

Mechol v. Soalablai, 1 ROP Intrm. 62 (Tr. Div. 1982)
**AUGUSTINA MECHOL, ANSELMA
SAKURAI, et al.,
Plaintiffs,**

v.

**HINAO SOALABLAI, PELELIU
STATE, et al.,
Defendants.**

CIVIL ACTION NO. 171-82

Order

Issued: October 23, 1982

BEFORE: ROBERT A. HEFNER, Associate Justice.

This matter came on for hearing on Plaintiff's motion for a temporary restraining order on October 21, 1982. The Plaintiffs were represented by Kaleb Udui, Esq. The State of Peleliu was represented by John S. Tarkong, Esq. The governmental parties were represented by Attorney General.

The purpose of plaintiff's motion is to enjoin the election for the approval/disapproval of the Peleliu Constitution, which election is set for October 22, 1982.

After hearing the testimony of one of the plaintiffs, considering the arguments of counsel and reviewing the pleadings on file as well as the applicable law, it is determined that the motion must be denied.

The plaintiffs assert that they "'have always consider [sic] themselves as residents and citizens of the State of Peleliu.'" (paragraph 2 of the Complaint) but that they were "discouraged" from registering to vote in the upcoming election because Peleliu Ordinance No. P-07-82, as amended, requires that a voter needs to reside in the State of Peleliu for 6 months.

The State of Peleliu enacted Ordinance No. P-07-82 pursuant to Article VII of the Constitution for the Republic of Palau which states in part:

Each state shall prescribe a minimum period **L63** of residence and provide for voter registration for state elections. (Emphasis added).

The plaintiffs argues that Ordinance No. P-07-82 has been superceded by RPPL No. 1-22. Section 6(b) of that law states:

States may establish minimum periods of residency for state elections and referenda provided such residency requirements are not in excess of fifty (50)

Mechol v. Soalablai, 1 ROP Intrm. 62 (Tr. Div. 1982)
days. (Emphasis added).

That there is a direct and irresolvable conflict between Article VII of the Constitution and RPPL No. 1-22 Section 6(b) is clear. It is further not subject to argument that the Constitution is the supreme law of the land and prevails over any statutes passed by the Olbiil Era Kelulau. Article II, Section 1, Constitution.

The Court is aware of the United States Supreme Court cases *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L.Ed.2d 274; *Burns v. Fortson*, 410 U.S. 686, 93 S. Ct. 1209, 35 L.Ed.2d 633; *Marston v. Lewis*, 410 U.S. 679, 93 S.Ct. 1211, 35 L.Ed.2d 627, which apparently spawned the passage of Section 6(b) of RPPL No. 1-22. However, it is not up to the Olbiil Era Kelulau to set the duration residency requirements.

Therefore Section 6(b) of RPPL No. 1-22 is null and void and of no legal effect.

At issue before the court at this time is not whether the 6 months durational residency requirement is too long and not compelled by the interests of the State of Peleliu, but whether the plaintiffs even have standing to object to the holding of the election.

The court finds that none of the plaintiffs have established standing and therefore have no right to claim that the election on October 22, 1982, should not be held. Neither their pleadings nor the testimony adduced show that they have even established bona fide residence.

Whether the 6 months duration residency requirement of the State of Peleliu is valid or not will remain to be tested on another day. What is decided now is that the plaintiffs have not shown any basis upon which to postpone the election.

¶64 Accordingly, it is Ordered:

1. Plaintiff's motion for a temporary restraining order postponing the Constitutional referendum for the State of Peleliu on October 22, 1982, be and the same is hereby denied.

2. That Peleliu Ordinance No. P-07-82 as amended by Ordinance No. P-08-82, in so far as it purports to establish a durational residency to vote is valid and Section 6(b) of RPPL No. 1-22 to the extent the latter is inconsistent therewith is of no legal effect. No opinion is expressed herein as to the validity/invalidity of the six month term set forth in said State of Peleliu Ordinance.