Kiuluul v. Obichang, 2 ROP Intrm. 201 (1991)
NGELUUL KIULUUL, ET AL.,
Appellants,

v.

CHARLES I. OBICHANG, Governor of Airai State,
Appellee.

CIVIL APPEAL NO. 18-90
Civil Action No. 379-90

Supreme Court, Appellate Division
Republic of Palau

Appellate decision
Decided: April 24, 1991

Counsel for Appellants: Johnson Toribiong

Counsel for Appellee: John K. Rechucher

BEFORE: LOREN A. SUTTON, Associate Justice; FREDERICK J. O'BRIEN, Associate Justice; ROBERT A. HEFNER, Associate Justice.

O'BRIEN, Associate Justice:

On July 19, 1990, Daniel Yaoch Ngirchokebai, referring to himself as the Speaker of the Airai State Legislature, wrote to the Governor of Airai State and requested that he take action on an enclosed petition for recall of Myori Simeon, one of the Airai State legislators. The petition was signed by 161 persons who were alleged to be registered voters of Airai State and who had voted in the most recent election. In his letter, Mr. Ngirchokebai asserted that 555 of the State's 609 registered voters had voted in the last election. He also claimed that the ⊥202 number of signators to the petition was sufficient to recall a legislator. In support of this argument, he noted that the Airai State Constitution only requires the signatures of 25% of the registered voters in order to recall a legislator. He argued that this requirement was met regardless of whether the 609 or 555 figure was used.[1]

Appellee responded by letter dated July 24, 1990, asserting that he would take no action on the petition, pending enactment of the necessary implementing legislation.[2]

On August 14, 1990, Appellants filed a petition for a writ of mandamus. Appellee

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[1] There has been no verification of the status of Mr. Ngirchokebai, nor of the 161 signatures on the Petition, nor of the Airai State voter's registration list.

[2] There is no dispute that, at the time the recall petition was sent to the Governor, there was no Airai "election law" which he could use to conduct the recall election.

responded by filing a motion to dismiss. On August 28, 1990, the Trial Court held a hearing on that motion. On September 5, 1990, the Trial Court granted the motion to dismiss. This appeal followed.

The issue as framed by Appellants is: "Whether Appellee in his capacity as the Governor of Airai State is mandated by Article VII, Section 13 of the Airai State Constitution to provide under the existing law for the recall of one of the legislators within ⊥203 sixty (60) days of the filing of the Petition for Recall by Appellants?"

The Airai State Constitution, Article VII, Section 13, states:

> The people may recall an elected member of the State Legislature from office. A recall is initiated by a petition which shall name the member sought to be recalled, state the ground for recall and be signed by not less than twenty-five percent (25%) of the registered voters who voted in the most recent election for the elected members of the State Legislature. Within sixty (60) days of the filing of the petition, the Governor shall provide for a recall election to be held pursuant to law. If a majority of the votes cast approves of the recall, the elected member shall be immediately removed from office.

I.

Appellants argue that Article VII, Section 13, Airai State Constitution, is self-executing and, therefore, there is no need for implementing legislation.

The Trial Court carefully considered Appellants' argument that the constitutional provision is self-executing, and found that the terms "pursuant to law" and "as provided by law" are synonymous. We reject Appellants' argument that "pursuant to law" does not require enabling legislation, but that "as provided by law" does. We hold that the terms are synonymous, and that whether enabling legislation is required depends on the constitutional context. *Clark v. Harris*, 144 P. 109 (Ore. 1914); *Arizona v. Mills* , 370 P.2d 946 (Ariz. 1962); *Latting v. Cordell* , 172 P.2d ⊥204 397 (Okla. 1946). The distinctions Appellants advance have no genuine support in the caselaw or in any other legal authorities.

In deciding whether Article VII, Section 13 is self-executing, we have considered the reasoning stated by the Trial Court, and studied the Airai State Constitution. The Trial Court's decision was based on its finding that: "The use of the phrase 'pursuant to law' indicates that subsequent enabling legislation was intended."

In our study of the Airai State Constitution, we note several ways of expressing the idea that its provisions depend upon legis lation: "pursuant to appropriation laws", Article VI, Section 4(b); "as provided for by law", Article VI, Section 4(g); "established by law", Article VI, Sections 5 and 6; "as prescribed by law", Article VII, Section 5; "Subject to State law", Article VII, Section 7; "in accordance with the laws", Article X, Section 1, in addition to the "pursuant to law" language of Article VII, Section 13. We find that these various terms are synonymous

for constitutional expression of principles which anticipate or rely upon legislation for specific implementation. We also note the wording of Article VI, Section 8:

> The Governor may be removed from office by a recall. A recall is initiated by a petition which shall state the ground for recall, and be signed by not less than twenty-five (25%) percent of the registered voters who voted in the most recent election for the members of the Airai State Government. Within sixty (60) days of the filing of the petition the State Legislature shall provide for a recall elect-
> ⊥205-ion to be held pursuant to law. If a majority of the votes cast approves of the recall, the elected member shall be immediately removed from office.

Even if there was an "election law" in existence when the recall petition was filed, the Airai Constitution clearly requires the Airai Legislature to enact enabling legislation to provide the funding for printing of the ballots, for paying the officials who will do the necessary administering and supervising of the election, and for the other necessary ingredients of the election process.

Comparing Article VI, Section 8, with Article VII, Section 13, we find no significant difference in intent. The Governor can easily enough select an election date and appoint officials to do the work, but where will the funds come from to defray the costs of the election? It is a principle of our system of government that the executive may spend only what the legislature authorizes. Surely, the Constitution does not require people to work for free or for the Governor himself to pay for the election. The Legislature perforce has to play its role in the recall process.

We hold, therefore, that Article VII, Section 13, of the Airai State Constitution is not self-executing, and that it requires enabling legislation to be put into effect.

⊥206 II.

Appellants' second argument is that even if Article VII, Section 13, is not self-executing, 23 PNC § 1005 provides the means for the National Election Commissioner to conduct the election:

> . . . if there is no applicable state law governing any state election to the extent that such law does not fully provide for the conduct of such election, the registration of voters, the tabulation of votes, or the announcement of official results, the Elect ion Commissioner shall formulate regulations to govern such election which shall be sub stantially similar to the provisions of this title with due recognition for local condit ions. Such regulations shall have the force and effect of law.

It is clear that in this situation there is "no applicable state law" governing the recall election. It is also clear that this is a "state election." Since there is no election law, the law of Airai State "does not fully provide for the conduct of such election, the registration of voters, the tabulation of votes, and the announcement of official results." It would seem, therefore, that this

situation was precisely anticipated by the Olbiil Era Kelulau in enacting 23 PNC § 1005. Consequently, the statute does apply.

In considering whether 23 PNC § 1005 applies, the Trial Court found, "Nowhere [in the Airai State Constitution] is it stated that the Governor may delegate all of his responsibilities to, for example, the Election Commission . . . ."

⊥207 But 23 PNC § 1005 contains within it a mandate. It says that in a situation such as this, "the Election Commissioner shall formulate regulations to govern such election" (emphasis added). We must keep in mind that, unlike the United States Constitution, the Palau Constitution grants only certain limited powers to the States; all other powers are retained by the National Government. This relationship between the National Government and the State is acknowledged in the Airai Constitution in several places: Article I, Section 1; Article III, Section 2; Article IV, Section 1; Article VI, Section 4(g); Article VII, Section 7; Article VII, Section 7(f); Article VIII; Article IX, Section 2; Article X, Section 1; and Article XI, Section 2.

Appellee sent the Election Commissioner a copy of his July 24, 1990, reply to Mr. Ngirchokebai, thus giving the Election Commissioner notice of the problem. As far as the Court knows, no action was taken by the Election Commissioner. Appellee sent copies of that same letter to each member of the Airai Legislature and, as far as the Court knows, that body took no action.

The notice given by Appellee to the Election Commissioner and to the Airai Legislature was insufficient to satisfy his respons ibilities under Article VII, Section 13. There was, admittedly, a failure by the Election Commissioner to follow the mandate of 23 PNC § 1005 to create regulations for Airai's recall election. The Airai Legislature failed to fund the recall election. However, those failures did not relieve Appellee of his responsibilities.

⊥208 Appellee should have: (1) chosen an election date; (2) asked the Legislature to fund the election and/or to enact implementing legislation; (3) requested that the Election Commissioner create regulations for the election, to provide for supervision of voter registration, balloting, tabulation of the votes, and to announce the result; (4) appointed the necessary officials to deal with voter registration, manning of the voting sites, and tabulation of the votes; and (5) created the ballot, to be printed upon receipt of funding from the Legislature. None of this would have involved any unconstitutional delegation of authority. Constitutions speak in terms of the executive carrying out various functions, and it is well understood that the executive will not personally deal with all of the nuts and bolts of the executive machinery.

We hold, therefore, that the Governor of Airai must, in order to fulfill his duties under Article VII, Section 13, take the steps we have indicated above. If he takes those steps and the Election Commissioner fails to act, or the Legislature does not provide the funding, then the blame for the non-occurrence of the recall election cannot be laid at his doorstep.

We further hold that Article VII, Section 13, of the Airai Constitution requires the Airai State Legislature, upon receipt of notice of the filing of a proper recall petition, to appropriate the

necessary funds so that the Governor can "provide for a recall election to be held."

⊥209 Finally, we hold that 23 PNC § 1005 imposes a duty upon the Election Commissioner, upon receipt of information that a State has "no applicable state law governing [a] state election to the extent that such law does not fully provide for the conduct of such election, the registration of voters, the tabulation of votes, or the announcement of official results, [to] formulate regulations to govern such election." The Election Commissioner must comply with 23 PNC § 1005 in such a case; he has no option to do otherwise.

III.

Given that the 60-day period for the election to be held has already passed, [3] what is to be done now? Appellant argued that the filing of the petition for a writ of mandamus "stopped the clock", so that we could now require Appellee to take steps to conduct the recall election. We find no merit in that argument, because at no point in the progress of this matter has Appellant exhibited any concern for the passage of time or done anything to expedite the processing of the case. The petition was filed 21 days after the Governor's letter, 36 days before the expiration of the 60-day deadline. Our rules provide for expedited handling of cases, when appropriate: ROP R. App. Pro. 21, which covers writs of mandamus, does not specify time limits, but does say that "the ⊥210 proceeding shall be given preference over ordinary civil cases." ROP R. App. Pro. 2 permits suspension of the rules (including time limits), "in the interest of expediting decision . . . ." Appellant could have requested expedited processing of this matter at the trial and appellate levels, and received a resolution in time to meet the 60-day deadline.

Now that the duties of the parties and potential actors in this drama have been clarified, it is expected that, should a new recall petition be filed, they can handle it without having to resort to litigation.

Accordingly, the decision of the Trial Division dismissing the petition for a writ of mandamus is hereby

AFFIRMED.

[3] Since the recall petition was sent to the Governor on July 19, 1990, the 60 days expired on September 17, 1990.