

*Simeon v. Election Commission*, 3 ROP Intrm. 372 (1991)

**MYORI SIMEON,  
Plaintiff,**

v.

**ELECTION COMMISSION as  
Represented by YOICHI KOHAMA  
and GOVERNOR CHARLES I. OBICHANG,  
Defendants.**

CIVIL ACTION NO. 421-91

Supreme Court, Trial Division  
Republic of Palau

Decision and order

Decided: November 12, 1991

NGIRAKLSONG, Associate Justice:

Plaintiff filed her complaint for a temporary restraining order, preliminary and permanent injunction on October 29, 1991. The court ordered a hearing set for November 1, 1991. Counsel for the plaintiff appeared and requested more time to file an amended complaint. Counsel for defendant Election Commission appeared and consented to plaintiff's request.

Accordingly, the hearing for a preliminary injunction was set for November 12, 1991, giving plaintiff time to file her amended complaint and defendants time to respond. At the November 12, 1991 hearing, the Court, with consent of all counsel, ordered that the hearing for preliminary injunction be consolidated with the trial of this case on the merits.

The Court begins with Section 13, Article VI of the Airai State Constitution:

The people may recall an elected member of the State Legislature from office. A recall is initiated by a petition which shall name the member sought to be recalled, state the ground for recall and be signed by not less **1373** than twenty-five (25%) percent of the registered voters who voted in the most recent election for the elected members of the State Legislature. Within sixty (60) days of the filing of the petition, the Governor shall provide for a recall election to be held pursuant to law. If the majority of the votes cast approves of the recall, the elected member shall be immediately removed from the office.

A petition to recall Legislator Myori Simeon from office was filed with the Governor. (Plaintiff's Exhibit A). The stated reason to recall the plaintiff from office is that ". . . she no longer represents their [petitioners'] interest."

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The Governor, acting on the petition, stated: “[t]he petitioners who submitted their petition to recall Legislator Myori Simeon have submitted sufficient facts to support the ground for their petition and I hereby submit her name for the recall election to be held on November 15, 1991, along with those names that were submitted to you earlier.” (Plaintiff’s Exhibit B). The Governor reviewed and found the petition to be proper pursuant to the instruction of *Kiuluul v. Obichang*, Civil Appeal No. 18-90. (*Id*; See, also Defendant Governor’s Answer). Accordingly, the Governor, by Airai Executive Order No. 1991-1 designated November 15, 1991 for the recall election of the plaintiff and other legislators.

Plaintiff makes one constitutional argument and one argument on election procedure. First, the constitutional argument is that the given reason for the recall election is too “vague” and “ambiguous” as to violate her rights under due process and equal protection clause. Plaintiff argues that the Airai State **1374** Executive Order No. 1991-1 subjecting her to the recall election violates her constitutional rights.

The Court disagrees with the plaintiff’s constitutional argument. The Court finds that recall is a “fundamental rights” the people reserve unto themselves. *Groditsky v. Pinkney*, 661 P. 2d (1983).

Recall . . . may be used for a purely political reason. The purpose underlying recall of public officials for political reasons is to provide an effective and speedy remedy to remove an official who is unsatisfactory to the public and whom electors do not want to remain in office, regardless of whether the person is discharging his or her duties consistent with his or her abilities and conscience.

*Dunham v. Ardery*, 143 P. 331 (1914). “A recall provision in a constitution is intended as a reservation in the people of the power to recall any official without judicial interference.” *Groditsky, supra* , at 282. “. . .once at least 25% of the electorate have expressed their dissatisfaction, the constitution reserves the recall power to the will of the electorate. Courts of law are not to intercede into the reasons expressed by the majority.” *Bernzen v. City of Boulder* , 525 P.2d 416, 419 (1974).

### RECALL PROCEDURES

Plaintiff argues that recall is different from election and therefore requires a specific Airai State “Recall Commission” to conduct. The Court disagrees. Even though the Court in *Kiuluul v. Obichang*, Civil Appeal No. 18-90, was confused with the election procedures, it is sufficient to say that the Election Commission may promulgate procedures, where needed, to conduct a **1375** recall election for a State Government. 23 PNC 1005; 23 PNC 1202(e).

The rule is well-established in this state that the right of recall is a fundamental right of the people. Statutes governing the exercise of the power to recall are to be liberally construed in favor of the ability to exercise it, and any limitations on that power must be strictly construed.

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*People v. McPherson*, 550 P.2d 311 (1976). The Governor has reviewed the petition to recall, found the petition to be proper and has called for a recall election on November 15, 1991. The Election Commission has determined that “. . .the Governor has complied with the procedures required by the Airai Constitution.”

### CONCLUSION

Recall is a right reserved to the people. The people will determine the sufficiency of the grounds in the recall petition. There are sufficient procedures for the recall election to take place on November 15, 1991. The Plaintiff shall recover nothing and judgment is granted in favor of the defendants.