

TRUST TERRITORY OF THE PACIFIC ISLANDS  
SPECIAL PLEBISCITE APPELLATE COURT

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MARIANA ISLANDS DISTRICT

In Re Appeal of )  
Herman Q. Guerrero, et al. )  
Appeal No. 1

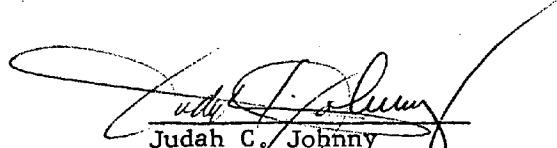
In Re Appeal of )  
Martha E. Rechucher )  
Appeal No. 2

In Re Appeal of )  
Abel Olopai )  
Appeal No. 3

NOTICE TO THE VOTER REGISTRATION BOARD

Notice is hereby given that an Opinion and Order was entered in the above captioned matter on June 10, 1975, by the Special Plebiscite Appellate Court. A copy of said Opinion and Order, which incorporates the three appeals above, is attached herewith, and delivered to you in accordance with Section 8 of the United States Department of the Interior Secretarial Order No. 2973, and Section 5 of the Instruction of the Appellate Division of the High Court. The Opinion and Order is certified to be a true copy of the original Opinion and Order which is on file in this court.

Dated: June 11, 1975

  
Judah C. Johnny  
Clerk, Special Plebiscite  
Appellate Court

You are respectfully requested to acknowledge receipt of this Notice and Opinion and Order by specifying the date and your signature in the space provided below. A copy of this Notice which is attached should be returned to this court for filing.

Date received: June 4, 1975

Erwin D. Canham  
Signature

TRUST TERRITORY OF THE PACIFIC ISLANDS  
SPECIAL PLEBISCITE APPELLATE COURT

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In Re Appeal of )  
Herman Q. Guerrero, et al. ) Appeal No. 1

In Re Appeal of )  
Martha E. Rechucher ) Appeal No. 2

In Re Appeal of )  
Abel Olopai ) Appeal No. 3

OPINION AND ORDER

This Court, its jurisdiction and its procedures derive from Section 8, Order 2973 of the Secretary of the Interior, dated April 10, 1975, and the Order of the Chief Justice, dated 19 May, 1975.

Pursuant to the provisions of Secretarial Order No. 2973, a Plebiscite Voter Registration Board was established which, throughout the period May 6 through May 16, carried out the registration of those individuals who, under the terms of the Order, were to be entitled to vote in the special Plebiscite, scheduled by Secretarial Proclamation for June 17, 1975.

A challenge was filed by certain registered voters of the Marianas on May 22 to the registration of some 155 proposed voters. On May 23, the Board advised the challengers that 12 of those who had registered and whose registration had been challenged, had been stricken but that the remaining registrants remained on the list. The appeal from that decision, Plebiscite Appeal No. 1, followed.

Among those 12 registrants stricken by the Board is one Martha E. Rechucher, who filed her appeal from the Board's decision; Plebiscite Appeal No. 2.

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On its face, the notice of appeal filed in Appeal No. 1 challenges the right to vote of all of the initial 155 registrants. On hearing, however, appellants advised the Court that, by reason of the limited time available, they were prepared to provide a factual basis for challenge of only 24 of those on the original list. Consequently, while the Court has, under the terms of the Order, the responsibility of determining the validity of registration of the entire challenged list of 155 names, the appellants were prepared to support their appeal only as to a list of 24.

The Secretarial Order provided a period of three working days after "publication of the decision of the panel" (a panel consisting of not less than two members of the Registration Board which is carrying out registration in a voting district) for challenge. Nothing identifies what publication consists of, nor has the Court been directed to any regulation to supply the omission. Thereafter, the Board is directed to determine all challenges as expeditiously as possible; any challenge not decided by May 23, 1975, is deemed to have been rejected. Appeal lies to this Court within three working days after "notification" of an adverse decision. It is not clear how one who is aggrieved by decision of the Board, through its inaction, receives notification.

I am concerned as to the opportunity for appeal by those off-island voters whose Marianas domicile, in all probability, would not be questioned, should they be denied registration, in view of the abbreviated time frame for Board challenge and appeals to this Court. Many, conceivably, would not even be

informed that their registration had been rejected until after the June 10, 1975, deadline established for decision by this Court.

The subject of the Plebiscite is the future political status of the people of the Northern Marianas; the entire concern of the Covenant which people are being asked to determine by their vote is with the welfare and future citizenship of the people of the Northern Mariana Islands. For some reason, however, in framing criteria for voter qualification, the interest of the people of the Northern Marianas (to whom Covenant conferred rights and benefits are limited) have been set aside. Such criteria take no account of the, perhaps peculiar, social interests and relationship of the various peoples of the Trust Territory at large. Thus, using the particular criteria established to determine domicile ( a term not particularly appropriate to Micronesian considerations) resort has been had as to well recognized considerations under the law of the United States. We are, consequently, confronted with an anomaly piled upon anomaly, and the necessity of making patently arbitrary determinations.

Obviously, the Registration Board was confronted with the same difficulty. I have tried in vain to determine the basis upon which the Board distinguished registration affidavits presented by the 12, whom they struck from the list, and the substantially greater number they permitted to remain. I do not mean to be critical of the Board, since the time within which they were permitted to function did not permit a thorough evaluation of factual distinctions upon which their decisions must rest. It was for this reason that I permitted introduction

of, and have considered, facts which were not before the Board, and so have perverted the appellate function, which normally restricts itself to a review of that which is before a lower court. Consequently, my determination extends to consideration of affidavits, voters registration lists, and testimony which was not before the Board.

Plebiscite Appeal No. 3, filed by Abel R. Olopai, challenges the registration of 74 individuals who are alleged to have been admitted as permanent residents of the United States, resident in Guam, and thus not domiciled in the Mariana Islands District. Received in support of the appeal is an affidavit of the Officer in Charge, U.S. Immigration and Naturalization Service for Guam; this affidavit was not available for consideration by the Board.

It has not been possible for either the Board or this Court to fully consider all relevant facts bearing on the right of challenged voter registrants. Error is inevitable; some will vote who should not, and others may be unjustly deprived of their franchise. It is unfortunate that time and expediency dictate this rule.

To a large extent, I must concede that my personal views of inter-district relationships play a large part in the determination which I must now make. For example, I find it most difficult to accept the claim of those who have come to the Marianas, from other districts, to reside with family members, who are here by reason of Government employment, that they have renounced their home islands and adopted Saipan as their domicile. My doubts are greater as to those who now register, for the first time, to vote in the Marianas.

My scepticism as to the bona fides of the registrants of non-Marianas origin is made greater on examination of the provisions of the Covenant which so clearly restrict its benefits to those "... of Northern Mariana Islands decent...." It would seem that the proposed separation of the Mariana Islands District from the Trust Territory might well have more clearly delineated those with a legitimate interest in their ancestral islands for the purpose of charting the future, and restricted the choice to them.

Accordingly, I made the following determinations:

Appeal No. 1:

(1) Ogunoro, Ambrocio Tagabuel, having conceded by counsel that he is not of legal age, is ordered stricken from the list of registered voters.

(2) Appeal is denied as to Pedro Christopher Jack, Marino Alanso, Paul Omenkar, Hermine Omenkar and Valentina Troderang; their names shall remain on the registration list.

(3) Appeal is allowed as to all others on the list of 24 names filed herein and on which hearing was held on June 5, 1975; their names shall be stricken from the list of registered voters.

(4) Unfortunately, neither the appellants nor the Court had an opportunity to challenge or examine the qualifications of the remaining registrants approved by the Board, and their names must necessarily remain on the list of registered voters.

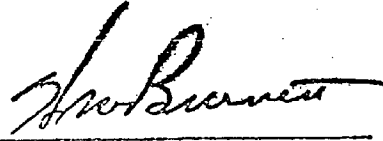
Appeal No. 2

The appeal of Martha E. Rechucher is denied.

17

Appeal No. 3.

The appeal of Abel R. Olopai is allowed. All those appearing on the list appended to the appeal by the affidavit of the Officer in Charge, U.S. Immigration and Naturalization Service, are ordered stricken from the list of registered voters.



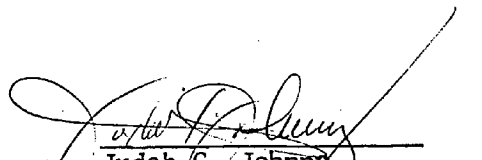
HAROLD W. BURNETT  
Chief Justice

Entered: 10 June, 1975

*Filed: June 11, 1975  
Helvio M. Bredon  
Deputy Clerk, Special Plebiscite  
Appellate Court.*

Certified to be a true copy of the original Opinion and Order which is on file in the Special Plebiscite Appellate Court.

Dated: June 11, 1975



Judah C. Johnny  
Clerk, Special Plebiscite  
Appellate Court