

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 150 (1984)
IN RE ERIICH, et al.,
Petitioners,

v.

REPUBLIC OF PALAU,
REAPPORTIONMENT COMMISSION,
Respondents,

REPUBLIC OF PALAU,
Real Party in Interest.

CIVIL APPEAL NO. 20-84
Civil Action No. 99-84

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: September 28, 1984

Counsel for Petitioner: Johnson Toribiong

Counsel for Respondent: Philip Isaac

BEFORE: ROBERT W. GIBSON, Associate Justice; ALAN L. LANE, Associate Justice;
LOREN A. SUTTON, Associate Justice.

GIBSON, Justice.

Petitioners/Appellants appeal from that portion of the judgment of the Trial Division entered September 21, 1984, reapportioning the Republic of Palau into, *inter alia*, the Fifth Senatorial District composed of the State of Ngardmau, Ngaremlengui, Ngatpang, Aimeliik, Peleliu, Angaur, Sonsorol, and Tobi, having two senators elected therefrom.

Appellants ground their appeal on an alleged failure of the Trial Division, with respect to the Fifth Senatorial District only, to adhere to the criteria stated by the Trial Division as a basis for its affirmation of the Report of the 1984 Reapportionment Commission established by RPPL No. 1-64, pursuant to the mandate of Article XV, Section 13(b) of the Constitution of the Republic of Palau. They argue that dilution of the political integrity of six of the eight states within the Fifth District, as delineated by the inclusion of L151 Peleliu and Angaur, will occur, and that Peleliu and Angaur alone can effectively neutralize the vote of the six states whose combined electoral strength is insufficient to assure them of equal representation. Stated simply, they say that Peleliu and Angaur can collusively combine to control the election of both senators.

Appellants also point out that the Fifth Senatorial District as so composed, in contrast to

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the remaining four Senatorial Districts, lacks compactness and contiguity because of the geographical gap between Aimeliik and Peleliu caused by the intervening State of Koror. This, of course, is self evident from an examination of a map of the Republic.

Questions regarding traditional division of the states of the Republic, the east-west coastal split, and the relationship of the states one to the other, *inter se*, are also raised by the Appellants. We do not, however, address these issues as they were not raised at the trial level and may not be raised for the first time on appeal. We feel the compelling requirements of equal protection and adherence to geographical contiguity demand our primary consideration and first concern.

Appellants' emphasis on the "one-man-one vote" concept and that of "geographical integrity" does, however, strike a responsive chord. The fact that Peleliu and Angaur together may effectively control representation of the two member Senatorial District to the exclusion of the remaining six states creates an unintended inequality against which the proportionality of the "one-man-one vote" rule of equal protection is directly aimed. We cannot ignore the "ever present danger" this alignment may create.

On the other hand, segregation of the states into two groups of four creates an even greater percentage deviation (*see* pp. 13-19, Trial Court Memorandum Decision) than that contemplated by the Trial Court. But on the plus side, a four by four split better serves the need for "integrity of political subdivision lines," mentioned at pp. 17-18 of the Memorandum Decision, than does the present constituency of the Fifth District as designed by the Trial Court and the Commission.

Ergo, as did the trial court, we re-weigh these factors in the hope of further perfecting the Trial Court's plan for reapportionment of the Republic. Doing so leads us to conclude that in spite of a four percent increase in deviation, the advantages of assured political equality, unit voter integrity, and geographical homogeneity accomplished by further **L152** dividing the Fifth Senatorial District into two separate senatorial units outweighs the resulting relatively negligible diminution in optimum proportionality.¹ This split also closely comports with the hybrid line drawn by the Trial Division from the *Wesberry/Karcher vis a vis* the *Reynolds/Brown* amalgams. It is likewise apparent that it effects a somewhat less drastic change from the 1980-1984 senate composition than that contemplated by the 1984 Commission Report.

We acknowledge that ideally each man should have his own representative, but we also recognize that the mathematics of reapportionment, limited as they are by the constraints of finance and manageable numbers, mandate instead reasonable restraint in fixing those numbers. By creating a Sixth District composed of one large constituency and three of lesser population, we are aware that we bring about a situation identical to that which we have here sought to correct. The saving factor, however, is that we have lessened materially the number of voters who could be adversely affected by the "ever present danger" of disproportionate representation.

¹ We note that the Commission Chairman, Norman Chin, in his testimony before the Trial Division, indicated that the Commission's reluctance to consider this four by four division of the Fifth District was predicated solely on the fact of the four percent deviation factor increase.

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This result is, we suggest, the most that can be hoped for, given the imperfect factors of geography, limited population and fixed state boundaries. We believe the essence of reapportionment to lie in the maximization of voter equality while at the same time minimizing the numbers of those who, of necessity, by the very reason of their numerical inferiority, must suffer some loss of proportional representation so that the greater number may enjoy the greater good.

Under normal circumstances we would remand back to the Trial Division for entry of judgment in accordance with this Opinion. Due, however, to the emergent nature of this matter, we exercise the prerogative of enunciating the decision herein.

Consonant therewith, it is HEREBY ORDERED, that the First, Second, Third and Fourth Senatorial District shall remain the same as those fixed by the Trial Division of this Court.

The Fifth Senatorial District shall be composed of the States of Ngardmau, Ngaremlengui, Ngatpang, and Aimeliik, and **153** shall have one senator.

The Sixth (newly hereby created) Senatorial District shall be composed of the States of Peleliu, Angaur, Sonsorol, and Tobi, and shall have one senator.

In all other respects the JUDGEMENT of the Trial Division is affirmed.