

IN THE KOSRAE STATE COURT  
FEDERATED STATES OF MICRONESIA  
TRIAL DIVISION

FILED

DATE

BY

9/16/02  
CLERK, STATE COURT  
KOSRAE

GERSON JACKSON, )

Plaintiff, )

v. )

KOSRAE STATE ELECTION )  
COMMISSION, )

Defendant. )

Civil Action No. 76-02

DEFENDANT'S OPENING BRIEF

COMES NOW the Kosrae State Election Commission, by and through the undersigned Assistant Attorney General and respectfully submits DEFENDANT'S OPENING BRIEF

**Factual Context**

[1] The Plaintiff in this case will, upon completion of the current term, have served two consecutive terms in the office of Lieutenant Governor in the State of Kosrae. The Plaintiff has filed papers with the Kosrae State Election Commission indicating an interest in seeking to run for an additional (third) term of office in the November, 2002 election. The Kosrae State Election Commission reviewed this requested and, on a unanimous basis, issued notice of a preliminary decision that the Plaintiff was not qualified to seek election to a third, consecutive term. Following receipt and consideration of a submission of evidence from the Plaintiff, the Kosrae State Election Commission issued a final decision that the Plaintiff may not run for a third term of office.

[2] In its final decision, the Kosrae State Election Commission acknowledged the service provided by Lt. Governor Gerson Jackson to the citizens of Kosrae. The Election Commission

has sought to make it clear that “the technical question [of whether the Plaintiff may seek a third consecutive term of office] has nothing to do with (his) individual competence or the qualify of (his) service as Lieutenant Governor<sup>1</sup>.”

**The Certainty Proposed by the Plaintiff Appears Misplaced**

[3] In his evidentiary submission to the Kosrae State Election Commission,<sup>2</sup> the Plaintiff asserts that it is “crystal clear that the drafters knew how to draft unambiguous language imposing term limits on elected officials, and it is equally clear that they chose not to propose language that would have imposed term limits on the Lieutenant Governor<sup>3</sup>.”

[4] The assertion of the Plaintiff is that explicit term limits were set for Senators and this capacity to set explicit term limits means that the absence of such explicit language conclusively establishes the validity of Plaintiff’s claim of eligibility to run for a third consecutive term as Lieutenant Governor.

[5] The Election Commission respectfully disagrees with this certainty.

[6] The Plaintiff argues that “when Constitutional language is clear, Courts in the FSM do not look beyond the plain language and do not examine legislative history.<sup>4</sup>”

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<sup>1</sup> Defendant’s Exhibit A, September 3, 2002 Notice of Final Determination of Non-Qualification, is attached hereto and incorporated by reference.

<sup>2</sup> Defendant’s Exhibit B, Lt. Governor Jackson’s Submittal of Evidence, has already been filed with the Court. It is incorporated by reference.

<sup>3</sup> Page 6 of Defendant’s Exhibit B, *supra*

<sup>4</sup> Page 6 of Defendant’s Exhibit B, *supra*

[7] The Election Commission believes that the current language of the Article V of the Kosrae State Constitution does not meet the test of being “clear<sup>5</sup>” and that the legislative history is relevant. Should this Court permit the taking of testimony on this matter, the Kosrae State Election Commission believes that testimony will persuasively reveal that there was intent to limit not just the Governor but also the Lieutenant Governor to two consecutive terms of service.

[8] The fact that the language within the Kosrae State Constitution is not “crystal clear” may also be seen from a recent review of this question by Legislative Counsel for the Kosrae State Legislature<sup>6</sup>.

[9] The Plaintiff claims that “an almost exact parallel situation was experienced by the State of Hawaii after its 1978 Constitutional Convention<sup>7</sup>.”

[10] The Kosrae State Election Commission respectfully submits that the situation in Kosrae is distinctly different from that of Hawaii or the 1951 US Constitutional amendment<sup>8</sup> limiting the President (but not the Vice President) cited by the Plaintiff.

[11] The issues before this Court are inherently complex. We are considering language and the intent of participants in a political process.

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<sup>5</sup> Section 6 states that “The Lieutenant Governor has the same qualifications as the Governor.” Section 6 can appropriately be read to require that the same “qualifications” include the qualification that the candidate not serve more than two consecutive terms. The Kosrae State Election Commission has not reached this conclusion with certainty. However, it disputes that the matters now before this Court are as “clear” as the Plaintiff asserts.

<sup>6</sup> Defendant’s Exhibit C, March 26, 2002 Memorandum concerning Constitutional limit on term of office for Lt. Governor, is attached hereto and is incorporated by reference.

<sup>7</sup> Pages 8 – 9 of Defendant’s Exhibit B, *supra*

<sup>8</sup> Cited at Page 11 of Defendant’s Exhibit B, *supra*

[12] In contrast to Hawaii and the United States, where all discussion and documents were in a single, unified language (English), Kosrae has a different experience. True, the technically “controlling” language<sup>9</sup> of the State of Kosrae is “English.” However, Kosrae is the Constitutionally protected “language of the State” with a recognition that English, in contrast, is simply a language that “may” be employed in government discourse<sup>10</sup>.

[13] The “crystal clarity” that one might expect from an English-only legal perspective is not as self-evident in the State of Kosrae where language, custom and tradition are more complex.

[14] Kosrae does have a similar, recent experience that may be helpful in assessing the instant conflict. At the same Constitutional Convention, delegates considered language proposing an amendment to the Kosrae State Constitution concerning the public service system. Inconsistent personnel management practices in different branches of government had led to concerns that similarly responsible government positions were paid differently. Discussion within the Constitutional Convention was spirited and appears to have supported the creation of a “unified system” for such personnel management.

[15] During the transition from delegate consideration to technical writing, the language that emerged in the proposed Constitutional amendment was to merely propose “a system.” The word “unified” did not appear.

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<sup>9</sup> Article 10, Section 18 of Kosrae State Constitution

<sup>10</sup> Article XIII, Section 10 of Kosrae State Constitution.

[16] In a dispute that seems remarkably similar to the instant case, the Governor initiated legal action against the Kosrae State Legislature [Civil Action No. 73-97 Rensley A. Sigrah, Governor of State of Kosrae v. Members of the Kosrae State Legislature] when they, in the view of the Governor, failed to give effect to the requirement for a “unified system.” In response, the Kosrae State Legislature argued, much as the Plaintiff does here, that the language of the Constitution was not sufficiently “clear” to support the position of the Governor. Just as was argued by the Plaintiff, the Legislature argued that more specific language could have been adopted and, by its absence, supported the notion that “a system” might properly include components rather than a “unified system.” Ultimately, this case resulted in a joint stipulation to the Court that specifically characterized the agreed-upon resolution as a “unified system” as one including a “unified Public Service System with the three Branch Heads setting unified personnel rules and regulations for all state employees<sup>11</sup>.”

[17] It is understood by the Kosrae State Election Commission that the Plaintiff wishes to have a hearing on this matter. Should a hearing be held<sup>12</sup> the Plaintiff believes the Court will receive testimony strongly supportive of the conclusion that the intent of the delegates to the Constitutional Convention did indeed intend to limit the term of office of the Lieutenant Governor to two consecutive terms.

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<sup>11</sup> Joint stipulation for dismissal Civil Action No. 73-97 Rensley A. Sigrah, Governor of State of Kosrae v. Members of the Kosrae State Legislature

<sup>12</sup> The Kosrae State Election Commission will not oppose holding a hearing on this matter. There is some concern that holding a hearing may create a challenge to meeting Plaintiff’s stated goal of receiving a judicial determination as to qualification status on or before October 1, 2002. The Kosrae State Election Commission shall do all that is reasonable to reach this objective since it is recognized that the question before the Court is of significant public interest.

Respectfully submitted,

Dated: 9-16-02

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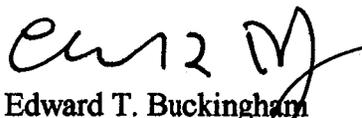
**Certificate of Service**

The undersigned hereby certifies that on the 16<sup>th</sup> day of September, 2002 a true and correct copy of the foregoing DEFENDANT'S OPENING BRIEF was properly served on the following by the means indicated below:

Andrea Hillyer, Esq.                    --            By Fax and By Mail, Postage Pre-paid  
P.O. Box Drawer D  
Pohnpei, FM 96941  
Fax: 691-320-6485

Jon M. VanDyke, Esq.                --            By Fax and By Mail, Postage Pre-paid  
2525 Dole Street  
Honolulu, Hawaii  
Fax: 808-956-5569

Dated: 9-16-02

By:   
Edward T. Buckingham  
Assistant Attorney General

## EXHIBIT LIST

Defendant's Exhibit "A" is a copy of the September 3, 2002 Notice of Final Determination of Non-Qualification issued to Lt. Governor Gerson Jackson by the Kosrae State Election Commission.

Defendant's Exhibit B is Lt. Governor Jackson's Submittal of Evidence to the Kosrae State Election Commission.

Defendant's Exhibit C is a March 26, 2002 Memorandum concerning Constitutional limit on term of office for Lt. Governor prepared for the Kosrae State Legislature by its Office of Legislative Counsel.

Defendant's Exhibit "A" is a copy of the September 3, 2002 Notice of Final Determination of Non-Qualification issued to Lt. Governor Gerson Jackson by the Kosrae State Election Commission.

September 3, 2002  
Lt. Governor Gerson Jackson  
Office of the Governor  
Post Office Box 158  
Kosrae, Federated States of Micronesia 96944

**Re: Notice of Final Determination of Non-Qualification**

Dear Lt. Governor Jackson:

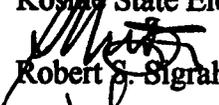
This letter follows our preliminary determination of non-qualification and your submittal of evidence in support of your view that you should be designated as qualified to seek re-election to a new term as Lieutenant Governor. The information submitted on your behalf has helped develop a more complete record and clarified issues. However, we believe that the intent of the voters in approving the Amendment to the Kosrae State Constitution was to include term limits to the Office of the Lieutenant Governor. Additionally, we believe we must act in a manner that avoids the significant risk of electoral uncertainty that would arise if you were permitted to seek re-election as Lt. Governor, win election and then be challenged by a defeated candidate or other citizen on the basis that you were not a qualified candidate.

Accordingly, we hereby advise you of our final determination that you are not qualified to be a candidate for re-election to the Office of Lieutenant Governor in the November, 2002 election.

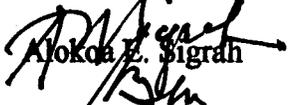
We understand that you will seek a judicial determination of your qualification status. As you know, the key issue in this matter concerns the technical question of whether term limits apply to you. This technical question has nothing to do with your individual competence or the quality of your service as the Lieutenant Governor. The Election Commission wishes to be clear that we respect and appreciate your service to the State of Kosrae. Also, we intend to act in a manner that helps expedite the judicial process so a Court decision can be made on or before October 1, 2002.

Respectfully,

  
Daniel Thompson, Chairman  
Kosrae State Election Commission

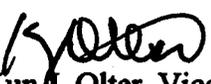
  
Robert S. Sigrah

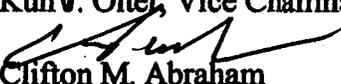
  
Rev. Tolenna J. Langu

  
Alokia E. Sigrah

  
Nena W. Benjamin

  
Fulton Nena

  
Kun V. Olter, Vice Chairman

  
Clifton M. Abraham

Edison S. Nena

  
Don Edmond Salik

Hemul Nena

  
Switson Robert

**Defendant's Exhibit B is Lt. Governor Jackson's  
Submittal of Evidence to the Kosrae State Election  
Commission.**

## PLEASE NOTE

Copy of Lt. Governor Jackson's Submittal of Evidence to the Kosrae State Election Commission is expected to be filed as an element of Plaintiff's Opening Brief. An additional copy is not included at this time. The Defendant reserves the right to include this document if it is not tendered to the Court.

Defendant's Exhibit C is a March 26, 2002 Memorandum concerning Constitutional limit on term of office for Lt. Governor prepared for the Kosrae State Legislature by its Office of Legislative Counsel.