

*Skebong v. Election Commissioner*, 1 ROP Intrm. 366 (1986)

**BLAU SKEBONG, NGIRAIKELAU  
BEOUCH, AMBOI JAMES FRANZ,  
FESTUS DEMEI, JOHN SKEBONG,  
RENGIIL MEDALARAK, YURIKO  
ADACHI, and FRED SKEBONG,  
Plaintiffs/Appellees,**

v.

**ELECTION COMMISSIONER,  
MAIDESIL RECHULD, FRANCIS  
TORIBIONG, AYANO BAULES,  
MASAUO KYOTA, ADELINA ISECHAL, HERSEY KYOTA, ERECHAR FRANZ,  
HELBERT FRITZ, APRIL OLKERIIL,  
NGIRNGOTEL IDESEMANG, and  
BAURI OINGERANG,  
Defendants/Appellants.**

CIVIL APPEAL NO. 19-84

Civil Action No. 3-84

Supreme Court, Appellate Division  
Republic of Palau

Opinion

Decided: August 19, 1986

Counsel for Appellant: Carlos H. Salii

Counsel for Appellee: Johnson Toribiong

BEFORE: MAMORU NAKAMURA, Chief Justice; LOREN A. SUTTON, Associate Justice;  
PAUL J. ABBATE, Part-time Associate Justice.

NAKAMURA, Chief Justice:

I.

STATEMENT OF THE CASE

On September 21, 1983, Ngeremlengui State of the Republic of Palau enacted Ordinance N-14-83 (“Ordinance N-14-83”) establishing an Election Board and prescribing voting procedures and voter qualifications for two separate elections: the November 14, 1983, referendum on the Draft Constitution for the State of Ngeremlengui; and the December 16, 1983, election of Ngeremlengui State Constitutional Government Officers (“Ngeremlengui **L367** State

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Election”)<sup>1</sup>. Section 4 of Ordinance N-14-83 created three (3) classes of prospective voters eligible to vote in the Draft Constitution referendum and four (4) classes of prospective voters eligible to vote in the Ngeremlengui State election, stating<sup>2</sup>:

Any citizen of the Republic of Palau qualified to vote in the election of the Magistrate of Ngeremlengui State held on December 7, 1982 or February 10, 1983 referendum on the Compact of Free Association shall be eligible to vote in the Constitutional referendum of November 14, 1983. Any other citizen of the Republic of Palau who is otherwise qualified to vote in a national election of the Republic of Palau who is a domiciliary or resident of the State of Ngeremlengui for not less than thirty (30) days prior to the referendum of November 14, 1983, may register to vote in the referendum at the Office of the Public Affairs or the Office of the Magistrate in Ngeremlengui State by October 20, 1983. The Municipal Council of Ngeremlengui State shall be responsible to certify the final list of eligible voters by November 7, 1983. The same registration and certification procedures shall apply with respect to the election of officers pursuant to the Constitution of the State of Ngeremlengui, except that the deadline for registration of voters shall be twenty-five (25) days from the date of the election and certification of voters to be made not less than fifteen (15) days prior to the date of election.

Ordinance N-14-83, section 4.

¶368 On October 16, 1983, Ngeremlengui Ordinance N-16-86 (“Ordinance N-16-86”) was passed amending section four to redefine voter eligibility requirements and restrict the classes of prospective voters for the Ngeremlengui Draft Constitution referendum to two (2) and the Ngeremlengui State election to three (3), providing:

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<sup>1</sup> The December 16, 1983, Ngeremlengui State election was dependent upon the ratification of the Draft Constitution in the November 14, 1983 referendum. Thus, if the Draft Constitution was rejected, the Ngeremlengui State election would have been canceled. *See* Ordinance N-14-83, section 5.

<sup>2</sup> The three classes of prospective voters for the referendum were:

1. Those qualified to vote in the Magistrate’s election of December 7, 1982;
2. Those qualified to vote in the February 10, 1983 Compact referendum; and,
3. Those eligible to vote in a national election who registered on or prior to October 20, 1983 and who were a domiciliary or resident of Ngeremlengui at least thirty (30) days prior to registration. The classes of prospective voters for the Ngeremlengui State election were the same as the referendum with an additional fourth class:
4. Those qualified to vote in a national election who registered on or prior to November 22, 1983 and who were a domiciliary or resident of Ngeremlengui at least thirty (30) days prior to registration.

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Any citizen of the Republic of Palau qualified to vote in the election held on February 10, 1983 for the referendum on the Compact of Free Association shall be eligible to vote in the Constitutional referendum of November 14, 1983. Any other citizen of the Republic of Palau who is otherwise qualified to vote in a national election of the Republic of Palau who is a domiciliary or resident of the State of Ngeremlengui for not less than thirty (30) days prior to the referendum of November 14, 1983, may register to vote in the referendum at the Office of Public Affairs or the Office of the Magistrate in Ngeremlengui State by October 25, 1983. The Municipal Council of Ngeremlengui State shall be responsible to certify the final list of eligible voters by November 7, 1983. The same registration and certification procedures shall apply with respect to the election of officers pursuant to the Constitution of the State of Ngeremlengui, except that the deadline for registration of voters shall be twenty (20) days from the date of the election and certification of voters to be made not less than fifteen (15) days prior to the date of election.

This appeal concerns only the three (3) classes of prospective voters eligible under Ordinance N-16-83 to vote in the Ngeremlengui State election. The three (3) prospective classes were determined by the trial court to be:

- A. Those qualified to vote in the February 10, 1983 Compact Referendum . . . ;
- B. Those entitled to vote by way of registration who were domiciliaries or residents in the State of Ngeremlengui for thirty (30) days prior to November 14, 1983; and,
- 1369 C. Those eligible to vote by reason of registration prior to November 21, 1983 and who were domiciliaries or residents of Ngeremlengui State for not less than thirty (30) days prior to November 26, 1983.

*Blau Skebong, et al. v. Election Commissioner, et al.*, (Tr. Div. July 1984).

The total number of registered voters in Ngeremlengui prior to the registration of new voters for the Ngeremlengui State election was 672. After 471 new voters registered, the total number of registered voters increased to 1,143. <sup>3</sup> The election was held as scheduled on December 16, 1983, and resulted in Maidesil Rechuld defeating Ngiraikelau Beouch for governor by 278 votes. Additionally, Adelina Isechal, Francis Toribiong, Ayano Baules, Masuo Kyota, Hersey Kyota, Erechar Franz, Helbert Fritz, April Olkeriil, Ngirngotel Idesemang, and Bauri Oingerang were elected as members of the Ngeremlengui State Legislature.

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<sup>3</sup> Before the December 16, 1983, election was held, the Republic of Palau filed a complaint seeking injunctive relief on behalf of the approximately 200 voters whose registration was denied by Ngeremlengui Municipal Council acting in its capacity as the Election Board. On January 4, 1984, the trial court entered a judgment sustaining the Ngeremlengui Municipal Council's actions with respect to 155 voters. *See Republic of Palau v. Municipal Council of Ngeremlengui*, (Tr. Div. Jan. 1984).

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On January 5, 1984, after the results of the election were tabulated, appellees filed suit seeking a declaratory judgment and injunctive relief on the ground that unqualified voters had illegally voted in the Ngeremlengui State election and that these illegal votes were sufficient in number to alter the outcome of the election.<sup>4</sup>

¶370 During the course of the twenty-three (23) day trial, 383 witnesses testified on behalf of plaintiffs/appellees. Defendants/Appellants called only one (1) witness as an expert. Fifteen (15) exhibits totaling 506 separate documents were also introduced into evidence at trial.

After reviewing and evaluating the testimonial and documentary evidence presented by both parties, the trial court issued a ten (10) part order which, in essence, declared the results of the Ngeremlengui State election null and void on one factual ground and null and void on a number of constitutional grounds. This order further declared that a new election should take place at the earliest convenient date.<sup>5</sup>

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<sup>4</sup> The results of the Ngeremlengui State election were certified by the President of Palau in his official capacity as Election Commissioner on January 12, 1984.

<sup>5</sup> After finding that it had jurisdiction to entertain the Ngeremlengui State election contest pursuant to Article VI, section 3 and Article X, section 5 of the Palau Constitution and 23 PNC § 106, the trial court issued the following ten (10) parts order:

1. That Article VII, Section 2, of the Ngeremlengui State Constitution as approved by referendum on November 14, 1983, be and the same is hereby declared to be void and unenforceable as being contrary to the provisions of Article II, Section 2, and Article IV, Section 5, of the Constitution of the Republic of Palau, and the Fourteenth Amendment to the United States Constitution, which latter constitution is held to currently apply within the Republic of Palau pursuant to Article XV, section 3(b) of the Republic of Palau Constitution.
2. Section 6(b), RPPL No. 1-22 [codified at 23 PNC§ 107(b)] is likewise held to be void and unenforceable as being in contravention of Article VII of the Constitution of the Republic of Palau.
3. Ngeremlengui State Ordinance 1-16-83 is also void and unenforceable as being contrary to Article VII, Section 2, of the Ngeremlengui State Constitution and further by it's failing to meet the test of uniformity required by Article IV, Sections 5 and 6 of the Constitution of the Republic of Palau.
4. The Ngeremlengui State gubernatorial and legislative election held on December 16, 1983, is declared void, and of no force and effect whatsoever, and does not have the affect of vesting official office, respectively, in those persons named herein as defendants.
5. That a new Ngeremlengui State Election be scheduled and held at the earliest convenient dates for the purpose of filling the Office of the Governor and Members of the State Legislature upon the following terms and conditions intended to establish controls sufficient to assure as closely as possible, that only

For the reasons stated in Part III, infra, we affirm the trial court's decision as to jurisdiction and parts (4) through ten (10) of its order. We reverse, however, the trial court's order as to parts one (1) through three (3).

II  
ISSUES OF APPEAL

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those qualified to vote by reason of residence, age, and citizenship are permitted in fact to so register and vote, to wit:

- a. Conduct and control of registration and voting shall be exclusively vested in the Republic of Palau Election Commissioner thereof.
- b. Voter registration and voting, when practical, shall be conducted under the procedure proposed to be established by Senate Bill 477, now pending before the 14th [sic] Olbiil Era Kelulau.
- c. The date of the closing of the registration books and of the election shall be fixed by the Election Commissioner and announced to the general public at the earliest convenient date.
- d. In determining eligibility to register which is a pre-condition to voting the following definition shall be used as a guideline in determining whether or not such registrant is qualified to vote:

Residence, resides in, or resident of, means that place where a person has, for the immediate preceding required statutory length of time, lived, slept, eaten and remained bodily present for a majority of such period of time, and from which such person has no present intention to permanently remove to another similar or other habitation.

This definition shall be taken together with the limitations expressed in Sections 14(b)-(f) of Senate Bill 447, aforesaid.

- e. No reference or use whatsoever shall be made to the ballot cast or registration books last used to determine voter eligibility in the December 16, 1983, or any prior Ngeremlengui State Election. To that end said ballots and registration lists are hereby declared null, void and of no force effect now or at any time whatsoever, it being intent of this ORDER that an entirely new and separate voter regis-

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1. Whether the trial court had jurisdiction to enter tain and decide an election contest in which the results were determined by an independent election board and certified by the President of Palau;

2. Whether Ordinance N-16-83 violates Article VII, section 2 of the Ngeremlengui State Constitution;

3. Whether Ordinance N-16-83 violates Article II, section 2 or Article IV, section 5

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tration list be compiled for use in any newly scheduled election.

f. The fact of prior registration in Ngeremlengui State shall not effect any presumption of qualification as to residency but rather each registrant shall be required to establish to the satisfaction of the person(s) charged with conducting the registration such registrant's bona fide residential qualification. In particular, any registrant who has first registered in Ngeremlengui State within the period of November 15, 1983 to November 30, 1983 should be examined with great perspicacity as this group constitutes the bulk of the disqualified December 16, 1983 voters.

6. That in consideration of the fact that the Election Commissioner testified as a witness subpoenaed on behalf of the plaintiffs, and stated that a new election could be held within 30 to 45 days from the date of an ORDER to do so, the court recognizing that defendants have been at the helm of Ngeremlengui State for some six months now without apparent major detriment to the governance of said State, determines and ORDERS that defendants shall continue in office pending the result of the herein ordered new election, relinquishing their respective offices only in the event he or she is defeated as a result of such new election.

7. The required period of residence qualification shall be that set forth in Section 13(a) of Senate Bill 447 aforesaid, except that the word State [sic: of Ngeremlengui] shall be substituted in lieu of the word Republic of Palau.

8. This court shall retain continuing jurisdiction of this matter pending the result of said election and the seating of those persons elected pursuant thereto.

9. Costs, not to exceed \$2,000.00 of the newly ordered election shall be reimbursed by the Ngeremlengui State Government to the Republic of Palau Election Commission upon presentation by said commission of invoice showing the total cost thereof.

10. Neither party shall recover of the other any attorneys fees, but plaintiff shall recover of defendants their costs incurred herein upon presentation of a cost bill to be first approved by the court, payment thereof to be made from the

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of the Palau Constitution;

⌚371

4. Whether Ordinance N-16-83 violates the Fourteenth Amendment of the United States Constitution;

5. Whether 23 PNC§ 107(b) violates Article VII of the Palau Constitution;

⌚372

6. Whether Article VII, section 2 of the Ngeremlengui State Constitution violates Article II, section 2 or Article IV, section 5 of the Palau Constitution;

7. Whether Article VII, section 2 of the Ngeremlengui State Constitution violates the Fourteenth Amendment to the United States Constitution;

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9. Whether the number of illegal votes cast were sufficient to alter the results of the Ngeremlengui State election; and

10. Whether the doctrine of estoppel precludes plaintiffs/appellees from challenging the results of the Ngeremlengui State election.

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### CONCLUSIONS OF LAW

#### A. Jurisdiction.

The Olbiil Era Kelulau has declared voting to be a fundamental right:

The right of suffrage is a fundamental right in a free and democratic society, particularly since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic fundamental and political rights.

23 PNC § 102(a).

Moreover, through 23 PNC § 105(b)(1), the Olbiil Era Kelulau has forbidden any person acting under the color of law to apply nonuniform voter standards, qualifications, practices, regulations or procedures in any municipal or state election:

(b) No person acting under color of law shall:

(1) In determining whether any individual is qualified under state or municipal law or laws to vote in any election, apply any standard, qualification, practice, regulation, or procedure different from the standards, or procedures

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Ngeremlengui State Treasury.

*Skebong, supra*, at pages 22-26.

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applied under such law or laws within the same state, or  
municipality or political subdivision to those who have  
been found by state or municipal officers to be qualified to  
vote . . . .

23 PNC § 105(b)(1).

¶375 The authority for the court to redress the use of nonuniform voter standards is implicitly found in Article IV, section 5 and Article X, section 5 of the Palau Constitution and explicitly found in 23 PNC § 106(a) and (c) which provides:

(a) The Supreme Court of the Republic of Palau shall have jurisdiction over all proceedings instituted pursuant to this chapter and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law . . .

(c) The Supreme Court may issue any order, suspend any election, void any election, reorganize any procedures for elections or take any actions excluding reapportionments as may be necessary to insure conformity with the requirements of this chapter.

23 PNC § 106(a) and (c).

The trial court, therefore, is correct in holding that it had jurisdiction to entertain and dispose of this election contest case.

B. Constitutional Issues.

This election contest case can be decided on factual, rather than constitutional, grounds. Simply stated, if the trial court found sufficient evidence to support a finding that votes were cast in the Ngeremlengui State election by persons not satisfying the durational residency requirements set forth in Ordinance N-16-83 and that these illegal votes were sufficient in number to alter the outcome of the election the trial court could void the election on this factual ground alone without reaching the constitutionality of Ordinance N-16-83, Article VII, section 2 of the Ngeremlengui State Constitution or 23 PNC § 107(b). Therefore, because it is clear from the record below that 373 illegal votes were cast by persons not satisfying Ngeremlengui's own residency requirements as set forth in Ordinance N-16-83 and that these illegal votes were sufficient in number to alter the results of the election, this court ¶376 affirms the trial court's order as to parts four (4) through ten (10).

*See, supra*, note 5.

This court, however, reverses the trial court's order as to parts one (1) through three (3)

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on the grounds of ripeness and judicial discretion. While this court appreciates the trial court's efforts to provide municipalities and states with durational residency standards for future elections, the Olbiil Era Kelulau, not the Judiciary, has the primary responsibility for establishing such standards. The Olbiil Era Kelulau has satisfied its responsibility by enacting 23 PNC § 107. The central issue before the trial court, however, was whether the durational residency requirements of Ordinance N-16-83 were complied with, not the constitutionality of 23 PNC § 107. As a consequence, until the constitutionality of 23 PNC § 107 is directly contested, this court will refrain from deciding that issue.

C. Estoppel.

This court affirms the trial court's ruling that the doctrine of estoppel does not preclude plaintiffs/appellees from challenging the results of the election. It is widely recognized that the question of whether an estoppel defense exists is for the trial court and that trial court's determination will be sustained on appeal unless the determination is clearly unreasonable.

The existence of an estoppel is generally a question of fact for the trier of fact, and ordinarily the trial court's determination is binding on appeal unless the contrary conclusion is the only one to be reasonable drawn from the facts. (emphasis added).

*Albers v. County of Los Angeles*, 42 Cal. Rptr. 89, 398 P.2d 129 (1965).

Thus, because the record contains sufficient evidence to show that 1377 the alleged "standing by" of plaintiffs/appellees was beyond their control and that the alleged "changing of positions" by defendants/appellants simply consisted of allowing themselves to become the holders of their respective offices, the trial court's decision regarding the inapplicability of an estoppel defense is affirmed.

IV  
CONCLUSION

For the reasons set forth above, the trial court's order as to parts four (4) through ten (10) is affirmed; provided; however, said order is reversed as to parts one (1) through three (3).