROP,* 3 ROP Intrm.127,128-29 (1992) *(citing Electric Bond and Share Co. v. SEC,* 59 S.Ct. 678, 687 (1938)). Therefore, the constitutionality of these challenged provisions shall not be determined by the Court at this time, as these issues have not been appropriately raised in this case. Thus, it is only the provision regarding the affidavits that the Court must review.

A "legislature is presumed to intend to pass a valid act, and . . . a law should be construed to sustain its constitutionality whenever possible." *Ngirengkoi v. ROP,* 8 ROP Intrm. 41,42 (1999) (citing *Yalap & Maidesil v. ROP,* 3 ROP Intrm. 61, 66 (1992)). If, however, "all or part of a statute *clearly* violates the constitution, the court must give effect to the language of the

constitution without regard to the consequences." *Yalap,* 3 ROP Intrm. at 64 (emphasis added).

The Court does not find that Plaintiff has sufficiently established that MSPL No. 6-12 conflicts with the right provided under Article XIII, Section 1 of the Melekeok Constitution. ⊥169 MSPL No. 6-12 does not bar Plaintiff from seeking to amend the State Constitution; it simply requires him to comply with procedures regarding how petitions proposing such amendments may be completed and filed. "[C]ourts will presume that legislation is valid until the contrary is shown beyond a reasonable doubt. Thus, courts should not pronounce legislation to be contrary to the constitution in doubtful cases." 16A Am. Jur. 2d *Constitutional Law* § 201 (1979). Here, there is no indication that the state law was intentionally enacted to unreasonably interfere with Plaintiffs right to petition to amend the constitution or with his right to vote. Nor has there been any showing that the state law is either arbitrary or unreasonable. Plaintiff testified that the requirements enacted by MSPL No. 6-12 are overly burdensome and would constrain an "ordinary" citizen's ability to utilize his or her right to amend the State Constitution. Plaintiff has failed, however, to provide any evidence that his claim would in reality have such a limiting effect.

The Court is of the opinion that MSL duly enacted MSPL No. 6-12, as well as Resolution No. 6-16-7S, albeit under circumstances that raise questions as to the legitimacy of the purposes thereof. Nevertheless, the stated purpose of the law is to establish procedures for the circulation and filing of initiative petitions proposing amendments to the State Constitution, which it does. Plaintiff became aware ofMSPL No. 6-12 either as early as March 2007, following the MSL session at Bailechesau, or as late as August 24, 2007, when the Election Commission informed him of the existence thereof. Plaintiff, despite knowing of the existence of the State law, chose to proceed with his course of action, submitting a petition that complies with the constitutional provisions, but fails to comply with the statutory requirements established by the state legislature. Despite the Court's holding that Article XIII, Section 1 is self-executing, the petition fails to comply with the duly-enacted state law regarding petitions for amending the State Constitution.

CONCLUSION

For the reasons discussed above, the Court finds that Plaintiff's complaint is without merit. Plaintiff is correct that Article XIII, Section 1 of the Melekeok State Constitution is self-executing. However, Plaintiff has failed to sufficiently establish that MSPL No. 6-12 conflicts with the right provided under Article XIII, Section 1 of the Melekeok Constitution. MSPL No. 6-12 does not bar Plaintiff from seeking to amend the State Constitution; it simply requires him to comply with procedures regarding how petitions proposing such amendments may be completed and filed. The Melekeok State Legislature enacted such enabling legislation, MSPL No. 6-12, on March 30, 2007. Because Plaintiff's petition fails to comply with the requirements of MSPL No. 6-12, it is invalid. As such, Plaintiff's complaint is dismissed. The Palau Election Commission is hereby ordered to establish a date for the Melekeok General Election in accordance with its rules and regulations in accordance with this decision. A separate judgment will be entered forthwith.