Gibbons v. Etpison, 4 ROP Intrm. 1 (1993)

IBEDUL YUTAKA M. GIBBONS, et al.,
Appellants,

v.

NGIRATKEL ETPISON, et al.,
and
PETITIONERS FRED SKEBONG, et al.,
Appellees.

CIVIL APPEAL NOS. 19-92 & 4-93

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: October 29, 1993

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BEFORE: JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice; EDWARD C. KING, Part-Time Associate Justice

PER CURIAM:

On November 4, 1992, a ballot initiative was held in which the citizens of Palau, by a 62% majority vote, approved an amendment to the Constitution of the Republic of Palau. The amendment is designed to eliminate the requirement that, due to the constitutional restrictions on nuclear weapons and materials in Palau, the Compact of Free Association must be approved by a super-majority of 75% rather than a simple majority of votes cast in a ⊥2 nationwide referendum. In this appeal we are asked to declare the 62% vote null and void. For the reasons stated herein, we find no grounds to undo at the courthouse what the people of Palau have done at the voting booth.

In these consolidated appeals plaintiffs below appeal several trial court holdings, namely, that the constitutional provision establishing amendment by popular initiative is self -executing, that the Election Commission properly verified the petition calling for the initiative, that the language of the ballot measure accurately informed the voters of its intended effect, and that the Political Education Committee fulfilled its statutory mandate. Based on these holdings, the trial

court permitted the initiative to go forward and upheld its result. We affirm, finding that the initiative process was properly carried out, that the ballot presented voters with a clear choice, and therefore that the decision of the Palau electorate to amend their Constitution should not be disturbed by this Court.

BACKGROUND

The following facts, drawn from the record, are undisputed. On April 14, 1992, a group of Palauan voters calling themselves "The Popular Initiative to Amend the Constitution" (hereinafter "petitioners") filed a petition calling for an initiative to amend the Palau Constitution so that the Compact of Free Association and subsidiary agreements ("Compact") could be approved by a simple majority of voters. To verify the names on the petition, the Public Affairs Division matched the printed names on the petition with names on the 1991 list of registered voters and counted only those petitioners whose names appeared on both the registration list and the petition. On April 21 the Election Commission certified the petition based on the Public Affairs Division's verification process.

On August 20 then President Ngiratkel Etpison signed RPPL 3-76, which was enacted "to carry out the will of the Petitioners in the Petition by providing necessary enabling legislation, dates, funding and political education for the referendum and plebiscite." RPPL 3-76 § 1(2). The Act scheduled the initiative for the November 4, 1992 general election, *id.* at § 2(1), and dictated the language of the ballot. *Id.* at § 3. [1] RPPL 3-76 also established a Political ⊥3 Education Committee to inform Palauans about the meaning of the petition and the consequences of amending the Constitution. *Id.* at§ 7(1)(a). The Committee was directed to translate, print and distribute copies of the petition and the text of the proposed amendment, *id.* at § 7(1)(d), and to draft a "brief, impartial, explanatory provision" for the ballot "to explain the meaning of the petition and clarify all ambiguities." *Id.* at §§ 3, 7(1)(b).

Plaintiffs filed a lawsuit to enjoin the vote on the initiative. After a brief trial, the trial court on October 8, 1992 held that Article XIV § 1(b) of the Palau Constitution, the provision establishing amendment by popular initiative, was self-executing, and that the Election Commission properly certified the petition. The trial court reserved for future consideration the question of whether the ballot's language was misleading.

The vote on the initiative occurred, as scheduled, on November 4. Sixty-two percent of those voting voted in favor of the Constitutional amendment. *See* RPPL 4-9 § 3(5)(b). As a result of this favorable vote, the Olbiil Era Kelulau ("OEK") has passed and President Kuniwo Nakamura has signed RPPL 4-9, establishing a November 9, 1993 plebiscite on the Compact.

Issues relevant to the ballot's language were tried in June, 1993. In a July 2, 1993 decision, the trial court held that plaintiffs failed to prove voters were confused or misled by the ballot language or that the discrepancies between the English and Palauan versions of the ballot were serious enough to confuse or mislead voters; the trial court also found that the Palauan

[1] The ballot and the Palauan version of the proposed amendment, as translated by plaintiffs' expert, are appended to this opinion as appendices "A" and "B" respectively.

version sufficiently informed Palauan-speaking voters of the effect of their vote, and that the Political Education Committee adequately informed voters of the substance of the proposed amendment.

Plaintiffs appeal the trial court's October 8, 1992 and July 2, 1993 decisions.[2]

⊥4 DISCUSSION

I. ARTICLE XIV § 1(b) OF THE PALAU CONSTITUTION IS SELF-EXECUTING.

The right of petitioners to bring an initiative to amend the Constitution is set forth in Article XIV § 1(b) of the Palau Constitution, which reads in part,

> An 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.

Plaintiffs argue that this constitutional provision is not self-executing. In other words, they contend that no popular initiative can occur until the OEK passes enabling legislation establishing guidelines for how to conduct an initiative.

We begin our analysis by noting, as the trial court did, 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." *Gibbons v. Etpison*, Civ. Action Nos. 285-92 & 287-92, Slip Op. at 6 (Tr. Div. October 8, 1992). We further note that constitutional interpretation must begin with a presumption that every provision in the Constitution has content and meaning which may be given immediate effect. In other words, we will presume that constitutional provisions are self-executing.

In light of this presumption, we will decline to give immediate effect to a constitutional provision in only two instances: 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.

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[2] Following the November 4, 1992 vote petitioners moved to dismiss plaintiffs' appeal of the trial court's October 8 decision, asserting that plaintiffs' request for injunctive relief became moot once the vote was held. However, in addition to injunctive relief, plaintiffs sought, inter alia, a declaratory judgment that enabling legislation was required to effectuate petitioners' right to amend the Constitution by initiative. This and other substantive issues raised in the plaintiffs' complaint and in their arguments before the trial court are not mooted by the election. We therefore deny petitioners' motion to dismiss plaintiffs' appeal.

A. Nature of the Right

Applying the first of these two related concepts to Article XIV§ 1(b), we find that this initiative clause contains sufficient content for us to determine the scope and nature of the right contained therein. The initiative clause sets out in unambiguous terms the requirement that petitioners seeking to amend the Constitution by initiative must meet, to wit, they must present a petition signed by not less than twenty-five percent of the registered voters. We disagree with plaintiffs that the phrase "not less than twenty-five percent" merely sets a ⊥5 minimum figure which the OEK is free to raise in enabling legislation. "Not less than" speaks not to the OEK, but to the petitioners, and tells them that while they are free to gather signatures from more than 25% of the registered voters, their petition may not be placed on the ballot unless they secure at least the specified number of signatures. The OEK may not alter the percentage fixed by the framers in Article XIV § 1(b).

The only term in the initiative clause that may need amplification is "registered voters." The term itself is clear, obviously meaning those citizens of Palau who have registered to vote in national elections. But since the number of registered voters changes from time to time there may be some need to clarify the time for determining the number of registered voters. We interpret the phrase to mean two things: 1) petition signers must be registered voters at the time they sign; and 2) the most recent voting list available at the time the petition is turned in should be used to determine if the 25% requirement has been met. In the present case the Election Commission used the 1991 voter registration list. As the testimony at trial indicated that this was the most current list available when the petition was turned in, the Election Commission complied with the standard established in this paragraph.

That "registered voters" requires elucidation by this Court is not a sufficient reason to conclude that this provision is not self-executing. This Court is "the ultimate interpreter of the Constitution." *Remeliik v. The Senate* , 1 ROP Intrm. 1, 5 (1981). That the Court must give meaning in particular instances to the terms "equal protection", Article IV § 5, or "due process", Article IV § 6, does not suggest that these fundamental rights are not in full force without legislative action. No different result should obtain with respect to the right of initiative at issue here. 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. Article XIV § 1(b) satisfies this requirement.

B. Immediate Implementation Intended

The initiative clause also satisfies the second prong of the test because nothing in the clause indicates that it is not to be immediately implemented. The self-executing nature of the initiative clause is evidenced by the absence of any language suggesting an intention that it remain dormant pending some future action. *Cf. Kiuluul v. Obichang* , 2 ROP Intrm. 201, 203 (1991). Indeed, Article XIV § 2 suggests that the provisions concerning proposed amendments ⊥6 have immediate vitality. Article XIV § 2 makes no mention of any need for implementing legislation but rather indicates that proposed amendments--whether proposed by initiative, the OEK, or a Constitutional Convention--should be put to a vote at "the next general election."

That was done in this case.

Our conclusion that the initiative clause was intended to be self-executing is confirmed by our review of the pertinent report of the committee that proposed it. The committee explicitly rejected an alternative version of the provision, which would have "empower[ed] the National Assembly to establish the mechanics and requirements for proposal of amendments by initiative." Constitutional Convention, Committee on General Provisions, Standing Committee Report 31, p. 3 (March 4, 1979). We interpret this rejection to mean that the framers favored a self-executing initiative provision rather than one which depended upon the OEK to establish enabling legislation.

Plaintiffs point to another portion of this committee report in which the framers indicated that they preferred a simply stated Constitution to one "burdened with detail" and said that the "specific requirements of the initiative . . . should be established" by the OEK. *Id.* at 4. Plaintiffs argue that this means the framers thought legislation must be in place before a popular initiative could occur. Plaintiffs' reading, however, does not comport with either the committee's explicit rejection of the "empowerment" clause or with its overriding interest in establishing a method of amendment which "ensure[s] popular control of the government and the right of future generations of citizens of Belau to revise, reform, and change the Constitution." *Id.* at 3. It is clear from the committee report that the framers envisioned establishing an initiative procedure independent of legislative action:

> Proposing amendments by initiative permits citizens to directly introduce constitutional changes since an individual or group of persons may sponsor a petition, collect signatures, and place a proposed amendment on the ballot for consideration in a popular amendment.

Id. A complete reading of the report convinces us that although the framers intended to permit the OEK to iron out the details of the initiative process, and perhaps even expected them to do so, they did not intend that the OEK's failure to act on this subject should stand in the way of a citizen's right to "directly introduce constitutional changes." *Id.*

⊥7 Plaintiffs argue that even if the initiative clause is self-executing the "OEK could still thwart any initiative petition by failing or refusing to enact enabling legislation after the initial proposal stage is completed." To the contrary, once a valid petition is filed it is constitutionally incumbent on the OEK to enact legislation to facilitate the voter initiative. This the OEK has done with RPPL 3-76. Given the self-executing nature of the initiative clause, it makes no constitutional difference that this Act was passed after the petitioners filed their petitions.

To conclude, we hold that Article XIV § 1(b) is self-executing; in other words, petitioners could exercise their reserved right to amend the constitution by initiative without enabling legislation from the OEK.

II. THE ELECTION COMMISSION PROPERLY CERTIFIED THE PETITION.

Plaintiffs argue that the procedures used to verify the petition were unfair and arbitrary. We start with the presumption that petitions which are circulated, signed and filed are valid. *See* 42 Am. Jur. 2d *Initiative and Referendum* § 54 (1969). "The presumption places on those who seek to invalidate signatures on a petition the burden of producing evidence sufficient to overcome the presumption. In the absence of such evidence, the presumption must prevail." *Id.*

Plaintiffs allege that this presumption only applies to petitions where the circulators have sworn that the signatures are genuine and where public officials have verified that the signers were qualified voters. Yet, plaintiffs conceded at oral argument that they have the burden of proof on their claim that less than 25% of the registered voters signed the petition. This is consistent with the weight of authority that the signatures on petitions are presumptively valid. To reverse this burden, and require petitioners to demonstrate the validity of each signature would place a potentially insuperable, and unwarranted, obstacle in the way of petitioners' constitutional right of initiative.

Plaintiffs have failed to rebut the presumption. As the trial court noted, plaintiffs did not cite a single name which improperly appears on the petition but which was also counted ⊥8 by the Public Affairs Division. [3] Nor did plaintiffs present a single person to testify that his name had been forged or procured by fraud or coercion of any kind. Plaintiffs instead argued that the process used by the Public Affairs Division was per se inadequate because no attempt was made to match and compare each signature on the petition with the signatures on file of each registered voter. We reject this contention, finding no such requirement in the Constitution. To require the painstaking procedure proposed by plaintiffs where there existed less onerous methods adequate to the task would, if anything, impose an unjustifiable burden on the right of initiative. What is called for instead is a process reasonably calculated to confirm that an initiative petition has in fact been subscribed to by the requisite number of registered voters.

We believe that the process used here met this standard. The head of the Division, David Ngirmidol, testified that his office used the same procedures in this instance as it has always used for checking petition signatures. For example, the Division did not count any signatures which contained only a first name; it also eliminated double counting by only counting once those names which were listed two or more times. Ngirmidol's uncontradicted testimony was that every name counted toward the total had a corresponding valid voter registration number on file. Those names that did not have registration numbers were not counted. Put another way, in determining whether the petitioners had satisfied the 25% minimum established in the initiative

[3] Although plaintiffs have provided this Court with an addendum which purports to identify potentially invalid signatures on the petition, it still fails to demonstrate that any of those signatures were improperly counted by the Public Affairs Division in certifying that the petition was signed by 25% of the registered voters, or that the trial court's adoption of that conclusion was clearly erroneous. Plaintiffs had a full opportunity to present their contentions to the trial court and to demonstrate that an insufficient number of voters signed the petition. Plaintiffs did not meet their burden below and their additional submissions here, even taken at face value, do not show that the trial court was clearly erroneous in its finding.

clause, the Division counted only the signatures of those citizens whom they could confirm were registered voters. We are satisfied that this procedure sufficiently insured that the petition was signed by the requisite number of voters.

As stated above, it is open to the OEK to institute more specific guidelines detailing how an initiative petition drive should be conducted and how the petitions obtained ⊥9 from such a drive should be counted and verified. The Election Commission can participate in this process through its rule making powers. *See* 23 PNC § 1202(b). But until these changes take place, we must assess the viability of the current procedures on their own terms, mindful that if overly restrictive or technical requirements are imposed on the initiative process, the right of initiative reserved to the people will itself be defeated.

For the reasons set forth in this section, we let stand the Election Commission's certification of the petition.

III. THE BALLOT'S LANGUAGE ACCURATELY INFORMED THE VOTERS OF THE AMENDMENT'S INTENDED EFFECT.

Challenges based upon lack of clarity of ballot language will be permitted to negate the results of an election only if the court is convinced that the language was so confusing as to prevent the average voter from comprehending what was at issue and from making an intelligent voting decision.[4] Where, as here, there is no showing that the ballot language is argumentative, propagandistic or misleading, we should avoid imposing unnecessary impediments to the initiative process.

A. English Version of Ballot

The English language version of the proposed amendment itself is somewhat convoluted and is consequently rather difficult to understand. However, any concern we might have had about the ability of the average voter to understand what was at issue in the initiative is allayed by the explanatory statement at the top of the official ballot:

> THIS AMENDMENT IF APPROVED BY SIMPLE MAJORITY AND THREE-FOURTHS (3/4) OF THE STATES SHALL LOWER THE CURRENT VOTING REQUIREMENT OF 75%, AS PRESCRIBED IN ARTICLE XIII, SECTION 6, AND ARTICLE II, SECTION 3 OF THE PALAU CONSTITUTION RELATIVE TO THE COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES AND ITS SUBSIDIARY AGREEMENTS ONLY.

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Plaintiffs have not furnished us with grounds for believing that the average voter of Palau,

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[4] Plaintiffs make much of the trial court's delay in hearing their claims regarding the ballot's language. Plaintiffs allege that the ballot's language should be tested under a "pre-election standard." However, they do not explain what this standard is, and how it differs from any "post-election standard." If the trial court erred in postponing the hearing on the ballot's language, such error was harmless.

reading the English version of the ballot, that is, the explanatory statement along with the proposed amendment itself, would be unable to comprehend what was at issue and to make an intelligent voting decision.[5]

B. Palauan Version of Ballot

With respect to the Palauan language version of the ballot, plaintiffs focus most of their attention on the first two sentences of the Palauan version of the proposed amendment. The first sentence states that "[w]ithout this amendment, the Supreme Court will determine that there is a conflict between the Constitution and the Compact and its subsidiaries." Plaintiffs allege that because this version refers to what this Court will do, unlike the first sentence of the English version which refers to what this Court has done already, it mistakenly leads a voter to believe that if he wants "the Constitution to be preserved," that is, if he wants the voting requirement on the Compact to remain at 75%, he should vote in favor of the amendment.

We find plaintiffs' claim untenable. The claim rests upon the unreasonable assumption that a voter would somehow believe that, by voting to amend or change a constitutional provision, he is voting to "preserve" it. We do not see any way that a voter who wanted the voting requirement to remain at 75% would conclude that he should vote to change the requirement. Thus, we disagree with plaintiffs' position that a voter reading the Palauan version could be misled into thinking that he should vote in favor of the amendment if he thought the voting requirement on the Compact should remain at 75%.

Plaintiffs fault the second sentence of the Palauan version, which accurately sets forth the amendment's goal of removing the Compact vote from those sections of the Constitution which require a 75% favorable vote, for beginning with the word "And." Plaintiffs ⊥11 suggest that the use of this conjunctive ties the second sentence to the first, and mistakenly implies that a voter should vote in favor of the amendment if he wants the 75% requirement to remain in effect. Plaintiffs can only reach this conclusion by applying imaginative English syntax theory to the text and by selectively removing and combining portions of the two sentences. While the "And" beginning the second sentence may be unnecessary, it in no way detracts from the meaning and intent of that sentence when read in its entirety.

As to both of these contentions, it must again be noted that the ballot's explanatory statement clearly and succinctly explained that the amendment was intended to lower the current voting requirement on the Compact. Plaintiffs have never suggested that the Palauan version of this statement was in any way deficient. Thus, any voter who might be confused by either the

[5] We are not persuaded by plaintiffs' argument that the explanatory statement creates an "obvious mystery" by not stating what percentage the voting requirement would be lowered to. The proposed amendment on the ballot explicitly states that the Constitutional provisions requiring a 75% vote on nuclear issues shall not apply to the Compact. As the Constitution makes no reference to any other voting percentage, it is fair to assume that the average Palauan voter would interpret this proposed amendment to mean that the standard voting requirement of a simple majority--the standard applied in other elections in Palau--would be applied to the Compact if the proposed amendment passed.

English or the Palauan version of the amendment could read the explanatory statement for guidance.[6]

While not determinative, we are impressed by the fact that every plaintiff who testified knew the main idea of the November 4, 1992 ballot and the consequences of a "yes" and "no" vote. Significantly, not one plaintiff testified that he or she intended to vote a particular way but was confused by the ballot language into voting in a manner he or she did not intend. While we ultimately decide whether the ballot's language is sufficient based on the objective tests stated earlier in this section, plaintiffs' failure to call a single witness who was misled by the language lends further support to our conclusion that the ballot accurately posed its question in a non-misleading manner.

C. Equal Protection

Finally, plaintiffs contend that voters who read only the Palauan language were discriminated against in violation of the equal protection clause of the Palau Constitution because the Palauan language version of the ballot varied from the English language version. *See* Article ⊥12 IV § 5 ("the government shall take no action to discriminate against any person on the basis of . . . language . . . ."). Plaintiffs argue that the Palauan language version of the ballot varied from the English language version in three ways: (1) as noted above, the Palauan version refers to inconsistencies between the Compact and the Constitution that will be found if the amendment is not approved, while the English version refers to inconsistencies that have been found to exist between the Compact and the Constitution; (2) the Palauan version refers to inconsistencies between the Constitution and the Compact, while the English version refers to inconsistencies between the Compact and "other sections of the Constitution"; and (3) the Palauan version, unlike the English version, does not specify that section 324 of the Compact is inconsistent with the Constitution--it just indicates that there is a conflict between the Constitution and the Compact.

Plaintiffs rely on *Torres v. Sacks*, 381 F. Supp. 309 (S.D.N.Y. 1974). That case was not an equal protection case, but rather a case brought under the United States Voting Rights Act. Still, what the court there said is a useful guide in determining what is required to satisfy the Palau Constitution's equal protection clause in regard to avoiding language-based discrimination in the voting context:

> In order that the phrase "the right to vote" be more than an empty platitude, a voter must be able effectively to register his or her political choice. This involves more than physically being able to pull a lever or marking a ballot. It is simply fundamental that voting instructions and ballots, in addition to any other material

[6] Plaintiffs' position is further undermined by the language near the end of the ballot which, as translated by plaintiffs' expert, explained that "Article 13, Section 6 and the last phrase in Article 2, Section 3 of the Constitution shall continue to apply in full force for all other purposes." The clear import of this language is that under the terms of the amendment, the 75% voting requirement contained in these constitutional provisions shall not apply for the purpose of approving the Compact.

> which forms part of the official communication to registered voters prior to an election, must be in [both languages].

Torres, 381 F. Supp. at 312.

Word for word exactitude is not required in translating ballot language. Indeed, the expert witness in English-Palauan translation who was called by plaintiffs stated that, in translating English to Palauan, one must translate, not literally, but rather to convey the meaning, for "it would be a very poor translation if you go word for word." Here, when comparing the English to the Palauan version of the ballot it is apparent that, although the language used has some differences, the overall meaning is the same, so that all voters, whether English speaking or Palauan speaking, were advised that a "yes" vote meant they were voting in favor of amending the Constitution to lower the 75% voting requirement with respect to the ⊥13 Compact. Therefore, both the English speaking and the Palauan speaking voter were "able effectively to register his or her political choice." *Torres, supra*. The language differences do not infringe upon a Palauan reader's equal protection rights because they do not alter the overall meaning of the Palauan version, nor do they affect the intelligent decision of the average Palauan voter.

After carefully examining the entire text of the ballot we are satisfied that it is not confusing or misleading, and that both versions of the proposed amendment accurately presented the voter with a clear choice on whether the voting requirement on the Compact should be reduced. Thus, we will not interfere with the people's vote on, and their approval of, the amendment.

IV. THE POLITICAL EDUCATION COMMITTEE FULFILLED ITS STATUTORY MANDATE.

Plaintiffs' arguments regarding the efficacy of the Political Education Committee's ("PEC") campaign to educate the voters can be dismissed summarily for the reason that plaintiffs candidly acknowledge in their brief: In deciding whether the ballot accurately informed the voter about the true nature of the proposed amendment, the sole focus should be on the ballot itself. We assess the ballot without reference to outside materials. Thus, having found that the ballot's language accurately informed voters about the purpose of the proposed amendment and enabled them to make an intelligent voting decision, our inquiry need go no further.

Notwithstanding this conclusion, plaintiffs have not shown us any reason to disagree with the trial court's conclusion that the PEC adequately performed the tasks allotted to it by the OEK. *Gibbons v. Etpison*, Civ. Action No. 435-92, Slip Op. at 16-18 (Tr. Div. July 2, 1993).[7]

⊥14 CONCLUSION

For all of the reasons stated in this opinion, we affirm the trial court's decisions of

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[7] We note that plaintiffs received $25,000 from the OEK to fund their political education drive. *See* RPPL 3-76 § 8(1)(b). Plaintiffs were thus given fair opportunity to air their opinions before the Palauan public.

October 8, 1992 and July 2, 1993. Therefore, we uphold the results of the November 4, 1992 initiative amending the Constitution.

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OFFICIAL BALLOT

CONSTITUTIONAL AMENDMENT REFERENDUM

Republic of Palau · November 4, 1992

THIS AMENDMENT, IF APPROVED BY SIMPLE MAJORITY AND THREE-FOURTHS (3/4) OF THE STATES, SHALL LOWER THE CURRENT VOTING REQUIREMENT OF 75%, AS PRESCRIBED IN ARTICLE XIII, SECTION 6, AND ARTICLE II, SECTION 3 OF THE PALAU CONSTITUTION RELATIVE TO THE COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES AND ITS SUBSIDIARY AGREEMENTS ONLY.

TIAL OMELODECH, SEL LEMENGAI RA RUBDOIS MA EDEI-ER-EUAITIUD RAIKAL BELUU (STATES), ENGMO ONGENGETII A NGAR NGII LOLKAEL ER CHELECHANG EL 75%, EL ULECHOLT RA XIII EL BLIONGEL ERA 6 EL BADES MA II EL BLIONGEL ERA 3 EL BADES RA UCHETEMEL A LLACH ER BELAU. TIAL OMELODECH A KMAL DI MELEKOI EL KIREL A MIMOKL EL DELEUILL EL OBENGKEL A MERIKEL, MAIKEL MEKEKEREI EL TELBIIL LOBENGKEL.

DO YOU AGREE THAT THE CONSTITUTION SHOULD BE AMENDED BY ADDING THE FOLLOWING SECTIONS?

Place an "X" or other mark in one box.

SECTION 1 4A. TO AVOID INCONSISTENCIES FOUND PRIOR TO THIS AMENDMENT BY THE SUPREME COURT OF PALAU TO EXIST BETWEEN SECTION 324 OF THE COMPACT OF FREE ASSOCIATION AND ITS SUBSIDIARY AGREEMENTS WITH THE UNITED STATES OF AMERICA AND OTHER SECTIONS OF THE CONSTITUTION OF THE REPUBLIC OF PALAU, ARTICLE XIII, SECTION 6 OF THE CONSTITUTION AND THE FINAL PHRASE OF ARTICLE ll, SECTION 3, READING "PROVIDED, THAT ANY SUCH AGREEMENT WHICH AUTHORIZES USE, TESTING, STORAGE OR DISPOSAL OF NUCLEAR, TOXIC CHEMICAL, GAS OR BIOLOGICAL WEAPONS INTENDED FOR USE IN WARFARE SHALL REQUIRE APPROVAL OF NOT LESS THAN THREE FOURTH (3/4) OF THE VOTES CAST IN SUCH REFERENDUM," SHALL NOT APPLY TO VOTES TO APPROVE THE COMPACT OF FREE ASSOCIATION AND ITS SUBSIDIARY AGREEMENTS (AS PREVIOUSLY AG REED TO AND SIGNED BY THE PARTIES OR AS THEY MAY HEREAFTER BE AMENDED, SO LONG AS SUCH AMENDMENTS ARE NOT THEMSELVES INCONSISTENT WITH THE CONSTITUTION) OR DURING THE TERMS OF SUCH COMPACT AND AGREEMENTS. HOWEVER, ARTICLE XIII SECTION 6 AND THE FINAL PHRASE OF ARTICLE II, SECTION 3 OF THE CONSTITUTION SHALL CONTINUE TO APPLY AND REMAIN IN FULL FORCE AND EFFECT FOR ALL OTHER PURPOSES, AND THIS AMENDMENT SHALL REMAIN IN EFFECT ONLY AS LONG AS SUCH INCONSISTENCIES CONTINUE. SECTION 14B. THIS AMENDMENT SHALL ENTER INTO FORCE AND EFFECT IMMEDIATELY UPON ITS ADOPTION.

Kau kekongei ra uchetemel a llach er Belau a mo mengode el uaitiang el ngariou?

Mliang a tengetang "X" malechub e ngiidi lolangch ra chelsel a tara kahol el ngariou.

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Omkong diak tial omelodech, ea Supreme Court a mo oterkeklii el kmo ngarngii a klekakebosech ra delongelel a Constitution ma Compact maikel mekekerel rengedel a delewill lobengkel. Me sel Article 13. Section 6 ra Constitution, mesel tekoi el ngara ullebengelel a Article 2, Section 3 a kmo "ENGDI LE NGARNGII A NGIIDIL TELBIIL EL KONGEI ER A USBECHEL, OMELSEMEL, OMNGEDELEL MA LECHUB E NGOMENGITEL A NUCLEAR, DOKUNGAS MA LECHUB ENG BAIKING EL KLEKEDALL RA MEKEMAD EL LOMDASU EL MO OUSPECH ERA MEKEMAD, ENG MO NGIUUL A KENGEI ER A EDEI-ER EUAITIUD (3/4) EL SENGKIO EL OLECHOLT A ULDESUIR A RECHAD ER A BELUU . Tiakid a mo diak douspech erngii el lolkael ra Sengkyo ra mo kongei ra Compact maikel bebil ra obengkerengedel a delewill (Tial melekoi ra Compact el blal saing erngii aikal erbitang malechub e omeldechel e mei ruriul, el ngii lomelodech a diak el lutekengii a Constitution) ra klteketel a louteliil a Compact maike rengedel a delewill. Engdi Article 13, Section 6 ma ulebongel tekoi el ngara Article 2, Section 3 ra Constitution a di mo medechel e melemolem el oureor el mui a klisichel el kirel a rokui el ngodech el tekoi (moktek), e tial omelodech a mo oureor era klemengetel a taem el ngarngii aikal klekakebosech Section 14b. Tial omelodech a mo omuchel el oureor era rechedel sel lemengai a kengei er ngii.

APPENDIX A

YES
CHOI

NO
DIAK

DO YOU AGREE THAT THE CONSTITUTION SHOULD BE AMENDED AS FOLLOWS: PLACE AN "X" OR ANY OTHER MARK INSIDE ONE OF THE BOXES BELOW.

WITHOUT THIS AMENDMENT. THE SUPREME COURT WILL DETERMINE THAT THERE IS A CONFLICT BETWEEN THE CONSTITUTION AND THE COMPACT AND ITS SUBSIDIARIES. AND ARTICLE 13, SECTION 6 OF THE CONSTITUTION, AND ALSO THE LANGUAGE AT THE END OF ARTICLE 2. SECTION 3 WHICH SAYS "PROVIDED, THAT ANY SUCH AGREEMENT WHICH AUTHORIZES USE, TESTING, STORAGE OR DISPOSAL OF NUCLEAR, TOXIC CHEMICAL, GAS OR BIOLOGICAL WEAPONS INTENDED FOR USE IN WARFARE SHALL REQUIRE APPROVAL OF NOT LESS THAN THREE FOURTH (3/4) OF THE VOTES CAST IN SUCH REFERENDUM," SHALL NOT BE USED TO DETERMINE THE VOTES TO APPROVE THE COMPACT AND ITS SUBSIDIARY AGREEMENTS. (THIS IS IN REFERENCE TO THE COMPACT WHICH HAS BEEN SIGNED BY BOTH SIDES AND ITS SUBSEQUENT AMENDMENTS TO FOLLOW. WHICH DO NOT CONFLICT WITH THE CONSTITUTION DURING THE LIFETIME OF THE COMPACT AND ITS SUBSIDIARIES. BUT ARTICLE 13. SECTION 6 AND THE LAST PHRASE IN ARTICLE 2. SECTION 3 OF THE CONSTITUTION SHALL CONTINUE TO APPLY IN FULL FORCE FOR ALL OTHER PURPOSES. THIS AMENDMENT WILL TAKE EFFECT AND REMAIN SO, AS LONG AS THESE CONFLICTS EXIST. THIS AMENDMENT WILL TAKE EFFECT AS SOON AS IT IS APPROVED.)

Gibbons v. Etpison, 4 ROP Intrm. 1 (1993)
APPENDIX B