

Secharaimul v. Palau Election Comm'n, 7 ROP Intrm. 246 (Tr. Div. 1998)
NOAH SECHARAIMUL et al.,
Plaintiffs,

v.

PALAU ELECTION COMMISSION, et. al.,
Defendants.

CIVIL ACTION NO. 98-82

Supreme Court, Trial Division
Republic of Palau

Issued: March 31, 1998

BEFORE: LARRY W. MILLER, Associate Justice.

Following a hearing on March 17, 1998, the Court enjoined the Palau Election Commission from certifying the results of the gubernatorial election for Airai State. The Court has today given preliminary approval to a stipulation requiring that a new election be held. The Court now issues this memorandum to explain why it entered the preliminary injunction and why it now approves the stipulation invalidating the election.

I.

At the hearing on March 17, the Court heard the testimony of four voters and of certain employees of the Election Commission. All four of the voters had previously voted in other states, but had recently transferred their voting registration to Airai. It was the Court's view based on their testimony that, of the four, only one should have been permitted to re-register to vote in Airai. The testimony of the Executive Director of the Election Commission confirmed, as a general matter, that the Commission had followed a mistaken reading of Palau's election laws in allowing these voters and other similarly situated to re- **1247**-register. Simply put, the Commission had misinterpreted the decision of the Appellate Division in *ROP v. Pedro*, 6 ROP Intrm. 185 (1997), as permitting voters to change their state of registration without fulfilling the physical presence requirement of the election laws. That interpretation was mistaken for the following reasons.

In the *Pedro* case, the Court held that Louisa Pedro, a first-time voter, should have been permitted to register as a voter of Sonsorol State even though she had not been physically present in Sonsorol in the thirty days preceding her registration. That holding followed from several undisputed acts - most notably that Ms. Pedro had lived with her family in Sonsorol until the age of 15 and, despite her subsequent absence, had always intended to establish her permanent home there - and the application of 23 PNC § 107(c)(1):

“Once residence is established it is maintained unless the individual is physically

Secharaimul v. Palau Election Comm'n, 7 ROP Intrm. 246 (Tr. Div. 1998)
present in another political jurisdiction on a reasonably continuous basis within a
minimum 30 day period with the intent to establish his permanent home therein.”

Applying this statute to these facts yielded the conclusion that, notwithstanding her physical absence, Ms. Pedro had been a resident of Sonsorol for thirty days - and, indeed, her whole life - and was entitled to register to vote there.

Unlike Ms. Pedro, however, a voter who is attempting to transfer her registration cannot rely on 23 PNC § 107(c)(1). Even assuming that a voter was born and raised in Airai and was once a resident of Airai within the meaning of the election laws, that residency was terminated by her registration in another state. When she registered to vote in Koror (or Ngchesar or wherever else), she filled out an application - and took an oath - that she was now a resident of Koror with the intent to establish her permanent home there and was accordingly no longer a resident of Airai. Accordingly, if she wishes to transfer her registration to Airai, she cannot (like Ms. Pedro) claim that she has always been a resident of Airai, but must re-establish her residence there and must meet the 30-day physical presence requirement to do so.¹

II.

As a result of the hearing, the Court concluded that plaintiff was likely to succeed in proving that the number of voters who should not have been permitted to vote in the Airai election, and who should now be disqualified, equaled or exceeded the margin of victory in the gubernatorial election. It was on that basis that the Court enjoined the certification of the results of that election. The Court also stated, however, that it would not take further action to order a new election or **1248** disqualify any other voters absent further proof. The Court accordingly directed plaintiff to take depositions of the other voters named as defendants in his complaint and, to the extent there was any dispute as to the import of their testimony, to present his proof at a further hearing.

Counsel thereafter agreed on a schedule for the depositions to be taken. However, on the date set for the first round of depositions, several of the deponents, through counsel, indicated they would invoke their right not to testify against themselves guaranteed by Article IV, Section 7, of the Constitution. Their concern - a legitimate one, in the Court's view ² - was that their

¹ As the Court noted at the hearing, this result was contemplated in a footnote to the opinion in *Pedro*: “It is theoretically possible that a person could form an intent to make her permanent home in another jurisdiction and then, later on, re-form her intent to return to her original home. In such circumstances, reliance on §107(c)(1) would be unwarranted and it appears that a new period of physical presence would be required to re-establish residency.” 6 ROP Intrm. at 189 n.3.

As the foregoing makes clear, the physical presence requirement, while a necessary condition, is not sufficient. Any person who wishes to re-register in Airai must also state - truthfully, of course - that it is her intent to establish her permanent home there.

² Given the confusion, even within the government, as to the proper interpretation of the election laws, the Court would hope that the government would exercise its discretion not to

Secharaimul v. Palau Election Comm'n, 7 ROP Intrm. 246 (Tr. Div. 1998)

deposition answers could potentially be made the basis of a criminal prosecution under 23 PNC § 110(a).³

As a result, discussion then ensued among counsel and the Court which eventuated in the stipulation entered today. As noted earlier, that stipulation calls for a new election to be held and strikes from the voting list all persons who registered to vote in Airai after December 31, 1997. The Court does not believe that either step should be taken lightly, but believes that both actions are justified under the circumstances.

As to the holding of a new election, the Court sees no impropriety in approving that result where both candidates and the government, and their respective counsel, are in agreement that the prior election was fatally flawed.

The Court is somewhat more hesitant about that aspect of the stipulation that disqualifies numerous votes. For two reasons, however, the Court believes that that action is also appropriate. First, it avoids the seemingly intractable conflict that arose between the Court's need for information about voting eligibility and the voters' constitutional rights. Second, the disqualification is not permanent, but may be avoided by any of the disqualified voters in two ways: (1) by appearing in Court and voluntarily testifying as to their eligibility to vote in Airai on the date set for hearing of objections to the stipulation, or (2) by simply re-registering to vote there.

The Court should make clear that while it has a duty to ensure that the election laws are complied with, it does not seek to prevent any voter who believes he or she is entitled to vote in the Airai election from doing so. The Court encourages all of those voters listed in the stipulation to review the pertinent election laws and this opinion, to consult with counsel as they see fit, and, if they believe themselves eligible, to take the steps discussed above either to preserve or renew their registration.

prosecute without clear proof of knowing fraud. Absent a grant of immunity, however, the unlikelihood that the government will prosecute does not prevent invocation of the constitutional right against self-incrimination.

³ That section provides, in pertinent part:

“Whoever knowingly gives false information as to his name, address or period of residence in the voting state for the purpose of establishing his eligibility to register to vote . . . shall upon conviction thereof, be fined not less than \$2,000.00 nor more than \$10,000.00 or shall be imprisoned not more than five years, or both.”