

*Aguon v. Ngarchelong State Assembly*, 4 ROP Intrm. 374 (Tr. Div. 1994)

**TOBIAS F. AGUON,  
Plaintiff,**

v.

**NGARCHELONG STATE ASSEMBLY and  
PALAU ELECTION COMMISSION,  
Defendants.**

CIVIL ACTION NO. 215-94

Supreme Court, Trial Division  
Republic of Palau

Decision and order

Decided: September 13, 1994

LARRY W. MILLER, Justice:

Before the Court are cross-motions for summary judgment filed by plaintiff Tobias Aguon and by defendant Palau Election Commission. The latter motion has been joined by defendant Ngarchelong State Assembly. For the reasons set forth herein, the Court has determined to deny plaintiff's motion and to grant defendants'.

#### Background

The facts underlying this dispute, although undisputed, are somewhat complicated. The Ngarchelong State Constitution provides that its Governor "shall be elected in a statewide election for a term of four (4) years." Art. VIII, Sec. 2. Ngarchelong State Government Public Law (NSGPL) No. 53, passed in July 1990, set an election for Governor on September 25, 1990. It provided that

"The term of office of the Governor is four [years], beginning at noon on the second Monday in October following his election and ending at noon on the second Monday in October four years later. The term of the incumbent Governor shall expire at noon[n] the second Monday in October 1990." *Id.* § 2.

**¶375** On September 21, 1990, Justice O'Brien of this Court entered a preliminary injunction enjoining the September 25 election for reasons not pertinent here. *See Republic of Palau Election Commission v. Ngarchelong State Government*, Civil Action No. 448-90. NSGPL No. 56, passed in April 1991, set a new election date of July 2, 1991,<sup>1</sup> and provided:

"The term of office of the Governor is for four (4) years, beginning at noon on the second Monday in October following his election and ending four (4) years later

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<sup>1</sup> An intervening law, NSGPL No. 54, had set an election date of January 15, 1991. For reasons not apparent from the record in this case, it appears that no election was held at that time.

*Aguon v. Ngarchelong State Assembly*, 4 ROP Intrm. 374 (Tr. Div. 1994) at noon on the second Monday in October. The term of the first Governor shall expire at noon on the second Monday in October, 1986, and each subsequent term shall be for every four (4) years thereafter to commence immediately after the expiration of the preceding term.” *Id.* § 2(a).

At the same time, the act provided that the term of the governor elected in the July 1991 election “shall commence at noon on July 17, 1991, and end at noon on the second Monday of October, 1994.” *Id.* § 2(c)(iii).

Plaintiff received the greatest number of votes in the July 1991 election. However, for reasons again not pertinent here, Justice O’Brien enjoined plaintiff from taking office on July 22, 1991, and declared the gubernatorial election void on February 17, 1992. *See Renguul v. Palau Election Commission*, Civil Action No. 266-91.

¶376 In March 1992, NSGPL No. 58 was passed, setting a new election for June 16, 1992, and declaring that the candidate elected should serve as Governor “until the next general election is held and [a] new Governor is elected and qualified to take the office.” *Id.* § 3(c). Plaintiff was again elected and took office on or about June 28, 1992.<sup>2</sup> Throughout this entire period and until June 28, 1992, it appears that Remoket Tarimel, the previous incumbent Governor, remained in office.

The present dispute was precipitated by the passage, over plaintiff’s veto, of Ngarchelong State Assembly Bill No. 10 earlier this year. That statute scheduled a gubernatorial election for August 30, 1994, and declared that the candidate receiving the greatest number of votes should become Governor on the second Friday in October of this year, October 14, 1994.

Plaintiff promptly brought this suit, challenging the enactment of Bill No. 10 as an unconstitutional abridgement of his term as Governor. Although plaintiff’s complaint sought an injunction against the holding of the August 30 election the parties subsequently agreed to allow the election to go forward. Plaintiff was a candidate for Governor, but failed to receive the greatest number of votes. Absent the relief sought by plaintiff, therefore, the Election Commission will certify the election of ¶377 his opponent as Governor and plaintiff’s term will end next month.

### Discussion

Plaintiff’s argument is a simple, and at first glance compelling one: Article VIII, Section 2, of the Ngarchelong State Constitution provides for a four-year term for the Governor; Bill No. 10, to the extent it purports to end his term before he has served a full four-year term, is therefore invalid. The effect of accepting plaintiff’s position would be to bifurcate indefinitely the term of Ngarchelong’s Governor, which would expire in June 1996, from the term of the State Assembly, which will continue to expire bi-annually in October, and would likely require that separate

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<sup>2</sup> Plaintiff’s complaint avers that he took office on July 15, 1992. However, his subsequent affidavit states that he took office in late June, and attaches documentary evidence that his predecessor left office on June 28.

*Aguon v. Ngarchelong State Assembly*, 4 ROP Intrm. 374 (Tr. Div. 1994) elections be held for each. Nevertheless, were Section 2 the only provision bearing on the dispute, the Court would be constrained to agree with plaintiff.

However, defendants point to another provision of the Ngarchelong Constitution, Article VIII, Section 4, that they believe relevant:

“Whenever the seat of the Governor becomes vacant and one hundred eighty (180) days or more is left in the unexpired term, a statewide election to fill the vacancy shall be conducted pursuant to law. If less than one hundred eighty days (180) remain in the unexpired term, the eight (8) traditional chiefs shall appoint a citizen to fill the vacancy until the next election.”

Leaving aside for the moment the applicability of section 4 to the present facts, this provision is noteworthy in two respects. First, it establishes that notwithstanding Section 2, relied upon by plaintiff, there are circumstances in which a Governor of L378 Ngarchelong State, although elected in a statewide election, will nevertheless serve less than a four-year term. There appears to be no dispute that where applicable, a Governor elected pursuant to Section 4 shall serve only for the period of time “left in the unexpired term.”

Second and relatedly, although there is no drafting history of the Ngarchelong Constitution of which the Court has been made aware, the Court believes that the workings of Section 4 evince an intent of the framers of the Constitution that the term of the Governor should adhere to a regular four-year cycle. If the sole purpose of the provision were to provide a way of filling vacancies, it could have been accomplished simply by providing that any vacancy should be filled by election, and that the winner of that election should hold office for the next four years. By tying and limiting succession to the “unexpired term”, the framers plainly intended to achieve the subsidiary goal of ensuring that a gubernatorial election would be held at some regular time every four years.

With these observations in mind, the Court now attempts to interpret Section 4 in light of the facts presented here. Defendants’ initial brief rested on the assumption that plaintiff had taken office following the June 1991 election but had thereafter been removed from office (until the June 1992 election) by Justice O’Brien’s ruling. Had that been the case, it is conceded that Section 4 would have applied -- because “the seat of the Governor [had] becom[e] vacant” -- and that the winner of the L379 1992 election <sup>3</sup> would have been entitled to serve out only the “unexpired term.”

In fact, however, as was made clear in plaintiff’s responsive brief, plaintiff never took office in 1991, but was enjoined from doing so by a temporary restraining order and preliminary injunction issued by Justice O’Brien. Instead, as noted above, the incumbent governor simply remained in office continuously through June 1992. The question, then, is whether this different factual scenario should change the constitutional analysis. Did the office of Governor become

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<sup>3</sup> That plaintiff was the winner of the 1992 election after his 1991 election had been voided is true but irrelevant to this analysis. The same result would follow whoever had won the 1992 election.

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“vacant” within the meaning of Section 4 even though the prior governor remained in office?  
Although the answer is by no means clear, the Court concludes that it did.

A famous statement of the proper approach to constitutional interpretation explains that

“the safest rule of interpretation . . . will be . . . to look to the nature and objects of the particular powers, duties and rights . . . and to give to the words of each just such operation and force, consistent with their legitimate meaning, as may fairly secure and attain the ends proposed.” *Prigg v. Pennsylvania*, 41 U.S. 539, 610-11 (1842) (J. Story).

The Court reaches its conclusion because defendants’ reading of the term “vacant” is a legitimate interpretation of the constitutional language and the one that best achieves the purpose which the Court believes that language was intended to achieve.

**¶380** As to the first, the Court notes that there is prior case authority for the conclusion that a “vacancy” occurs as a constitutional matter even where an office continues to be held by an incumbent after his term has expired. In *Campbell v. Board of Supervisors*, 7 Cal. App. 155, 93 P. 1061-63 (1907), the court concluded:

“[W]e cannot see any reason for holding that an office becomes vacant in a case where an ineligible officer, who has been elected, enters into possession of it, and a judgment is afterwards entered, declaring his election void, that would not apply with equal force to a case where, under like circumstances, the ineligible officer has not taken the office.”

Likewise, the California Supreme Court in *Adams v. Doyle*, 139 Cal. 678, 73 P. 582, 583 (1903), cited in *Campbell*, reasoned as follows:

“The fact that the prior incumbent, in order that the public business may be done, is allowed and directed to discharge the duties in the meantime, and until some person is lawfully invested with title to the term, does not affect the question of there being a vacancy in the sense intended. The vacancy is in the term of four years just beginning.”<sup>4</sup>

These cases are of course not binding on this Court nor are they any more authoritative than those cases cited by plaintiff which lead in different directions. Nevertheless, they demonstrate that the interpretation of the term “vacant” proposed by defendants is a reasonable reading of the Ngarchelong Constitution.

That defendants’ interpretation is not merely reasonable but **¶381** also the right one

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<sup>4</sup> See also 63A Am. Jur. 2d Public Officers and Employees § 169: “A holdover does not change the length of the term, but merely shortens the tenure of the succeeding officer.”

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follows, in the Court's view, from the fact that it most fully achieves the purpose of the provision at issue. Reading the term "vacant" to include the circumstance where an incumbent officeholder remains in office following the expiration of his term best ensures that, as the Court believes Article VIII, Section 4, intended, there will be a regular election for the Governor of Ngarchelong State on a four-year cycle coincident with the elections for the Ngarchelong State Assembly. By contrast, accepting plaintiff's interpretation would, as noted above, disrupt indefinitely Ngarchelong's election schedule in circumstances that are logically indistinguishable from those in which Article VIII, Section 4, unquestionably would apply to prevent that result.<sup>5</sup> If constitutional interpretation is sometimes a process of discerning what the framers would have said had they been presented with the question at hand, then the Court believes that defendants' reading of Article VIII, Section 4, and of the meaning of "vacant" in particular, is the preferable one.

In sum, therefore, the Court concludes that the office of Governor of Ngarchelong State became vacant within the meaning of Section 4 upon the scheduled expiration of the four-year term of the incumbent governor in October 1990, that a new term began immediately thereafter, and that the election of plaintiff in 1992 was only for the unexpired portion of that term ending in October 1382 1994. For these reasons, the Court denies plaintiff's motion and grants defendants' motion for summary judgment.

SO ORDERED.

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<sup>5</sup> Put another way, the Court cannot conceive any reason why the framers of Article VIII, Section 4, would have intended that it not apply to the current facts.