IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

CONGRESSIONAL REAPPORTIONMENT COMMISSION,
Appellant,
v.
SABO BULTEDAOB, JOHHNY TUDONG; NESTRALDA MECHAET, MEISAI CHIN, KALISTUS ILUCHES, and SALVADOR TELLAMES,
Appellees.

Cite as: 2016 Palau 22
Civil Appeal No. 16-018
Appeal from Civil Action No. 16-060

Decided: October 17, 2016

Counsel for Appellant.....A. Trout
Counsel for Appellees.....J. Toribiong

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
LOURDES F. MATERNE, Associate Justice
KATHERINE A. MARAMAN, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Associate Justice, presiding.

ORDER

PER CURIAM:

[¶ 1] On June 27, 2016, the Congressional Reapportionment Commission ("CRC") promulgated a "2016 Reapportionment and Redistricting Plan" (the "2016 Plan"). The 2016 Plan provides: "The Senate shall be composed of thirteen (13) members to be popularly elected in a Single Senatorial District." The 2016 Plan was accompanied by a report describing the process and reasoning the CRC used to develop the plan (the "CRC Report").

[¶ 2] The 2016 Plan was unchanged from the previous plan adopted in 2008. The CRC Report noted that census and other data showed a 12% decrease in "resident-citizen population" that the Commission attributed "mainly to outmigration to the U.S." *See* CRC Report at 5. The CRC Report

later stated that "the citizens' population has remained relatively constant for the past decade." *See* CRC Report at 6. After considering a number of factors, including "the latest population trend," the CRC concluded "that there is no compelling reason to alter the present makeup of the Senate." *See* CRC Report at 7.

[¶ 3] On July 11, 2016, a group of voters petitioned the Supreme Court to review the 2016 Plan and to amend it to comply with the Constitution. The petitioners argued in the Trial Division that a plan that makes no changes to the apportionment and districts in the previous plan is not a "reapportionment or redistricting plan" as that phrase is used in Art. IX, § 4 of the Constitution. The CRC argued that the Constitution requires a plan "based on population," and that if the population had not changed, adopting a plan that did not change was constitutional.

[¶ 4] On September 1, 2016, the Trial Division issued an order amending the 2016 Plan. The Trial Division explained that it considered the CRC's interpretation of the Constitution to be correct. The court concluded, however, that the question had already been answered by the Appellate Division in *Tellames v. CRC*, 8 ROP Intrm. 142 (2000), in which we described Art. IX, § 4(a) "as an affirmative command that the Commission revise at least one aspect of the districting scheme." *Id.* at 146. The Trial Division acknowledged that this language was dicta and that the issue here had not been before the Court in *Tellames*. The Trial Division nevertheless concluded that that language required finding that a reapportionment or redistricting plan must make a change to at least one aspect of the apportionment scheme every eight years. Accordingly, the Trial Division changed one aspect of the 2016 Plan. Looking to language in the CRC Report that the resident citizen population had declined by 12%, the court decreased the number of Senators to be elected by 12%, from 13 to 11 Senators. The amended 2016 Plan thus provides: "The Senate shall be composed of eleven (11) members to be popularly elected in a Single Senatorial District."

[¶ 5] The CRC appealed that decision to this Court. The appeal was heard on an expedited basis. Due to the scheduled general election on November 1, 2016, the Court issues this order now to enable the printing of election ballots without delay. A full opinion will follow explaining the decision of the Court.

[¶ 6] The Court concludes that the primary intent of the Constitution's reapportionment and redistricting provision is to ensure the preservation of the "one person, one vote" principle. *See, e.g.*, *Yano v. Kadoi*, 3 ROP Intrm. 174, 183 (1992). Reapportionment and redistricting "based on population" are means to achieve that principle. Construing the Constitution to require a purely arbitrary change every eight years does nothing to further the intent of the Framers; indeed, such an enforced change would often undermine that intent.

[¶ 7] There is no dispute that the plan for 2008 comported with the Constitution's "one person, one vote" principle. If population has not changed in a Constitutionally-meaningful way since 2008, a new plan that arbitrarily changes the 2008 plan might move away from the Constitution's "one-person, one vote" ideal. That result would defeat the primary intent of the reapportionment provision, and any rule of construction requiring such a result cannot stand.

[¶ 8] The remaining question is whether the CRC's 2016 Plan is "based on population." The census data used by the CRC indicated a 12% decrease in resident citizen population. An argument could be made that a plan "based on population" should therefore decrease the number of Senators by around 12% from the 2008 Plan—*i.e.*, from 13 Senators to 11 Senators. That argument assumes, however, that the number of Senators in 2008—13—was the number required by the Constitution for the citizen population in 2008.

[¶ 9] The problem with that assumption is that the Constitution does not mandate a specific citizen-to-Senator ratio. When there are *multiple* Senate districts, the Constitution does mandate that the ratios of each district not deviate too far *from one another*. *See, e.g.*, *Yano*, 3 ROP Intrm. at 181-183 (excessive deviation violates the "one person, one vote" principle). But in a plan with a *single* Senate district, there is no other district to deviate from. The Constitution is silent as to what the ratio for such a district should be.

[¶ 10] We have previously explained the Framer's intent to afford the CRC "broad discretion in devising election schemes." *See Tellames*, 8 ROP Intrm. at 145 n.7. The CRC's decision to adopt a 13-Senator plan in 2008 was an exercise of this discretion; there is no obvious reason, why the CRC could not have adopted, for example, a 15-Senator plan in 2008. If it had, a 12%

decrease would result in 13 Senators, the number under challenge here. The only reason a 12% decrease would result in 11 Senators here is because the CRC exercised its discretion to adopt a 13-Senator plan in 2008.

[¶ 11] If we were to hold that the Constitution requires a decrease in resident citizen population to be mirrored by equal decrease in Senators from the most-recent previous reapportionment plan, we would be adopting a mechanical Constitutional rule to apply to an exercise of the CRC's discretion. The language of our Constitution does not support such a contingent mechanical rule. "Constitutional language must be understood as expressive of general ideas rather than narrow distinctions, and no forced, strained, unnatural, or narrow construction should ever be placed upon it." *Tellames*, 8 ROP Intrm. at 144 (citations omitted). Absent a Constitutional limitation on the CRC's discretion to determine the appropriate number of Senators for a single district scheme, we see no Constitutionally-required reason for us to amend it. Accordingly, the Trial Division's order amending the 2016 Plan is **VACATED**. The Trial Division's decision granting the petition challenging the 2016 Plan is **REVERSED** and the petition is hereby **DENIED**. The 2016 Plan shall be as originally promulgated by the CRC: "The Senate shall be composed of thirteen (13) members to be popularly elected in a Single Senatorial District."

SO ORDERED, this 17th day of October, 2016.