Gibbons v. Etpison, 3 ROP Intrm. 398 (Tr. Div. 1993)

IBEDUL YUTAKA M. GIBBONS, et al.,
Plaintiffs,

v.

NGIRATKEL ETPISON,
President of the Republic of Palau; and
the PALAU ELECTION COMMISSION,
Defendants,

v.

PETITIONERS, FRED SKEBONG, et al.,
Defendants.

CIVIL ACTION NO. 435-92

Supreme Court, Trial Division
Republic of Palau

Memorandum decision
Decided: July 2, 1993

NGIRAKLSONG, Chief Justice:

PROCEDURAL HISTORY

Some time in 1992, the Petitioners began collecting signatures for a petition to amend the Constitution to lower the voting requirement on the Compact of Free Association from 75% to a simple majority vote. The proposed constitutional amendment would purportedly remove the inconsistencies between the Constitution and the Compact of Free Association with respect to the so-called "anti-nuclear" provisions of the Constitution. Their efforts culminated in a petition with over 3300 signatures (representing at least 25% of the registered voters of Palau), which the Petitioners submitted to then-President Etpison on April 14, 1992.

President Etpison responded on May 8, 1992, by issuing ⊥399 Executive Order No. 111 setting a vote for July 13, 1992. The President had previously, on April 23, 1992, submitted a proposed bill to the Olbiil Era Kelulau ("OEK") setting forth election procedures; however, as time neared for the election the OEK had not passed a bill to establish election procedures.

The challengers, also Plaintiffs in this action, brought suit on the eve of the election to protest it. On July 7, 1992, the plaintiffs brought Civil Action No. 285-92 against the President and the Chairman of the Election Commission, seeking an injunction to stop the election on the referendum.[1] The Senate filed a similar suit, Civil Action No. 287-92, the next day, and the two

[1] The proposed amendment has come to be known as a "referendum," although the Court

causes were consolidated.

The court in Civil Action Nos. 285-92 and 287-92 preliminarily enjoined the election on July 9, 1992, on the grounds that only the OEK was authorized to set election procedures, and in particular to set the date of the election. On August 7, 1992, the OEK enacted RPPL 3-76, which called for a November 4, 1992 election on the amendment and also set forth procedures for voting on the amendment. RPPL 3-76 prescribed the ballot language in exactly the same form as the petition, and in addition, created a Political Education Committee to educate the public as to the meaning of the measure and to provide an explanatory provision to head the ballot ⊥400 language.

The trial of Civil Action Nos. 285-92 and 287-92 began October 2, 1992. The plaintiffs' four contentions were: (1) the Election Commission did not have the proper authority to certify the validity of the petition; (2) that the petition had not been properly certified; (3) that the language of both the Palauan and English versions of the ballot was misleading to voters, and there were confusing variances between the two; and (4) the referendum must be held simultaneously with a vote on the Compact of Free Association.

The court issued its trial decision on October 8, 1992, in which it decided the first, second and fourth issues against the plaintiffs. The court also denied the plaintiffs' prayer to enjoin the holding of the election. The court left the issue of the ballot language for another day, since the official ballots had not yet been printed.

The official ballot was printed and disseminated in early October, 1992, and Plaintiffs received a specimen ballot on October 14, 1992. Two weeks later, on October 26, 1992, Plaintiffs filed the instant lawsuit seeking a preliminary injunction against the holding of the election.

Upon receiving Plaintiffs' complaint, and mistakenly thinking that this case involved the same parties as Civil Action Nos. 285-92 and 287-92, the Court immediately set an October 29, 1992 hearing for Plaintiffs' motion for preliminary injunction (see Court's order of October 26, 1992). Upon further review of the ⊥401 file, the Court realized that the Plaintiffs had deliberately omitted as parties the Petitioners from the previous cases. The Court by its order of October 27, 1992 rescinded the hearing set for October 29, 1992 and ordered a status conference for October 28, 1992.

At that status conference [2], the Court's primary concern was the exclusion of the

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notes that the proper term is "initiative." A referendum refers to a legislature seeking voters' approval for their proposed actions, whereas an initiative refers to a measure brought before the voters by a specified percentage of the electorate. *Black's Law Dictionary*, 784, 1281 (6th ed. 1990).

[2] Plaintiffs argue that at the status conference, the Court indicated that Plaintiffs' challenge would be held to an easier, "pre-election" standard at its trial after the election. The Court recalls feeling that the *Koshiba* standard would suffice for both pre-election and post-election cases. In any event, no agreement was reached among the parties and the Court as to

Petitioners. Plaintiffs opposed the inclusion of the Petitioners, taking the position that RPPL 3-76, once it became law, extinguished the Petitioners' interest. The Court, cognizant of the fact that the right of initiative is independent of the legislature's rights and duties (see infra) and that Plaintiffs' complaint and motion sought to void the referendum and have RPPL 3-76 declared unconstitutional, informed Plaintiffs that the action could proceed no further without the Petitioners being made parties. Hence, although Plaintiffs sought a quick resolution of their plea for an injunction, valuable time had to be consumed to ensure that the Petitioners were properly added as defendants in this case.

Further, when Plaintiffs filed their October 29, 1992 motion to set a November 1, 1992 hearing on the preliminary injunction or a trial on the merits, the named defendants had not yet had enough time to file their answer. Hence, on October 30, 1992 the Court ⊥402 denied Plaintiffs' motion for an earlier hearing date for the preliminary injunction and at the same time ordered that Petitioners be made parties.

At long last we have come to the trial of this action. The issues raised by Plaintiffs' complaint are the following: (1) whether the Plaintiffs' right to vote was impaired due to unclear language in both the English and Palauan versions of the ballot, and the discrepancies between the two[3]; (2) whether voters who speak only Palauan were denied equal protection by virtue of the variances between the English and Palauan versions of the ballot and the fact that the English version prevails in cases of conflict [4]; (3) whether RPPL 3-76 is unconstitutional because it mandated the use of the alleged faulty language for the November 4 ballot; (4) whether the Political Education Committee failed to comply with RPPL 3-76 in that (a) it did not provide a brief ⊥403 explanatory provision explaining the meaning of the petition and clarifying ambiguities and (b) it did not otherwise inform Palau's voters about the meaning of the amendment; and (5) whether RPPL 3-76 failed to provide for adequate voter education.

ANALYSIS

In all election contests, the party challenging the election results has the burden of proof. *Fugate v. Mayor and City Council of Buffalo* , 348 P.2d 76, 86 (Wyo. 1959); *In re Heusner*, 204

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any legal standard to be used at trial.

[3] The Court notes that Plaintiffs adduced proof only on the issue of the discrepancies between the English and Palauan versions of the ballot, and did not provide independent proof of the insufficiency of either the English version standing alone or the Palauan version standing alone, except to say that both the provisions were too long to be understood. Accordingly, the Court confines itself to these allegations.

[4] Although these causes are styled as "right to vote" and "equal protection" actions, the legal authorities under these theories do not include cases of ballot language or voter education. *See* L. Tribe, *American Constitutional Law*, 737; Lockhart, Kamisar & Choper, *Constitutional Rights and Liberties*, 1051-63 (4th ed. 1975). Nor have Plaintiffs provided the Court with authority to show that these theories apply in the context of ballot language and voter education. Rather, the case authorities involving ballot language have been styled as election contests. Thus, the Court takes cognizance of Plaintiff's action as an election contest. *See generally* 26 Am. Jur. 2d, *Elections* secs. 316-364 (2d ed. 1966).

P.2d 886, 889 (Cal. App. 1949).

In addition, a challenge to an initiative measure involves special considerations. The Palau Constitution guarantees the right of initiative and referendum to the people. Palau Const. Article XIV, section 1(b). The right of initiative is independent of the legislature. *Gibbons v. Etpison*, Civil Action Nos. 285-92 and 287-92 (consolidated), Order Granting Preliminary Injunction, July 9, 1992; *Common Cause v. Anderson*, 495 P.2d 220, 221 (Colo. 1972); *Glendale v. Buchanan*, 578 P.2d 221, 224 (Colo. 1978). The OEK may, so long as it does not diminish these rights, enact laws to promote their exercise. Even then, only those laws which will further the purpose of the constitutional initiative and facilitate its operation will be permitted. In all cases, the constitutional right of initiative is to be protected as a right independent of the legislature's right to regulate elections, and the enabling legislation shall be liberally construed to facilitate the right of initiative. *Gibbons v. Etpison* , Civil Action Nos. 285-92 and 287-92 (consolidated), Trial Decision at 6 (October 8, 1992); *Yenter v.* ⊥*404* *Baker*, 248 P.2d 311, 314 (Colo. 1952). Any statute which limits, curtails or destroys the Petitioners' right is invalid as violative of the right reserved by the people to themselves. Palau Const. Article XIV, section 1(b); *Common Cause, supra*, at 222.

In exercising the constitutional right to initiative, the Petitioners helped bring about the enactment of RPPL 3-76. Section 1, subsection 2 of that law states:

> This Act is intended to carry out the will of the Petitioners as expressed in the Petition by providing necessary enabling legislation, dates, funding and political education for the referendum and plebiscite [emphasis added].

The Court considers this election challenge keeping in mind the following principles. First, the ballot as a whole should be sufficient to inform the voter of the main issue being voted upon and should indicate to the voter how to mark it so as to express his preference on the issue at hand. *Koshiba v. Remeliik*, 1 ROP Intrm. 65, 68 (Tr. Div. 1983); *Gray v. Taylor*, 227 U.S. 51, 33 S.Ct. 199 (1913); *Kahalekai v. Doi*, 590 P.2d 543, 550 (Haw. 1979); *Boucher v. Bomhoff*, 495 P.2d 77, 78 (Alaska 1972) [5]. Second, defects in the form of the ballot which do not mislead the voters are not sufficient to warrant a court in voiding the results of the ⊥405 election. *Penrod v. Crowley*, 356 P.2d at 82-83; *see Koshiba v. Remeliik* , 1 ROP Intrm. at 69 [6]. Finally, the

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[5] Plaintiffs urge this Court that the test should be whether a voter would know how to express his vote upon reading the ballot for the first time; presumably, right before he votes. Plaintiffs have not provided the Court with legal authority for that proposition. This Court acknowledges *infra* that the reasonable voter usually takes some steps to inform himself of the meaning of the ballot before election day. In any case, as discussed below, given that the explanatory provision correctly tells the voter which way to vote to express his preference, the reasonable voter might well know how to vote upon reading the ballot for the first time.

[6] A word about Plaintiffs' seeking to void the election as its remedy. Plaintiffs seek to void the amendment voted in on November 4, 1992. Defendants argue that rather than voiding the amendment, those illegal votes should be struck from the results, and if they are not enough to change the result of the election, the amendment is valid. Therefore, this Court need go no further in its inquiry as to the sufficiency of the ballot. However, Defendants overlook the fact

reasonable voter will educate himself prior to the election as to the meaning of the measure and the ballot. *See State v. Geurkind*, 109 P.2d 1094 (Mont. 1941).

I. The Ballot Language.

Much has been made of the application of *Koshiba v. Remeliik*, 1 ROP Intrm. 65 (Tr. Div. 1983) to this case. *Koshiba* involved the ballot language for a plebiscite on the Compact of Free Association. The allegation was that the ballot did not conform to the enabling legislation which set forth both the language and the election procedures. The enabling legislation provided, in ⊥406 pertinent part, that the language of the ballot should be as follows: "Do you approve of the Agreement concerning radioactive, chemical and biological materials concluded pursuant to Section 314 of the Compact of Free Association?" There were then spaces to mark either Yes or No. In contrast to the enabling legislation, the English version of the actual ballot was as follows: "Do you approve the agreement under Section 314 of the Compact which places restrictions and conditions on the United States with respect to radioactive, chemical and biological materials?" There were then spaces to mark Yes or No. The Palauan version of the ballot indicated that Section 314 of the Compact would stop the United States and show the conditions under which the United States could use the harmful substances.

In determining that the ballot language was misleading, the court noted that the English ballot

> patently suggests that by voting yes, the voter wishes to impose restrictions and conditions on the United States with respect to certain harmful substances . . . One may vote yes because he or she agrees to the provisions of Section 314 . . . Another voter may vote yes because he or she is against the use of radioactive substances but, unknowingly, is voting to ease the constitutional restrictions. *Koshiba* at 69.

The Palauan version added to the confusion by suggesting that Section 314 would restrict the harmful substances. In other words, the ballot language misled the voters as to how to vote to

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that in the cases cited by it, and in the cases reviewed by this Court, the striking of illegal votes was a proper remedy when the illegality pertained to those particular votes, such as votes taken after the polls closed, votes handed to the wrong election official, improper handling of absentee ballots, votes made by unregistered voters, or other individual deficiency. *See Chutaro v. Election Commissioner*, 8 T.T.R. 209 (1981); *Basilius et al., v. Election Cimmissioner*, 5 T.T.R. 290 (Tr. Div. 1970); *Baldauf v. Gunson*, 8 P.2d 265, 266 (Colo. 1932); *Rampendahl v. Crump*, 105 P. 201, 206 (Okl. 1909); *Turkington v. City of Kachemak*, 380 P.2d 593 (Alaska 1963). By contrast, in a case in which improper language affecting all the ballots is found, the proper remedy is to void the election results. *See Boucher v. Bomhoff*, 495 P.2d 77 (Alaska 1972); *Murphy v. City of San Luis Obispo*, 51 P. 1085, 1088 (Cal. 1898).

Nevertheless, the number of misled voters helps to determine whether Plaintiffs have met their burden of proof. Plaintiffs must prove that the language was so misleading as to have a significant impact on the results of the election. *See infra*.

express their preference on the issue.[7]

⊥407 We turn now to the language of the ballot at issue. The first question is whether the voters knew that a "yes" vote was to approve the amendment to the constitution to lower the 75% voting requirement of Article XIII, section 6 and Article II, section 3 for voting on the Compact of Free Association, and that a "no" vote indicated that the voter did not wish to lower the voting requirement for voting on the Compact. The second question is whether the ballot language misled the voter to cause him to vote in a manner that did not express his preference.

The Plaintiffs who testified at trial stated that the following problems were present in the ballot language used at the November 4, 1992 general election: (a) the language is long and complex; (b) the English version refers to inconsistencies that the Supreme Court has found prior to the amendment to exist between the section 324 of the Compact and other sections of the Constitution, whereas the Palauan version refers to inconsistencies that the Supreme Court will find if the amendment is not enacted and omits the references to "other sections of the Constitution" and to section 324; (c) the English version shows that the amendment will be numbered 14A, whereas the Palauan version shows no numbering; ⊥408 and (d) the Palauan version is not completely translated, leaving in English such words as "Compact" (also incomplete without "of Free Association"), "Constitution", "Article", and "Section". The Court recognizes that these variances do exist.

Certainly this is not a case, nor have Plaintiffs argued as much, that the ballot language implied a recommendation as to how the voters should vote. *See Kahalekai v. Doi*, 590 P.2d 543, 551-52 (Haw. 1979). Rather, Plaintiffs assert that the variances between the English and Palauan version create such confusion that the voters either did not know what they were voting on and did not know how to mark the ballot to express their preference, or were misled by the ballot language into voting in a way that did not express their preference on the issue.

Presumably, although the contrary is stated in their complaint [8], Plaintiffs' argument applies only to those voters who read and speak both English and Palauan -- a voter who reads only Palauan would not be aware of the variances between the languages. In any case, the evidence adduced by Plaintiffs did not show that the voters who spoke both English and Palauan were confused or misled.

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[7] Also instructive is the *Boucher* case. In *Boucher v. Bumhoff*, 495 P.2d 77 (Alaska 1972), the Alaska constitution required that a referendum be held every ten years to determine whether the voters wanted a constitutional convention. The proposition to hold a convention passed at a general election. Thereafter, plaintiffs brought suit to overturn the results, claiming that the ballot title was misleading since it implied that the constitution required that a convention be held. The ballot title read: "REFERENDUM / As required by the Constitution of the State of Alaska / Article XIII, Section 3 / Shall there be a constitutional convention?" The ballot then contained a box to mark Yes and a box to mark No. The court found that the language misled the voters, making them think a constitutional convention was required, and thus frustrating the expression of their free will. The election was invalidated.

[8] See Plaintiff's First Amended Complaint of Nov. 6, 1992, at paragraph 14.

The Court finds that all of the testifying plaintiffs (six who actually testified, and others whose testimony was stipulated to) that speak both English and Palauan knew the main idea of the November 4, 1992 ballot and the consequences of a "yes' or "no" ⊥409 vote. As one plaintiff put it, "every Palauan knows" the effect of the amendment and the history of the inconsistency between the Constitution and the Compact. Possible exceptions are Nemecio Andrew who testified that he did not know what the 75% requirement was being reduced to [9], and Augusto Naruo who testified that he heard the explanation of the consequences of a "yes" or "no" vote, but that it should have been explained within the four corners of the ballot itself. That testimony does not change the Court's conclusion that every plaintiff knew that the main idea of the ballot was to remove the inconsistency between the Compact and the Constitution and thereby reduce the voting requirement for the Compact. Whether they knew this from the ballot language, including the explanatory provision, itself or their own activities and education (see infra) is immaterial since they were not confused or misled. Certainly both versions of the ballot language are sufficient to inform the voter that if they wish there to be no inconsistencies between the Constitution and the Compact, they should approve the amendment. Significantly, not one plaintiff testified that they intended to vote a particular way but were confused by the ballot language into voting in a manner they did not intend, as required by the *Koshiba* case. All the plaintiffs voted on the initiative on November 4, 1992.

Moreover, Plaintiffs' expert witness testified that the ⊥410 Palauan translation of the English ballot was "acceptable", although it could be improved. He also testified that in some instances reading one version helps to clear up the other version. In short, plaintiffs simply have failed to prove that the voters were confused or misled by the ballot language. The most they have accomplished is to speculate that certain portions of the ballot could be confusing. Further, the fact that the explanatory provision on the ballot correctly sets forth the main issue to be decided and the consequences of a "yes" versus a "no" vote is important. Finally, the Court is mindful that a certain amount of complexity is inherent in any ballot language in which a substantive issue is raised, and that this is the reason that explanatory provisions are commonly provided. Hence, the Court finds that the discrepancies between the two versions are not serious enough to confuse or mislead the voter as to the effect of his approval or disapproval. *Koshiba v. Remeliik, supra*.

The Court now turns to the alleged lack of equal protection for the Palauan-only voter. Plaintiffs did not adduce proof that the Palauan version standing alone is insufficient to inform the voter of the effect of his vote or that it misleads that voter. The Court finds that the testifying plaintiffs who only spoke Palauan (two that testified and others whose testimony was stipulated to) knew the main idea of the ballot and the consequences of a "yes" or "no" vote. Further, the Palauan version has substantially the same effect and import on the Constitution as the English version. The conflicts between the English and Palauan ⊥411 versions are not so serious as to make the essential meaning and import of the Palauan version different from the English version. Thus, the Palauan-only voter was able to cast a meaningful vote at the election, the version he voted on was similar enough to the English version so as to give effect to his vote, and he was

[9] Given the history of this issue among the Palauan people, and hence the common knowledge that without the nuclear provisions only a majority vote is needed to approve the Compact, the Court did not find this testimony persuasive.

not deprived of his right to vote. Such being the case, the Court need not embark on an analysis of whether the Palauan-only voter's right to equal protection was violated.

Finally, the Court is mindful that a challenger must show that enough voters were misled as to change the results of the election. *City of Glendale v. Buchanan* , 578 P.2d 221, 224 (Colo. 1978); *see Boucher v. Bomhoff*, 495 P.2d 77, 80 (Alaska 1972).[10]

⊥412 As noted supra, Plaintiffs' expert witness testified that the Palauan version was an acceptable translation of the English version. He did not opine that variances were sufficient to create a bias in the election or to change the results. Further, plaintiffs were not misled--they knew the main idea and the effect of a "yes" or "no" vote. Given the lack of proof that the allegedly misleading ballot language introduced a bias into the election, Plaintiffs have not met their burden of proof.

II. Voter Education.

Even if not constitutionally mandated, the legislature has an implied duty to inform the public of the contents and effect of proposed legislation. *Kahalekai v. Doi*, 590 P.2d 543 at 553. The members of the public have a corresponding responsibility to educate themselves as to the effect of proposed constitutional amendments before expressing themselves at the polls. *Id.* Where an initiated amendment is involved and publicity is given to the measure, a strong presumption exists that voters cast informed ballots. *City of Glendale v. Buchanan* , 578 P.2d 221, 225 (Colo. 1978). A court may look to the voters' education to determine whether they

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[10] *City of Glendale v. Buchanan*, 578 P.2d 221 (Colo. 1978), involved an initiative to amend the constitution that was adopted by the electorate at a general election. It was later challenged on the grounds that the title of the ballot was misleading to voters in that it did not make clear that the effect of the amendment was to change the constitution's requirement that voters of a territory to be annexed must approve the annexation. The amendment allowed the legislature to enact legislation that would allow voters whose territory was not to be annexed to override the opposition of the annexed voters. The title of the ballot was, in relevant part, "An act to amend [the constitution] . . . prohibiting the striking off of any territory . . . without first submitting the question to . . . electors of the county."

In reaching its decision that the amendment was valid, the court focused on the fact that the plaintiffs had not shown that a sufficient number of voters were mislead as to affect the expression of the popular will, noting that the plaintiffs provided the affidavit of one voter, whereas the amendment passed by a margin of 117,000 votes. 578 P.2d at 224. The Court compared this with another case in which the challengers provided expert testimony that misleading ballot language introduced a significant bias into the election.

Similarly, in *Boucher v. Bomhoff, supra*, the expert testimony at trial proved that the ballot language was inherently biased and therefore would tend to change the results of the election. 495 P.2d at 80-81. The court relied on the expert's opinion in concluding that the language was indeed misleading, and the election results would be invalid. *Id*. at 81-82.

were misled by ballot language. *State v. Geurkind*, 109 P.2d 1094 (Mont. 1941).[11]

⊥413 In *Kahalekai v. Doi*, 590 P.2d 543 (Haw. 1979), the issue was whether the electorate was deprived of necessary information concerning a proposed constitutional amendment. 590 P.2d at 553. Before the election, copies of the full text of the revised Constitution were distributed to state and municipal officers and to all libraries. However, the voters were not informed that the revised Constitution was available for viewing at the libraries. A summary of the amendments was mailed to the household of each registered voter, and that summary advised voters that they could obtain the exact wording of the amendments from the voter information center in one city. In addition, the committee charged with political education put advertising supplements in four newspapers of general circulation in the state, in which the affected sections of the Constitution were reprinted. Finally, radio and television announcements advised listeners that information was available and discussed the proposed amendments. The Court, noting the extensive coverage of the proposed amendments before the election, found that the voter education was sufficient to enable a voter to reasonably educate himself about the significance and substance of the proposed amendments. 590 P.2d at 554, 557.

Similarly, in the instant case, the Political Education Committee ("PEC") adequately performed the task of informing our ⊥414 nation's voters of the substance of the proposed amendment. From the testimony of various members of the PEC, the Court finds that at least a month before the election, the PEC set up a visible headquarters in Koror at which the official ballot, the sections of the Constitution mentioned in the ballot, the Compact, an informational pamphlet, the petition, and RPPL 3-76 were available for reading. Of those materials, the pamphlet, the petition, the explanatory provision of the ballot, and RPPL 3-76 all correctly set forth the issue to be decided and the consequences of approval and disapproval. The PEC headquarters also had staff available to answer questions from morning until 10 p.m.

As the certified election returns show, approximately 75 percent of Palau's registered voters live within Palau, another 15 to 20 percent live in Saipan and Guam, and the remaining 5 to 10 percent live in Hawaii and the mainland United States or vote by absentee ballot. In Palau, besides the availability of the PEC headquarters, the PEC made at least one trip to all states in the nation, at which they explained the issue to be decided and the consequences of approval and disapproval. The exceptions are Sonsorol and Tobi, for which the PEC educated others and sent them back to educate the voters. When the PEC felt that they had not reached enough voters at the first meeting, they often scheduled a second meeting in an area. The radio station repeatedly broadcast the PEC's programs explaining the ballot and urging voters to come to the PEC headquarters if they were confused. The PEC made announcements on television. In addition to

[11] In *State v. Geurkind*, 109 P.2d 1094 (Mont. 1941), a candidate died before the election, but his name appeared on the ballot. 400 people voted for the dead man. The Court, in striking the 400 votes and declaring the runner-up as the winner, looked to the evidence that the news of the candidate's death had been printed in a newspaper of general circulation in the county, and that the great majority of the voters of said county read that newspaper, in finding that the voters knew the candidate was dead when they voted for him and their votes were meant merely as a protest. Hence the Court looked to voter education to determine whether voters were misled by the appearance of the candidate's name on the ballot.

the PEC's efforts, ⊥415 political groups both in favor of and opposed to the amendment put out numerous radio programs.

Outside of Palau, the PEC made repeated trips to Guam and Saipan and sent materials there. The PEC also made trips to Hawaii and the mainland and in some cases where a trip could not be made, sent election information including the pamphlet to the last address of the registered voter. Hence the PEC's efforts were comprehensive and, given that the vast majority of voters reside in Palau, effective at reaching the voters. The PEC met or surpassed the level of education approved in the *Kahalekai* case.

Of the plaintiffs themselves, most of them belonged to political groups that educated themselves as to the meaning of the November 4, 1992 amendment and understood it well enough to formulate a position and campaign publicly against the amendment. Some plaintiffs attended the PEC meetings, many attended other groups' meetings on the amendment, and some heard the PEC radio announcements. As noted, at least one witness testified that every Palauan knew the meaning of the amendment and the consequences of their vote, given that the issue of the inconsistency between the Constitution and the Compact has long been a topic of discussion and concern among the Palauan people. And Plaintiffs' expert witness, Pastor Kuartei, testified that because of that history, all Palauans are familiar with the words "Constitution", "Compact" and others that Plaintiffs pointed to in the Palauan version. Further, the Court notes that the inconsistency between the Compact and the Constitution has been the subject of seven previous ⊥416 referenda and previous efforts to amend the Constitution. The inconsistency issue thus has a history among the voters which is almost as old as the Republic itself. Over that time, the voters have doubtless become well-versed on the issue and the Constitution and the effect of amending the inconsistent Constitutional provision.

With these findings (which include plaintiffs' testimony and testimony of their own expert witness) and the comprehensive voter education program for this election, the Court concludes that the plaintiffs and the voters at large were not confused or misled as to the substance of the amendment and the meaning of a "yes" or "no" vote.

III. RPPL 3-76.

Legislative acts which prescribe the procedure to be used in voting on initiatives may not restrict the free exercise of the right. *City of Glendale v. Buchanan* , 578 P.2d 221, 224 (Colo. 1978). The action of the legislature in fixing the ballot language is presumed to be valid. *Say v. Baker*, 322 P.2d 317, 318 (Colo. 1958). Only in a clear case of legislation resulting in misleading language should ballot language held insufficient. *Epperson v. Jordan* , 82 P.2d 445, 448 (Cal. 1938). In all cases, the constitutional right of initiative is to be protected as a right independent of the legislature's right to regulate elections, and the enabling legislation shall be liberally construed to facilitate the right of initiative. *Gibbons v. Etpison* , Civil Action Nos. 285-92 and 287-92 (consolidated), Trial Decision at 6 (October 8, ⊥417 1992); *Yenter v. Baker*, 248 P.2d 311, 314 (Colo. 1952). All doubts must be resolved in favor of giving effect to the initiative. *Id.*

Plaintiffs have not shown that the mandates of RPPL 3-76 were insufficient to produce a meaningful election of the initiative. Rather, those mandates were followed and did result in the expression of popular will on the amendment.

As discussed above, the variances in the ballot language mandated by RPPL 3-76 were not so misleading that the intent of the voters was frustrated. RPPL 3-76 cannot be deemed unconstitutional on that ground. In addition, there is insufficient evidence to show that the Political Education Committee failed to comply with RPPL 3-76 in either its duty to educate the public or to provide a brief explanatory provision for the ballot. As discussed *supra*, that explanatory provision was brief and correctly set forth both the substance of the amendment and the consequences of approval and the obvious consequences of disapproval, i.e. the status quo. It is absurd to suggest that the explanatory provision should have discussed each and every variance between the English and Palauan versions, since its purpose was to briefly explain the meaning of the ballot (thereby clarifying the variances).

In conclusion, the Court notes the high burden of proof placed on the challengers in this case. In the case of a voter initiative or a constitutional amendment, every presumption will be given in favor of the validity of the results and the challenger must show beyond a reasonable doubt that the enactment is void. *City of Glendale v. Buchanan*, 578 P.2d 221 (Colo. 1978); *Kahalekai v. Doi*, ⊥418 590 P.2d 543, 549 (Haw. 1979); *Penrod v. Crowley*, 356 P.2d 73 (Idaho 1960). "We enter upon a consideration of the validity of a constitutional amendment after its adoption by the people with every presumption in its favor: The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it." *Penrod v. Crowley, supra*, at 76.

The plaintiffs have failed to prove their case by a preponderance of evidence standard, much less overcoming the presumption in favor of the constitutional amendment. Accordingly, the Court hereby upholds the result of the initiative on November 4, 1992.

With the foregoing memorandum decision, the Court holds in favor of the defendants.