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REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	H. CT. CIVIL ACTION NO. 2016-121
	)	S. CT. CIVIL APPEAL NO. 2018-001
Plaintiff-Appellant,	)	
	)	APPEAL FROM ORDER DENYING
vs.	)	PLAINTIFF'S MOTION FOR SUMMARY
	)	JUDGMENT; ORDER GRANTING
ROBSON YASIWO ALMEN, in his	)	DEFENDANT ALMEN'S MOTION FOR
capacity as Chief Electoral Officer;	)	DISMISSAL; ORDER DENYING
MINISTRY OF INTERNAL AFFAIRS;	)	DEFENDANT JACK'S MOTION TO
GOVERNMENT OF THE REPUBLIC	)	VACATE, FILED ON 14 DECEMBER
OF THE MARSHALL ISLANDS; and	)	2017
LADIE M. JACK,	)	
	)	HIGH COURT
Defendants-	)	HONORABLE COLIN R. WINCHESTER
Appellees.	)	ASSOCIATE JUSTICE

samuel election 2015 appeal opening brief holdover

OPENING BRIEF

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Defendants-	)	
Appellees.	)	HONORABLE COLIN R. WINCHESTER
	)	ASSOCIATE JUSTICE

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OPENING BRIEF

I. STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Article VI, Section 2(2) of the Constitution of the RMI, and 27 MIRC, Chapter 2, §207.

II. STATEMENT OF THE CASE

This election challenge case arises out of the general election for Mayor for Majuro Atoll Local Government, held on 16 November 2015.

In Appellant's motion for partial summary judgment filed with the High Court, Appellant claimed that Appellee ALMEN illegally declared the *final results* of the general election for Mayor for Majuro Atoll Local Government (hereinafter referred to as "MALGOV") on 19

December 2015, while the Appellee ALMEN had actual knowledge that a formal petition for recount dated 14 December 2015, challenging the Mayoral election for MALGOV, had been filed by Appellant on 15 December 2015; and Appellee ALMEN had actual knowledge that Appellant had filed a recount lawsuit on 18 December 2015. Since that date until today, the Mayoral election for MALGOV was, and still is being contested in both a recount case, and this election challenge case; and the election for MALGOV Mayor therefore is still ongoing. Under these circumstances, no certification of final results could have been legally announced under the Elections and Referenda Act 1980 until a final determination is made on Appellant's cases presently in the Courts.

The following is the first issue on appeal: while an election recount and challenge is in progress for MALGOV Mayor, does the incumbent Mayor have the right to remain in office as a holdover officer, pending the outcome of election litigation and final certification of the election results, i.e., is a legally issued final certification of election required under the MALGOV Constitution before a person assumes an elected local government office, and until then, is the incumbent entitled to remain in that office?

It is Appellant's contention that until the recount and election challenge lawsuits are resolved and the election is legally still ongoing, under the MALGOV Constitution, Appellant has the right to remain in or reassume his position as a "holdover" Mayor until all election litigation has been resolved, or at least until any recount petition litigation has ended.

Appellant also commented on a constitutional issue with the trial court during oral argument on the motion for partial summary judgment, which has been the cornerstone of his litigation – that an undisputed clandestine meeting between the Appellee ALMEN and Appellee

JACK, occurred during the election, in violation of the Constitutional right of the citizens of this Republic to ethical government (Constitution of the Republic of the Marshall Islands, Article II, Section 16 "Ethical Government"); and in violation of the Ethics In Government Act 1993 (3 MIRC, Chapter 17, §1704) which mandates that public officials shall avoid the appearance of impropriety in the discharge of their official duties.

Appellant submits that the cases which he has filed petitioning for a recount, and challenging the election, present a novel (for this jurisdiction), yet fundamental issue that relates to the foundation of the principles of democracy upon which this young Republic is based. And that what is at stake is the very integrity of the institution of government in the Republic.

The very broad question presented by this case is whether under the law and Constitution of the Republic, a public official who is in charge of running the elections in the Republic, can meet privately with a candidate while the election is still in progress, without running afoul of the Constitutional mandate that the people have a right to ethical government, and where the statutory code of ethics prohibits even the "appearance" of violating the law or ethical standards of that code.

The High Court in its dismissal of Appellant's election challenge case never even considered these issues in its Order dismissing Appellant's case. These claims are separable from the holdover officer issue. Therefore, it is Appellant's position that dismissal of **all** issues based upon determination of the holdover issue, was clear error.

### III. STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY

A. That the Appellee ALMEN, had no legal basis for announcing the final results of the Mayoral election for MALGOV since the election was actively being challenged by Appellant (2



MIRC, Chapter 1, §185). The declaration of final results was therefore illegal under the ERA.

B. That under the Constitution of Majuro Atoll Local Government, the office of Mayor does not begin until “the day after the day on which his election . . . is certified”, can only be interpreted as referring to a legally issued certification of the election. The interpretation of the High Court interpreting “certification” as meaning *any* certification, legal or illegal, is an absurd result and one that was not intended. And Appellant further argues that Appellant has the right to remain as Mayor until “the day before the new member takes office” i.e., the day after the day on which the election of his successor is certified”, therefore allowing for a holdover Mayor. [Constitution of Majuro Atoll Local Government, Part III, Section 8(1)(a) and (b).]

C. That it was improper for the High Court to dismiss the remaining issues in Appellant’s case relating to his election challenge, as they constitute separate claims falling within the scope of the claims mentioned in the Complaint (*Anitok v. Binejal*, 2 MILR 114, 116 (1998); and see generally 1 Restatement of the Law Judgments Second, §27.):

1. That in light of the substantial gain of votes on a recount in Rita Ward, in which Appellant gained a net 31 votes, it was unreasonable and an abuse of discretion for the Appellee ALMEN to deny the petition of Appellant for a recount of all of the Wards on Majuro, since tabulation problems were clearly evident and may have substantially altered the results of the election.

2. That the Appellee ALMEN as a result of the opening of postal ballots in private and out of the public view of poll watchers, clearly violated the laws of the Republic and may have substantially affected the election results for the Mayoral election for MALGOV. The Appellee ALMEN’s actions raise the specter that this act was a gross violation of the ERA and the Ethics Law which itself could have substantially altered the results of the election. [Article II, Sections 16 and 18, Constitution of the RMI; 3 MIRC, Chapter 17, §§1702, 1704; 2 MIRC, Chapter 1, §178(3); *Clanton v. Marshall Islands Chief Electoral Officer*, 1 MILR (Rev.) 146, 154 (1989); and *Bien v. Marshall Islands Chief Electoral Officer*, 2 MILR 94, 96 (1997) – in addressing the validity of postal ballots, the Court therein stated “The Nitijela wanted an election that was free from any impropriety or appearance of such. A democracy can only flourish with free elections untainted by any questionable conduct.” *Ibid*, at p. 96.]<sup>1</sup>

3. That the collection of confined votes until 3:00 a.m. on the day after closing of the polls, outside of the view of poll watchers was illegal and

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<sup>1</sup> This unreasonable decision to deny a recount may have been tainted by the unethical conduct of Appellee ALMEN’s clandestine meeting with then MALGOV Mayor candidate Appellee JACK, during the election in violation of the Article II, Sections 16 and 18, Constitution of the RMI; 3 MIRC, Chapter 17, Section 1702; and *Bien*, *supra*.

unjustified, and looking at the totality of the circumstances, the Appellee ALMEN's decision to allow these votes raises the specter that this act was a violation of the Ethics Law and clearly was a violation of the ERA and regulations promulgated thereunder, and this action could have substantially altered the results of the election. (Article II, Sections 16 and 18, Constitution of the RMI; 2 MIRC, Chapter 1, §170(2); and Elections and Referenda Regulations 1993, §123; and *Bien, supra.*)

4. That the private meeting between the Appellee ALMEN and Mayoral candidate Ladie Jack (whom the Appellee ALMEN illegally declared the winner of the Mayoral election for MALGOV) during the election, was a violation of the Ethics Law and looking at the totality of the circumstances, *that* improper conduct was an indication of the conflict of interest which infected the entire election for MALGOV Mayor, so tainting the election for Mayor of Majuro Atoll Local Government as to call into question the fundamental fairness of that election. (Article II, Sections 16 and 18, Constitution of the RMI; 3 MIRC, Chapter 17, §§1702, 1704; and *Bien, supra*, at p.96.)

5. That all of the actions of the Appellee ALMEN *vis-a-vis* Appellant, during the election were unreasonable and when viewed in the totality of the circumstances, shows that he was biased in favor of Appellee JACK (Mayoral candidate Ladie Jack) and prejudiced against Mayoral candidate and Appellant herein, tainting and influencing his decisions and possibly substantially affecting the results of the Mayoral election for MALGOV. (Article II, Sections 16 and 18, Constitution of the RMI; 3 MIRC, Chapter 17, §§1702, 1704; and *Bien, supra.*)

6. That the failure of the Appellee ALMEN to refer all issues raised in Appellant's petition (and in particular the constitutional violations of the Ethics Law) to the High Court as required under applicable law [2 MIRC, Chapter 1, §188(2)], when considering the Appellee ALMEN's clandestine meeting(s) with Appellant's opponent in the Mayoral election for MALGOV, indicates Appellee ALMEN's prejudice and bias against Appellant, so as to have tainted the election and to call into question the fundamental fairness of the entire election, which in turn may have substantially affected the outcome of that election. (*Bien, supra.*)

7. The failure of the CEO and the High Court in resolving this case as quickly as possible has infringed upon the oft quoted necessity to resolve election issues and contests expeditiously. *Matthew, et al., v. CEO, 3 MILR 174 (2014).*

#### IV. STANDARD OF REVIEW

Findings of fact, are reviewed under the "clearly erroneous" standard. [*Dribo v. Bondrik,*

*et al.*, 3 MILR 127, 134 (2010).] Conclusions of law are reviewed under the “*de novo*” standard. [*Gushi Brothers Co. v. Kios, et al.*, 2 MILR 120, 125 (1998).] And mixed questions of fact and law, are reviewed under the “*de novo*” standard. [*Samson, et al., v. Rongelap Atoll LDA*, 1 MILR (Rev.) 280, 284 (1992).]

The standard of review of this appeal are based upon the High Court’s conclusions of law in denying Appellant’s Motion for partial summary judgment, and in granting Appellee ALMEN’s Motion to Dismiss. Therefore, the standard of review should be *de novo*.

## V. STATEMENT OF QUESTIONS PRESENTED

1. WHERE AN ELECTED OFFICIAL FOR MAJURO ATOLL LOCAL GOVERNMENT RUNNING FOR RE-ELECTION CHALLENGES THE ELECTION FOR HIS OFFICE, IS HE ENTITLED TO REMAIN IN OFFICE UNTIL HIS SUCCESSOR IS VALIDLY CERTIFIED TO HAVE BEEN DULY ELECTED TO THAT OFFICE, INCLUDING ANY APPEALS ON THAT ELECTION CHALLENGE?

2. DID THE HIGH COURT COMMIT REVERSIBLE ERROR IN DISMISSING ALL CLAIMS INVOLVED IN APPELLANT’S ELECTION CHALLENGE, WHEN IT RULED ON ONLY ONE ASPECT OF THE ENTIRE CLAIM OF APPELLANT – WHETHER APPELLANT SHOULD RESUME HIS OFFICE OF MAYOR AS A HOLDOVER OFFICER – AND DISMISSING THE CONSTITUTIONAL AND STATUTORY VIOLATIONS RELATED TO THE LACK OF A NEUTRALLY RUN AND FAIR ELECTION?

## VI. SUMMARY OF ARGUMENT

The High Court persisted in relying upon the first rule of statutory construction (that an unambiguous provision should be given its plain and literal meaning) in interpreting the use of the word “certification” in the Term of Office Section of the MALGOV Constitution, as meaning *any* certification, i.e., premature, illegal, legal. The High Court, although agreeing with Appellant during oral argument, that such a literal meaning would lead to an absurd result, nonetheless felt compelled to avoid interpretation of that word. Appellant pointed out to the

High Court that this Court in *Dribo, supra, at p. 138*, approved the use of the second rule of statutory construction: where the plain and literal meaning of a provision leads to an inconsistent and/or absurd result, the court must then construe the intent behind the use of that provision under consideration in order to harmonize the statute in which the provision appears.

Appellant believes that the High Court committed reversible error in failing to properly apply the applicable rules of statutory construction in interpreting Part III, Section 8(1) of the MALGOV Constitution, and erroneously denying Appellant's right to resume his position as holdover Mayor pending final resolution of all recount and election litigation related to the election of Mayor for MALGOV.

In erroneously failing to apply the correct rules of statutory construction, the High Court also committed reversible error in dismissing the Appellant's case which also involved election challenge claims; claims separable from the holdover claims.

## VII. ARGUMENT

For purposes of this Appeal, the pertinent facts and the time line in this protracted case are as follows:

1. Voters on Majuro went to the polls on 16 November 2015;
2. Despite the fact that there was no event shortening the time for voting on 16 November 2015, the ballot box for confined voters was driven around Majuro until roughly 3:00 a.m. on 17 November 2015 in violation of 2 MIRC, Chapter 1, §170, and Elections and Referenda Regulations 1993, §123 – polling hours can only be extended if **shortened** due to natural causes;
3. The postal ballots were opened outside of the vision of poll watchers, in private and

those ballots deemed to be valid were then brought out for counting in front of the poll watchers in violation of the rule set out in *Clanton, supra*;

4. Before the unofficial results of the election were announced, an informal recount on demand of incumbent Councilman Charles Kelen, for Rita Ward, one of 13 Wards on Majuro, was conducted, and Appellant MUDGE SAMUEL (hereinafter referred to as “Appellant”) gained a net 31 votes over challenger Defendant-Appellee LADIE JACK (hereinafter referred to as “Appellee JACK”);

5. On 26 November 2015, based in large part on the Rita recount, Appellant *informally* requested a recount for all of Majuro Atoll by way of letter addressed to the Defendant-Appellee Chief Electoral Officer ROBSON YASIWO ALMEN (hereinafter referred to as “Appellee ALMEN”);

6. The response to that letter for an *informal* request for a recount was not delivered by Appellee ALMEN to Appellant , until 14 December 2015;

7. During the interim between the Appellant’s informal letter requesting a recount (26 November 2015) until the date of the response from the Appellee ALMEN (14 December 2015), Appellee ALMEN announced the unofficial results of the election on 04 December 2015, starting the 14 day period for petitioning for a formal recount under the Elections and Referenda Act 1980 (hereinafter referred to as the “ERA”), 2 MIRC, Chapter 1, §180;

8. By way of letter dated Monday, 14 December 2015 and hand delivered to the Appellee ALMEN on Tuesday, 15 December 2015, Appellant [within the time limit for petitioning for a recount under ERA 2 MIRC, Chapter 1, §180(3)] *formally petitioned* the Appellee for a recount; demanded that the issues raised in that letter and Plaintiff’s prior informal request for a recount

dated 26 November 2015, be referred to the High Court for determination pursuant to ERA 2 MIRC, Chapter 1, §188(2); and claimed numerous violations of the ERA committed by the Appellee ALMEN and his staff, as well as violation of Appellant's constitutional rights to a fair election;

9. In anticipation of the Appellee ALMEN not responding to Appellant's petition for recount in a timely fashion and as a prophylactic action to protect his rights, Appellant filed an action with the High Court on 18 December 2015, challenging the failure to recount as petitioned for on 14 December 2015, and challenging election irregularities;

10. The Appellee ALMEN failed to respond to Appellee's petition for recount, until he prepared a letter dated 15 February 2017 (but not delivered to Appellant until 27 February 2017), and only after the High Court had issued an order on 13 February 2017, in one of Appellant's election cases (High Court Civil Action No. 2015-233) commanding the Appellee ALMEN to respond to the petition for recount filed by Appellant back on 14 December 2015;

11. Prior to issuance of Appellee ALMEN's written rejection of Appellant's petition for recount, on February 15 2017, Appellant specifically included an amendment to Appellant's original petition for recount that included a claim for unethical conduct (an illicit meeting between Appellee ALMEN and then Mayoral candidate Appellee JACK) that was discovered after the filing of the original petition for recount (that illicit, clandestine and improper meeting became part of the record on appeal of Appellee ALMEN's rejection for recount in High Court Civil Action No. 2017-037, which appeal is still pending before High Court Chief Justice Ingram);

12. Following Appellee ALMEN's denial of Appellant's petition for a recount, Appellant

filed a timely appeal for recount with the High Court in new civil proceeding pursuant to instructions of the Clerk of Court (High Court Civil Action No. 2017-037), pursuant to ERA 2 MIRC, Chapter 1, §181(1) – that appeal is still pending;

13. While the recount petition was pending response (which response did not occur until letter dated 15 February 2017), Appellee ALMEN declared the final results of the election on 19 December 2015 (the High Court deemed this declaration synonymous with a certification of election under Part III, Section 8 of the Constitution for Majuro Atoll Local Government);

14. On 22 December 2015, Appellee JACK was sworn into the office of Mayor for Majuro Atoll Local Government by High Court Chief Justice Carl Ingram, all while a petition for recount was filed with Appellee ALMEN as of 15 December 2015, and an election challenge case which had already been filed on 18 December 2015 (that election challenge did not include a claim for unethical conduct by the Appellee ALMEN);

15. On 16 June 2017, Appellant filed the instant action four (4) months following the formal written rejection of his recount petition, asking that he be installed as holdover Mayor and challenging the election;

16. On 07 November 2017, the High Court heard oral argument on Appellant's partial motion for summary judgment, reserving the constitutional issues for later determination, but asking the Court for an immediate ruling on the holdover issue and for an order placing Appellant back into the office he was duly elected for back in 2011, pending the protracted election recount litigation and the election challenge, filed by Appellant;

17. Over a month later, on 13 December 2017, Appellant filed a Request for Expedited Ruling with the High Court, and on 14 December 2017, the High Court finally issued its

decision, denying Appellant's motion for partial summary judgment on the holdover issue, and granting Appellee ALMEN's Motion to Dismiss;

18. On 19 December 2017, Appellant filed a Motion For Reconsideration of the Court's Orders denying Appellant's summary judgment motion, and granting Appellee RMI GOVERNEMNT's (hereinafter "Appellee RMI) Motion to Dismiss;

19. On 09 January 2018, the High Court issued an Order Denying Plaintiff's Motion For Reconsideration; and

20. On 10 January 2018, Appellant timely filed his Notice of Appeal.

In order to put this case in its proper perspective, it is vitally important to understand the overriding issue which is being confronted in this election challenge case.

Casting a long shadow over the entire election process in the 2015 election for Mayor for MALGOV, was the fact that at least one clandestine meeting occurred between the Appellee ALMEN and candidate Appellee JACK, prior to the announcement of the final results of the election for Mayor for MALGOV. It is not known how many other such meetings occurred throughout the election, but the fact is that there was at least one documented meeting. That meeting occurred on or about 09 December 2015, a meeting that preceded the filing of Appellant's formal petition for recount dated 14 December 2015; after Appellant's informal petition for recount dated 26 November 2015; and coincidentally a day before the date of the Appellee ALMEN's response to Appellant's informal petition for a recount (10 December 2015), denying that informal request. The very fact that such a clandestine meeting occurred raises questions about the neutrality of Appellee ALMEN *vis-a-vis* the Mayoral election for MALGOV, and relates to the fairness and integrity of the election process for that general election. To



paraphrase the RMI Supreme Court on this matter, the bedrock of a democracy is an election free from even the appearance of any impropriety. See, *Bien, supra*, – a postal ballot case wherein the Court in interpreting the ERA, 2 MIRC, Chapter 1, §162(3), noted that a free and fair election requires that the election be untainted by *any questionable conduct*. In the postal ballot situation, the *Bien* Court made the following statement referring to the reasoning behind the enactment of ERA 2 MIRC, Chapter 1, §162(3):

The Nitijela clearly wanted an election that was free from *any impropriety or appearance of such*. A democracy can only flourish with free elections untainted by *any questionable conduct*. (Emphasis added, *Bien, supra*.)

Appellant believes that this statement applies not only to postal ballots, but in general when one views the Constitutional and statutory prohibitions restricting ethically improper conduct by RMI government employees.

Article II, Section 16 of the Constitution of the Republic of the Marshall Islands, read in conjunction with the Ethics in Government Act 1993 (3 MIRC, Chapter 17, §§ 1702, 1704), clearly indicates that the Nitijela and the people of this Republic intended to prohibit the precise kind of conduct for which Appellant engaged in during the last election in 2015, when Appellee ALMEN and Appellee JACK met privately during the election [see 3 MIRC, Chapter 17, §1704(7), (8) and (12)], for fear of calling into question the validity of the entire election itself.<sup>2</sup> Based upon the pronouncements of the RMI Supreme Court in *Bien, supra*; the bold statement of

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<sup>2</sup> The issue presented in this case is whether the appearance of impropriety in the clandestine meeting(s) between MALGOV Mayoral candidate Appellee JACK and Appellee ALMEN during the election, sufficiently poisoned the election (to the detriment of Appellant) so as to (at the minimum) require a special election for MALGOV Mayor; when considered in the context of all of the violations of the ERA committed by the Appellant ALMEN throughout the election, *vis-a-vis* Appellant herein,

policy contained in the Ethics and Government Act 1993 (3 MIRC, Chapter 17); and the people's clear and unmistakable constitutional requirement that their Government be operated in an ethical manner (Article II, Section 16, Constitution of the RMI) there can be no doubt that these directives require the extraordinary remedies that have been suggested by Appellant – a recount, a special election, and placing Appellant back into his office as Mayor pending the outcome of the recent recount litigation as well as this election challenge.

Impropriety brings into question the validity of actions of the wrongdoer and leads to a loss of trust and integrity in the electoral process which leads further to an erosion in the confidence in the results of an election and to democracy itself. One need only look at the intensity of inquiry of the claim of Russian meddling in the last Presidential election in the United States to understand the importance that the United States of America values a fairly run election and its efforts to protect the integrity of the electoral process. Even the Supreme Court of the African country of Kenya, a common law jurisdiction, took the bold step of nullifying a presidential election in favor of a fair election, despite the threat of violence not only to the citizens of Kenya, but also to the justices of that court. See, *Odinga, et al., v. Independent Electoral and Boundaries Commission, Presidential Petition No. 1 of 2017*, (<http://kenyalaw.org/caselaw/cases/view/140716>).

Thus, knowing that at least one undisputed clandestine meeting occurred between the Appellee ALMEN and Appellee JACK (and while one can only speculate as to the actual number of meetings between the two during the election process), that one meeting is enough to infect and poison the entire voting process in that election, thus raising the following questions.

While a pre-petition recount in Rita ward for Councilman Charles Kelen was approved,

yet on request by Appellant for a pre-petition island wide recount, why was Appellant's request denied where he gained 31 net votes in Rita ward as a result of Councilman Kelen's informal request for recount – was it because the Appellee ALMEN favored Appellee JACK and Appellee ALMEN did not want to upset the vote count in favor of his friend? Why were the postal ballots vetted in private outside of the view of the public and Appellant's poll watchers in violation of the ERA and RMI case law<sup>3</sup> effectively depriving Appellant's poll watchers their right to challenge which ballots should have been accepted or rejected – was it because the Appellee ALMEN wanted to affect the outcome of the postal ballot count, the critical last count that would ultimately decide the winner and loser of the Mayoral election for MALGOV?

Why was the confined voter ballot box driven around Majuro until 3:00 a.m. (a fact which was admitted by the Defendants) on the day after the election without the necessary accompaniment of poll watchers/and or the public, in clear violation of the ERA and Regulations issued thereunder<sup>4</sup> – was it an attempt to alter the confined vote? Why was there a rush for the declaration of the final result of the election when Appellee ALMEN knew that a formal petition

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<sup>3</sup> 2 MIRC, Chapter 1, Section 178(3) which states “Each candidate or his authorized representative is entitled to be present during the count, as well as such members of the public as can conveniently be allowed to be present in the premises in which the count takes place.” See also, *Clanton, supra, at p. 154*, which sets out in detail the proper procedure for the opening of ballot boxes, screening of ballots and counting of ballots. Public scrutiny of the ballot box opening and vetting process has long been established under RMI case law.

<sup>4</sup> 2 MIRC, Chapter 1, Section 170(2) states that “a polling place shall remain open from 7:00 a.m. to 7 p.m. on the day of an election, and shall then close.” The Elections and Referenda Regulations 1993, Regulation 123 states that expanded hours are allowed “if by reason of storm or other weather condition or any other cause whatsoever, the hours during which votes can be cast under the Act and these Regulations *have been shortened*.” (Emphasis added.) It is clear, therefore, that extended hours for voting are allowed only where for some reason the regular hours have been *shortened*. Such was not the case with the confined voters.

for recount and special election had been filed by Appellant and that a court case had been filed challenging the election on recount and constitutional grounds which normally would stop the announcement of the final results of the election (2 MIRC, Chapter 1, § 185) – was it to illegally help his friend get into office as quickly as possible to deny Appellant’s holdover status in favor of his friend Appellee JACK?

Why did the Appellee ALMEN totally ignore the petition of Appellant, fail to reply to the petition for over a year, yet actively engage in issuing the rushed illegal declaration of final results of the election for Mayor for MALGOV (a “certification” under the MALGOV Constitution, albeit an illegal “certification”), qualification and installation of his friend knowing that a petition and even a court case was filed challenging the election – was it to help his friend in a grand attempt to affect the outcome of the Mayoral election for MALGOV?

And penultimately, was the entire election and vote count for Mayor for MALGOV actually free from the effect of the Appellee ALMEN’s improper conduct of meeting with Appellee JACK during the election, particularly when such conduct is prohibited by the ethics laws of the Republic? See Article II, Section 16 of the Constitution of the RMI; 3 MIRC, Chapter 17, §§1702, 1704; and *Bien, supra*.

The point of this part of Appellant’s argument, is to emphasize the reason why the Government in Ethics law was enacted in the first place – as stated by the Nitijela, the Ethics in Government Act was enacted because it recognized that the Government is obligated under the RMI Constitution (Article II, Section 16), to conduct itself in accordance with a code of ethics in order to govern in a manner to “foster public confidence in the integrity of the Government” and stating that “public service is a public trust, requiring public officials and Government employees

to place loyalty to the Constitution, the laws and ethical principals above private gain.” [See, 3 MIRC, Chapter 17, §1702(1) and (2).] And by engaging in conduct that gives the appearance of impropriety, the Appellee ALMEN had essentially violated the public trust to perform his job as the chief of elections, to run a fair and impartial election for representatives in a government elected by the people, not some group or an individual. (See *Bien, supra.*) And for that, the Appellee ALMEN’s decision denying a recount or to hold a special election should not be allowed to prevail. It would be fair to say that all of his decisions regarding the challenge by Appellant have been tainted and poisoned by the clandestine meeting between Appellee ALMEN and then Mayoral candidate Appellee JACK.

These were the remaining issues challenging the election which were raised in Appellant’s Complaint, but not considered by the High Court due to its dismissal of the case. Appellant submits that the rule of law that is applicable in this case for these remaining issues, has been stated as follows: Where the decision of the CEO is a clear departure from *statutory requirements, is fraudulent or in bad faith*, that decision may be substituted by the appellate court. *Bien, supra, at p. 96.* Because of the clear violation of ERA provisions compounded by the engagement of the Appellee ALMEN in unethical conduct during the election, the entire election and decision making process in approving or rejecting the Appellant’s petition has been tainted and called into question. And based upon the decisions of Appellee relative to a recount, vetting of postal ballots in private, and driving the confined voter ballot box around Majuro until 3:00 a.m. the day after the election; Appellant questions whether the clandestine meeting between Appellee ALMEN and Appellee JACK is only the tip of the iceberg. And under *Bien, supra*, Appellant submits that he is entitled to a special election – the election for Mayor for

MALGOV being so tainted by the unethical actions of the Appellee ALMEN as to infect the entire election.

However, the High Court devoted scant attention to these issues and merely dismissed the Appellant's case. Appellant strongly believes that the High Court committed error in so holding. None of these issues were litigated in the proceedings below. The orders should be reversed in favor of Appellant on the holdover issue and Appellant's Summary Judgment motion should be granted. Conversely, Defendant's Motion to Dismiss should be reversed with an order for further proceedings to determine the remaining issues. This case should not be buried along with previous election cases on the basis that the Chief Electoral Officer has wide discretion in running the elections. The conduct of Appellee ALMEN and Appellee JACK is so reprehensible and egregious, that the law and equity cry out for justice.

These issues although related, were separable from the holdover officer issue, and should not have been tied with disposition of that issue as the High Court did in this instance. For the High Court to have dismissed these issues was clear error.

Regarding the holdover issue, which is the primary issue on this appeal, Appellant submits that the rule of law that is most pertinent to the clearly erroneous ruling of the High Court, is simply summarized as follows. The overriding and penultimate rule of statutory construction is that a statute or constitutional provision should be given its plain and literal meaning; *unless*, that interpretation leads to an absurd or incongruous result. In the instant case, the High Court itself acknowledged that by interpreting the Constitution of the Majuro Atoll Local Government as it did, would lead to absurd results. However, despite being advised by the Appellant of the second rule of construction, in his motion for reconsideration, which would have

avoided the absurd result, the High Court felt compelled to interpret the term of office provision of the MALGOV Constitution, by finding that the operative provision in the Constitution for MALGOV, was unambiguous, and therefore the Court felt required to give that provision its plain and literal meaning. Appellant strongly believes therefore, that the application of the plain and literal meaning rule as the touchstone for this case is plain error and should be reversed.

1. WHERE AN ELECTED OFFICIAL FOR MAJURO ATOLL LOCAL GOVERNMENT RUNNING FOR RE-ELECTION CHALLENGES THE ELECTION FOR HIS OFFICE, IS HE ENTITLED TO REMAIN IN OFFICE UNTIL HIS SUCCESSOR IS VALIDLY CERTIFIED TO HAVE BEEN DULY ELECTED TO THAT OFFICE, INCLUDING ANY APPEALS ON THAT ELECTION CHALLENGE?

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The Constitution for Majuro Atoll Local Government, Part III, Section 8(1), “Term of Office”, states as follows:

The term of office of a member referred to in Section 6(1)(a), (b) and (c) is 4 years and –  
(a) commences on the day after the day on which his *election* or appointment *is certified*; and  
(b) terminates (unless the seat of the member becomes vacant earlier under Section 9) on the day before the new member takes office. (Emphasis added.)

The High Court in its Order denying Appellants Motion for partial summary judgment, in essence adopted the plain and literal meaning of the language of Part III, Section 8 of the Constitution for MALGOV as it relates to use of the word “certification”. The Court interpreted that word to mean exactly what it says, i.e., any certification, whether prematurely issued, illegally issued, or legally issued. In support of its decision the High Court cited *Lekka v. Kabua*, 3 MILR 167,171 (2013); *Niedenthal v. Almen*, RMI High Court Case No. 2014-263, Order Granting Summary Judgment (02/25/15); and *In the Matter of the Vacancy of the Mayoral Seat*, 3 MILR 114, 117 (2009). Appellant admits that although the first rule of statutory construction is

that an unambiguous statute or constitutional provision is to be given its plain and literal meaning; that rule is supplemented by other rules, the most important of which is that if the application of a provision's plain and literal meaning leads to an absurd or incongruous result, then the intent of the provision must be ascertained utilizing other rules of statutory construction. (See generally, *2A Singer, Statutes and Statutory Construction, 7<sup>th</sup> Ed., §46:7 (2014)*; see also, *Dribo, supra*). The Court itself, during the hearing on Appellant's Motion for Summary Judgment recognized that its interpretation that "certification" means *any* certification whether invalid or illegal, would lead to absurd results (see Transcript of Proceedings on Appellant's Motion for Summary Judgment at p. 27). In his Motion for Reconsideration and Reply to Opposition To Plaintiff's Motion for Reconsideration filed with the High Court, Appellant directed the High Court to this Court's language in *Dribo, supra, at p. 138*, that indicated agreement with the precise rules of construction advanced hereinabove.<sup>5</sup> Yet the High Court persisted in its position that it was required to give the word "certified" its plain and literal meaning, minimizing the language in *Dribo*, as merely dicta. For sake of brevity, Appellant incorporates his arguments setforth in his Motion For Summary Judgment, Motion for Reconsideration, and Reply to Opposition to Plaintiff's Motion For Reconsideration, copies of which are attached hereto in the Appendix as 1, 2, and 3.

In short summary, the word "certification" as used in the Constitution for MALGOV, modifies the word "election". And therefore, the word "election" refers to an election falling

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<sup>5</sup> "It has long been recognized that the literal meaning of a statute will not be followed when it produces absurd results. (Citations omitted.) . . . We are to avoid constructions that produce 'odd' or 'absurd results' or that is inconsistent with common sense. (Citations omitted.) *Dribo, supra, at p. 138*."



within the ERA. And as argued in the High Court at the hearing on Appellant's Motion For Summary Judgment and in his post-order memoranda, under the ERA (2 MIRC, Chapter 1, §185(2)(c), there cannot be a final declaration of the results of an election while there is a pending petition for recount; and the petition for recount is presently on appeal to the High Court in Civil Action No. 2017-037. Therefore, the Appellee ALMEN could not have issued any legal final result of the election for Mayor for MALGOV on 19 December 2015, since Appellant's petition for recount had been pending since 14 December 2015 and Appellee knew that Appellant had filed an action challenging the election on 18 December 2015. Therefore, his attempt to announce the final results for the Mayoral election for MALGOV was illegal, void and without legal authority. See 2 MIRC, Chapter 1, §185. But Appellee should have known all of this when he made his illegal announcement of the final results of the election on 19 December 2015.

Furthermore, regardless of the statutory prohibitions cited that void the announcement of final results on 19 December 2015, the cases prohibit such declarations as unauthorized because while the election is under review, the election is deemed to be still in progress. See *Roudebush v. Hartke*, 405 U.S. 15, 25 (1972).

Appellee JACK, therefore presently occupies the seat of Mayor for MALGOV illegally, as he has not yet legally been declared the winner of the election. This is the only reasonable reading of the MALGOV Constitution. *A fortiori*, Appellee JACK could not legally have assumed the office of Mayor for MALGOV back on 22 December 2015. Appellee should be ordered to vacate the position of Mayor. Conversely under the Constitution of MALGOV, Appellant's term as Mayor has not ended yet since his replacement cannot take office until the

election litigation has been resolved. See Constitution for MALGOV, Part III, Section 8(1)(b). Appellant's term ends "on the day before the new member takes office." If there cannot be a legal declaration of final result (certification) due to the recount petition litigation and this election challenge, Appellant logically still remains the sitting holdover Mayor until such time as the election is determined, i.e., when all of the litigation has ended for the recount case, as well as this election challenge case.

Beyond the provisions of the Constitution for MALGOV, the doctrine of holdover officer is widely recognized. The Court's attention is directed to *Rhyne, The Law of Local Government Operations (1980)*, in which it is aptly stated as follows:

The term or tenure of office of municipal officers is usually provided for in the charter or general statutes. In the absence of a charter or statutory provision to the contrary, an officer though elected or appointed for a definite term, is entitled to remain in office until his successor is **lawfully elected or appointed and has been duly qualified**. "Term of office" is generally defined as the fixed period for which an office may be held; whereas "tenure" is the right to hold office for an indefinite time. In the absence of a special provision, the term of an elective officer usually begins on the day of election . . . .

\* \* \* \* \*

In general, an incumbent holds over after the conclusion of his term until the **election and qualification of a successor**. The doctrine of holding over is designed to assure the continuation of public functions . . . .

\* \* \* \* \*

The period of holding over is considered a part of the officer's term, and he is entitled to compensation up to the time he ceases to discharge the duties. *Id.*, at pp. 233-236. (Emphasis added.)

The Court is also directed to *3 McQuillin, The Law of Municipal Corporations, §12.60 (2012)*, wherein it is stated:

Officers who hold over after the expiration of their term under some color of right, no successor having been . . . chosen, and continue to exercise the functions of their office are de facto officers.

Absent provisions to the contrary, the public interest requires that public offices should be filled at all times without interruption. Under this policy, an elected or appointed officer may remain in office after the expiration of its term ***until a successor qualifies, whether or not this is provided for by the statute creating the office.*** Stated otherwise, the rights of a holdover officer terminate when the rights of the successor vest. *Id.*, at pp. 725-726.

There is even precedent in this jurisdiction for the recognition of a *de facto* office holder and by implication, a *de jure* office holder. See, *Chutarov v. Election Commissioner for the Marshall Islands*, 8 TTR 209 (A.D. 1981) – the improper office holder in an election declared invalid, was recognized as a *de facto* member of the Nitijela, but was asked to vacate his position pending the outcome of a special election which was ordered by the Court. A copy of the *Chutarov* case is attached hereto as Appendix 4.

By way of the Constitution of MALGOV, Part III, §8(1)(b), Appellant is allowed to remain as a holdover Mayor until such time as his successor is duly elected and certified. And under the cited case law, and applicable provisions of the ERA, it is submitted that Appellee JACK should be ordered to vacate the office of Mayor for MALGOV, and Appellant should be allowed to resume his duly elected position until such time as the present election challenge case and the related recount case are both finally resolved.

2. DID THE HIGH COURT COMMIT REVERSIBLE ERROR IN DISMISSING ALL CLAIMS INVOLVED IN APPELLANT'S ELECTION CHALLENGE, WHEN IT RULED ON ONLY ONE ASPECT OF THE ENTIRE CLAIM OF APPELLANT – WHETHER APPELLANT SHOULD RESUME HIS OFFICE OF MAYOR AS A HOLDOVER OFFICER – AND DISMISSING THE CONSTITUTIONAL AND STATUTORY VIOLATIONS RELATED TO THE LACK OF A NEUTRALLY RUN AND FAIR ELECTION?

This Court is directed to the Motion for Summary Judgment that was filed on 17 February 2017. In that Motion (which should have been titled Motion For Partial Summary Judgment), no legal argument was devoted to any of the constitutional issues and ERA violations committed by Appellee ALMEN and his staff during the election of 2015 (claims made in the Complaint filed in the case presently under consideration), and the only relief asked for in the Motion, was for Appellant-Plaintiff to be found to be a holdover Mayor pending resolution of the recount litigation in High Court Civil Action No. 2017-037 and the instant election challenge portion of this case High Court Civil Action No. 2017-121. Although extensive time was spent and argument was made on election challenge issues during oral argument to alert the Court that election challenge issues are being claimed, the relief asked for was only for Appellant to be found to be a holdover Mayor, entitled to resume his office pending resolution of the recount litigation and this election challenge case.

Instead of just denying Plaintiff-Appellant's motion for partial summary judgment, the High Court went beyond the relief asked for, and ruled on the entire case, by dismissing the election claims of Appellant on the basis that because a "certification" was issued by the Appellee ALMEN whether legal or not, the Court felt bound to interpret that "certification" as the critical fact in denying Appellant's motion for partial summary judgment, and for granting Appellee ALMEN's motion to dismiss. (See Orders upon which this appeal is based.) Without actually litigating and placing the matter of the election challenge issues to be determined by the Court, Appellant submits that these issues were wrongfully determined by the High Court. See generally, *1 Restatement of the Law Judgments Second*, §27.

Having addressed the issue of the error committed by the High Court in failing to

determine the intent of the use of the word “certification” as a modifier of the word “election” in Part III, Section 8(1) of the MALGOV Constitution, which would *a fortiori* involve consideration of the provisions of the ERA that mandate that a final result cannot be declared while recount litigation is ongoing (see, 2 MIRC, Chapter 1, §185); Appellant submits that the High Court committed reversible error in dismissing the remaining claims of Appellant, based upon the wrong application of the rules of statutory construction as its basis for the ruling.

Appellant has always deserved to remain in office since the election of 2015 as a holdover Mayor under the MALGOV Constitution, and due to the failure of a legal “certification” of election to be validly and legally issued (in this case Appellant agrees with the High Court that a “declaration of final” result as used in the ERA, is synonymous with a “certification” as that word is used in Part III, Section 8(1) of the MALGOV Constitution), Appellant is entitled to resume his office of Mayor immediately, and entitled to back pay for the time he has been out of office, until the recount and election challenge litigation has ceased.

As the legally elected Mayor for MALGOV in 2011, Appellant’s term ends the day before his successor takes office. [MALGOV Constitution Part III, Section 8(1)(b).] The term of his successor begins the day after a valid certification (declaration of final results) of the election is issued. [MALGOV Constitution Part III, Section 8(1)(a).] A declaration of final results cannot be made, so long as a recount and election challenge is in progress. [2 MIRC, Chapter 1, §185(2)(c).]

The High Court having committed reversible error in misapplying the law in failing to properly interpret the applicable MALGOV Constitutional provision, Part III, Section 8; this Court should reverse and remand for further proceedings, and vacate the Order dismissing

Appellant's action for determination of the constitutional challenges to the election of 2015.

### VIII. CONCLUSION

The *Bien* case is instructive in this matter: where the decisions of the CEO violate statutory requirements, the court may substitute his decision with its own. That is the case here. The Appellee ALMEN had illegally declared the final results knowing that a petition for recount had been timely filed on 14 December 2015, and that there was even a court case filed on 18 December 2015, challenging the election. Under the circumstances, it was illegal for Appellee to have made a declaration of election in the race for Mayor for Majuro Atoll Local Government. Under the ERA, while a petition for recount is pending, the authority for the Appellee ALMEN to have made a declaration was suspended until such time as a final determination is made by the Courts. The declaration of Appellee ALMEN was therefore illegal under the ERA. And for the High Court to have interpreted Part III, Section 8, of the MALGOV Constitution to allow *any* certification of election to have been made to satisfy that provision (thus allowing Appellee to take office), was an absurd ruling that under generally accepted principles of statutory construction (which this Court had already endorsed in the *Dribo* case) must be reversed.

Additionally, for the High Court to have dismissed the case under the circumstances, was inappropriate since there were claims unrelated to the holdover issue.

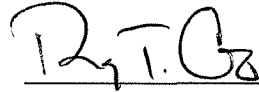
For the foregoing reasons, Appellant submits that the Orders of the High Court should be reversed and judgment should be entered in favor of Appellant with concomitant directions that

SAMUEL V. ALMEN, ET AL., RMI SUPREME COURT CIVIL APPEAL NO. 218-001;  
OPENING BRIEF

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Appellant be seated as Mayor forthwith, with such other orders as may be necessary therefor.

DATED: Honolulu, Hawai'i, 08 May 2018.



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ROY T. CHIKAMOTO

Attorney for Plaintiff-Appellant

RELEVANT CONSTITUTIONAL,  
STATUTORY, AND OTHER PROVISIONS

1. Constitution of the Republic of the Marshall Islands, Article II "Bill of Rights", Section 16 and 18:

Section 16. **Ethical Government.**

The Government of the Republic of the Marshall Islands recognizes the right of the people to responsible and ethical government and the obligation to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics.

Section 18. **Invoking Bill of Rights Provisions.**

(1) No right secured by the Bill of Rights may be denied or abridged, whether directly through the imposition of force or penalty, or indirectly through the withholding of privilege or benefit.

(2) Any provision of the Bill of Rights may be invoked either as a defense to a civil or criminal proceeding or as a basis for legal or equitable relief against any actual or threatened violation.

2. Ethics in Government Act 1993, 3 MIRC, Chapter 17, §1702, 1704:

§1702. **Policy.**

(1) The Nitijela of the Republic of the Marshall Islands declares and recognizes the right of the people to a reasonable and an ethical government and the obligation of the government to take every step reasonable and necessary to conduct government in accord with a comprehensive code of ethics, consistent with Article II, Section 16 of the Constitution.

(2) The Nitijela of the Republic of the Marshall Islands further declares and recognizes that it is the policy of the Government, in recognition of its constitutional obligation to the people, to govern in such manner as to foster public confidence in the integrity of the Government, and that public service is a public trust, requiring public officials and Government employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(3) Such policy of ethical governance is most effectively implemented by prescribing essential standards and guidelines of ethical conduct for officers and employees of the Government.



**§1704. Fundamental Principles.**

To ensure that every citizen can have complete confidence in the integrity of the Government, each public official and Government employee shall respect and adhere to the fundamental principles of ethical conduct set forth below and to those which may be specified in regulations promulgated under this Chapter by the Government Ethics Board. Failure to so adhere shall result in a breach of ethical standards and, in addition, may constitute an offense under the Criminal Code, as amended, or otherwise.

(1) A public official or Government employee shall not solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing official business with, or conducting activities regulated by such official's or Government employee's agency or department, or whose interests may be substantially affected by the performance or nonperformance of duties;

(2) A public official or Government employee shall not accept, as a public official or Government employee, any gifts or other items of monetary value from any person wherein the total value of such item or items over the course of one year is in excess of \$100 and wherein such acceptance is not related to any particular official action or business and is not related to any activities regulated by such official's or employee's agency or department and whose interests will not be substantially affected by the performance or nonperformance of duties;

(3) Any gift or other item received as a public official or Government employee shall be reported to Cabinet within thirty (30) days following receipt of such gift or other item;

(4) Public officials and Government employee shall put forth honest effort in the performance of their duties;

(5) Public officials and Government employees shall not use public office for private gain;

(6) Public officials and Government employees shall give due disclosure of any conflict of interest such official or employee has or may have in the performance of his or her duties and recuse himself or herself of any involvement on the matter in his or her capacity as such an official or employee.

(7) Public officials and Government employees shall not use or take advantage of public office to commit any illegal acts.

(8) Public officials and Government employees shall not violate the laws of the Republic or regulations promulgated thereunder;

(9) Public officials and Government employees shall protect and conserve government property and shall not use it for other than authorized government activities;

(10) Public officials and Government employees shall not engage in outside employment or activities that conflict with official government duties and responsibilities;

(11) Public officials and Government employees shall satisfy in good faith their obligation as citizens; and

(12) Public officials and Government employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this Chapter or in any regulations promulgated hereunder.

3. Elections and Referenda Act 1980, 2 MIRC, Chapter 1, §185:

**§185. Declaration Of The Result.**

(1) If after an election in an electorate no petition for a re-count is received within the period allowed by Section 180(3) of this Act for the filing of petitions, the Chief Electoral Officer shall, on the day after the end of that period, publically announce the unofficial result already announced under section 178(4)(b) of this Act as the official result of the election.

(2) If after an election in an electorate a petition for a re-count is received within the period allowed by Section 180(3) of this Act for the filing of petitions, the Chief Electoral Officer shall publically announce the unofficial result already announced under Section 170(4)(b) of this Act on the original count, or under Section 182(3)(b) of this act on the re-court, as the case requires, as the official result of the election:

(a) if he grants the petition, on the day after he receives the certified result of the re-count under section 182(3)(a) of this Act;

(b) if he rejects the petition and no appeal is made to the High Court within the period allowed by Section 181 of this Act for appeals, on the day after the end of that period; or

(c) if he rejects the petition and an appeal is made to the High Court within the period allowed by Section 181(1) of this Act for appeals, then:

(i) if the appeal is upheld, on the day after he receives the

certified result of the re-count by the court in accordance with Section 182(3)(a) of this Act; or

(ii) if the appeal is rejected, on the day after the court announces its decision.

(3) The Chief Electoral Officer shall give notice of the official result of an election in the same manner as that in which notice of the holding of the election was given under Section 142 of this Act.

4. Elections and Referenda Regulations 1993:

Section 123. Time of Polling.

(1) Subject to Section 70 (*Section 170 of the current MIRC*) of the Act, and the provisions of his Regulation, a polling place shall remain open from 7 a.m. to 7 p.m. on the day of an election, and shall then close.

(2) Pursuant to Section 68 (*Section 168 of the current MIRC*) of the Act, the Cabinet hereby authorizes the Chief Electoral Officer **to expand or extend the polling hours** referred to in Subregulation (1), **if** by reason of storm or other weather condition or any other cause whatsoever, **the hours during which votes can be cast under the Act and these Regulations have been shortened.** (Emphasis and current MIRC citations added.)

5. Constitution of the Majuro Atoll Local Government, Part III, Sections 6 and 8:

Section 6. Membership and Elections.

(1) The Council shall consist of 16 members, being:

(a) the 13 members elected by the wards, as specified in Section 4;  
and

(b) 2 voting Iroij members; and

(c) 1 Mayor.

\* \* \*

\* \* \*

Section 8. Term of Office.

(1) The term of office of a member referred to in Section 6(1)(a), (b) and (c) is 4 years and –

(a) commences on the day after the day on which his election or appointment is certified; and

vacant

(b) terminates (unless the seat of the member becomes earlier under Section 9 on the day before the new member takes office.

## STATEMENT OF RELATED CASES

1. *Mudge Samuel v. Robson Yasiwo Almen, in his capacity as Chief Electoral Officer, Ministry of Internal Affairs, and Government of the Republic of the Marshall Islands*, RMI High Court Civil Action No. 2017-037, the companion recount case on appeal. Status pending.

# APPENDIX 1

**FILED**

FEB 17 2017

CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

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Attorney for Plaintiff

**IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS**

MUDGE SAMUEL,

Plaintiff,

vs.

ROBSON YASIWO ALMEN, in his  
capacity as Chief Electoral Officer;  
MINISTRY OF INTERNAL AFFAIRS;  
GOVERNMENT OF THE REPUBLIC  
OF THE MARSHALL ISLANDS; and  
LADIE M. JACK,

Defendants.

CIVIL ACTION NO. 2016-121

MOTION FOR SUMMARY JUDGMENT  
AND FOR ORDER TO VACATE THE  
OFFICE OF MAYOR; MEMORANDUM  
IN SUPPORT OF MOTION FOR SUM-  
MARY JUDGMENT AND FOR ORDER  
TO VACATE THE OFFICE OF MAYOR;  
EXHIBITS "A" - "C"; CERTIFICATE OF  
DELIVERY FOR SERVICE

election 2015 msj on complaint decert election

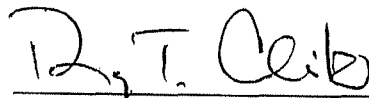
**MOTION FOR SUMMARY JUDGMENT AND FOR  
ORDER TO VACATE THE OFFICE OF MAYOR**

COMES NOW Plaintiff, by and through his undersigned attorney, and respectfully moves this Honorable Court for Summary Judgment herein and for issuance of Orders for Defendant LADIE JACK to vacate his office as Mayor and for Plaintiff to be installed as holdover Mayor pending the outcome of the election challenge filed with the Defendant ROBSON YOSIWO ALMEN back on 15 December 2015. This Motion is made pursuant to MIRCP Rules 7 and 56, and is based upon the attached Memorandum In Support of Motion For Summary Judgment And

SAMUEL V. ALMEN, ET AL., RMI HIGH COURT CA NO. 2016-121; MOTION FOR  
SUMMARY JUDGMENT AND FOR ORDER TO VACATE THE OFFICE OF MAYOR

For Order To Vacate The Office of Mayor, and the records and files herein and in the companion case *SAMUEL V. ALMEN, ET AL., RMI High Court CA No. 2015-233*.

DATED: Majuro, Marshall Islands, 17 February 2017.



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ROY T. CHIKAMOTO

Attorney for Plaintiff



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Attorney for Plaintiff

**IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS**

MUDGE SAMUEL,

Plaintiff,

vs.

ROBSON YASIWO ALMEN, in his  
capacity as Chief Electoral Officer;  
MINISTRY OF INTERNAL AFFAIRS;  
GOVERNMENT OF THE REPUBLIC  
OF THE MARSHALL ISLANDS; and  
LADIE M. JACK,

Defendants.

CIVIL ACTION NO. 2016-121

MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
AND FOR ORDER TO VACATE THE  
OFFICE OF MAYOR; EXHIBITS "A" –  
"C"

election 2015 msj on complaint decert election

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY  
JUDGMENT AND FOR ORDER TO VACATE OFFICE OF MAYOR**

**INTRODUCTION**

This matter was filed on 16 June 2016, just shy of 6 months following the certification of final results of the 2015 election for Mayor. This companion case to Plaintiff's previously filed election challenge case (Samuel v. Almen, et al., CA No. 2015-233) was filed under the presumption that rapid action (as is required) would occur on a matter of extreme public interest, i.e., in light of the pending challenge to the Mayoral election of 2015 filed by Plaintiff herein,

during the interim, was it legal for the Defendant ROBSON ALMEN (hereinafter Defendant "CEO") to have certified the final results of the Mayoral election of 2015 and for Defendant LADIE M. JACK to be sworn in as Mayor for the Majuro Atoll Local Government during the election challenge period, which is still ongoing over a year later?

The undisputed facts concerning the nonaction of Defendants CEO and the RMI Government in fairly protecting the rights of Plaintiff are fully set forth in the attached pleading filed by Plaintiff in his companion case, and marked as Exhibit "A".

The Plaintiff herein had previously filed his Complaint appealing the effective "denial" of his petition due to the failure to timely act on referral of questions demanded in Plaintiff's formal petition dated 14 December 2015 and received by the Defendant ROBSON ALMEN (hereinafter referred to as the "CEO") on 15 December 2015. In retrospect, Plaintiff's conservative actions in protecting his rights were justified, due to the previous failure of Defendant CEO to timely respond to Plaintiff's informal demand for recount following the recount in Rita Ward, by way of letter addressed to the Defendant CEO dated 26 November 2015 (which was responded to by way of letter from Defendant CEO two weeks later on 10 December 2015). Again, in retrospect, there is no question that Plaintiff's suspicions concerning Defendant CEO's lack of appreciation for timely action were warranted. As a result of the failure of Defendant CEO to abide by the letter of the law, and taking the penultimate step in certifying the final results of the Mayoral election in 2015 while the matter was under challenge, in plain violation of the RMI Elections and Referenda Act (hereinafter "ERA"), we are presently in a situation in which the "buggy is before the horse" – Defendant LADIE JACK is and has been sitting as Mayor for Majuro Atoll Local Government, collecting a salary; when the election law and the Constitution of MalGov

clearly mandate that Plaintiff is a holdover Mayor until final determination of the election issues raised in Plaintiff's petition have been finally resolved.

The inordinate amount of delay in resolving the issues in this instant case, as well as Plaintiff's companion case (CA No. 2015-233), are at the minimum violative of Plaintiff's due process rights with every passing day that he is prevented from taking his rightful and legal role as holdover Mayor pending the final outcome of the election challenge that has been pending since 15 December 2015. Under the circumstances, swift and decisive action should be undertaken by the Court in order to preserve the law, preserve the status quo as of 15 December 2015, and to stop the further violation of Plaintiff's legal and constitutional rights as a natural result of the utter failure by the Defendant CEO to follow the laws under which he is charged and the Defendants RMI Government in failing to uphold the laws under which they are charged to enforce.

While this Court issued an Order of Abatement in these proceedings (filed 01 December 2016), this Court has recently issued an Order Remanding Case For CEO Decision in Plaintiff's companion case in Samuel v. Almen, et al., High Court CA No. 2015-233, a copy of which is attached here to as Exhibit "B" for the Court's immediate reference. But all of these legal maneuvers and actions in the companion case by Defendants CEO and RMI Government still impact and affect the basic issue in these proceedings (all to the legal detriment of Plaintiff who is and has been denied his constitutional right to his job as holdover Mayor for Majuro Atoll Local Government): can Defendant LADIE JACK legally continue to sit as Mayor while election issues were and are still pending, or should Plaintiff have been and now be the holdover Mayor until election issues have been finally resolved?

Under these circumstances, how much longer must Plaintiff wait for justice to be served?

ARGUMENT

Plaintiff incorporates his arguments contained in his Motion For Order Decertifying The Final Official Results of the Mayoral Election for Majuro Atoll Local Government Held on 16 November 2015, etc., a copy of which is attached as Exhibit "A" hereto.

Plaintiff only wishes to add that election cases require the swift determination of the challenges made, due to the nature of the proceedings.

Neither Defendants herein have denied the factual matters raised in Plaintiff's Complaint filed herein. There being no factual or legal issues, Plaintiff is entitled to a Summary Judgment under MIRC Rule 56, and is entitled to the Orders applied for in his Complaint. Any further delay in denying Plaintiff his rightful and legal position as holdover Mayor with his legal compensation (retroactive and future) until the final outcome of the election challenges raised in his companion case (High Court CA No. 2015-233), is a denial of justice and his constitutional rights to due process. In fact, it would not be unreasonable to say that the delay in resolving this case is an abuse of the legal system and a clear denial of Plaintiff's legal and constitutional rights.

It is uncontroverted that Plaintiff had timely filed his petition challenging the election of 2015 for MalGov Mayor. It is also uncontroverted that despite the existence of the legal challenge timely filed by Plaintiff, and with full knowledge thereof, Defendants in clear violation of the law, proceeded to disregard the petition and request for referral of questions to the High Court as allowed by law, and nevertheless certified the final results of the Mayoral election on 19 December 2015. To add insult to injury, Defendants CEO and RMI Government then proceeded to almost rush to swear in Defendant LADIE JACK as Mayor for MalGov on 22 December 2015

– an unprecedented action which historically takes place in January to coincide with the swearing in of members of the Nitijela. But the facts as stated herein and the laws set forth in the attached Exhibit “A” coupled with the failure of Defendants CEO and RMI Government to specifically deny the factual claims of Plaintiff *vis-a-vis* the time line of the petition, referral, and appeal process in their Answer filed herein, clearly evidence Plaintiff’s right to judgment and immediate relief. There being no factual issues and the applicable law being clearly stated by Plaintiff as set forth herein and Exhibit “A” attached hereto, Plaintiff is entitled to judgment as a matter of law under MIRCP Rule 56.

Any intentional or unintentional failure to timely act by the Defendants CEO and RMI Government, under the guise of exercise of his total discretion belies the fact that as in any exercise of discretion, the limitation is that it be exercised reasonably and based on good cause. Any claim that the exercise of discretion is unfettered by the Defendants CEO and RMI Government should not be allowed. And any attempt by Defendantsw CEO and RMI Government to further delay resolution on the issues presented herein (which have been continuing now for over a year after the election and wrongful certification) which are based upon the claim of the exercise of unconstrained discretion by the Defendants CEO and RMI Government to further delay these proceedings by not taking action as required by law, is simply unconscionable and a continuing violation of the Plaintiff’s constitutional rights.

#### CONCLUSION

Based upon the foregoing argument and the Answers of Defendants on file herein, Plaintiff urges this Honorable Court to correct the serious injustice that has been and continues to be perpetrated upon Plaintiff. By remanding the matter back to the CEO in High Court CA No.

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2015-233, we are now faced with having to undo that which the Defendant CEO and RMI Government failed to do under law; and issues such as the instant one because it is so intimately intertwined with the failure of the Defendants CEO and RMI Government to do that which they were legally and constitutionally charged to do, begs the Court for immediate relief on the issues presented herein pending the final resolution of the election challenges raised by Plaintiff -- is Plaintiff a holdover Mayor under law entitled to retroactive and future pay pending the outcome of his election challenge? And the obvious and related issue is whether the Defendants CEO and RMI Government should have allowed the final certification to be announced and to take effect when the election was under challenge? Plaintiff submits that he is legally the holdover Mayor for Majuro Atoll Local Government entitled to retroactive and future pay from the date of the illegal "certification of final results of the Mayoral election for MalGov", until such time as the Plaintiff's election challenge is finally resolved one way or the other.

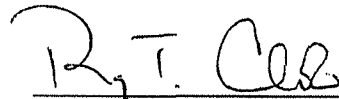
It is for these reasons and based upon the legal arguments presented herein, that Plaintiff respectfully requests that this Honorable Court grant Plaintiff's Motion For Summary Judgment herein, and issues an order forthwith, ordering Defendant LADIE JACK to vacate the office of Mayor, installing Plaintiff as holdover Mayor under the MalGov Constitution, and orders that Plaintiff receive back pay for the months during which he was wrongfully denied the right to act as holdover Mayor, i.e., from 22 December 2015, when Defendant LADIE JACK was sworn in (see Exhibit "C" attached hereto) until he is reinstated as holdover Mayor, and such future pay to

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SUMMARY JUDGMENT AND FOR ORDER TO VACATE THE OFFICE OF MAYOR

be received by Plaintiff as holdover Mayor, until the election issues raised by his petition have been finally determined.

Any further delay on this matter is justice denied to Plaintiff and an egregious violation of his constitutional property rights and to due process of law.

DATED: Majuro, Marshall Islands, 17 February 2017.



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EXHIBIT "A"



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Attorney for Plaintiff

**FILED**

JUN 17 2016  
*Sam*  
ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,

Plaintiff,

vs.

ROBSON YASIWÓ ALMÉN, ET AL.,

Defendants.

CIVIL ACTION NO. 2015-233

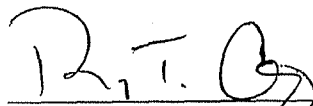
MOTION FOR ORDER DECERTIFYING  
THE FINAL OFFICIAL RESULTS OF  
THE MAYORAL ELECTION FOR  
MAJURO ATOLL LOCAL GOVERN-  
MENT HELD ON 16 NOVEMBER 2015;  
AN ORDER FOR LADIE M. JACK TO  
VACATE HIS POSITION AS MAYOR  
FOR MAJURO ATOLL LOCAL  
GOVERNMENT AND FOR MUDGE  
SAMUEL TO RESUME HIS OFFICE AS  
MAYOR AS A HOLDOVER OFFICER  
PENDING FINAL RESOLUTION OF THIS  
CIVIL ACTION; AN ORDER DIRECTED  
TO LADIE M. JACK TO REFUND HIS  
SALARY PAID BY MAJURO ATOLL  
GOVERNMENT FROM THE TIME HE  
WAS SWORN IN AS MAYOR TO THE  
PRESENT; AND AN ORDER FOR SUCH  
OTHER RELIEF AS MAY BE JUST AND  
EQUITABLE UNDER THE CIRCUM-  
STANCES; MEMORANDUM IN  
SUPPORT OF MOTION; EXHIBITS "A"  
AND "B"; CERTIFICATE OF SERVICE

election 2015 in order decertifying election.

SAMUEL V. ALMEN, ET AL., CA NO. 2015-233, RMI HIGH COURT; MOTION FOR ORDERS DECLARING DECERTIFICATION OF THE FINAL OFFICIAL RESULTS OF THE MAYORAQL ELECTION FOR MAJURO ATOLL LOCAL GOVERNMENT HELD ON 16 NOVEMBER 2015; FOR LADIE M. JACK TO VACATE HIS POSITION AS MAYOR FOR MAJURO ATOLL LOCAQL GOVERNMENT AND FOR MUDGE SAMUEL TO RESUME HIS OFFICE AS MAYOR AS A HOLDOVER OFFICER PENDING FINAL RESOLUTION OF THIS CIVIL ACTION; AN ORDER DIRECTED TO LADIE M. JACKK TO REFUND HIS SALARY PAID BY MAJURO ATOLL LOCAL GOVERNMENT FROM THE TIME HE WAS SWORN IN AS MAYOR TO THE PRESENT; AND AN ORDER FOR SUCH OTHER RELIEF AS MAY BE JUST AND EQUITABLE UNDER THE CIRCUMSTANCES

COMES NOW Plaintiff, by and through his undersigned counsel, and moves this Honorable Court for various orders arising out of actions undertaken by Defendant ROBSON YOSIWO ALMEN (post-filing of the Complaint herein), illegally certifying and qualifying Ladie M. Jack as the Mayor of Majuro Atoll Local Govenment in this past election held on 16 November 2015. This motion is made pursuant to MIRCP Rules 7(b) and Rule 57, and is based upon 30 MIRC, Chapter 2, Section 202, and 4 MIRC, Chapter 1, §§185 and 188, the attached Memorandum In Support of Motion, and such oral argument as may be made at the hearing of this Motion.

DATED: Honolulu, Hawai'i, 16 June 2015.

  
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IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2015-233
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION; EXHIBITS "A" AND "B"
ROBSON YASIWO ALMEN, ET AL.,	)	
	)	
Defendants.	)	
_____		
election 2015 m order decertifying election		

MEMORANDUM IN SUPPORT OF MOTION

INTRODUCTION

On 16 November 2015, the election for Mayor for Majuro Atoll Local Government was held. On 26 November 2015, Plaintiff had requested the Chief Electoral Officer (hereinafter "CEO") for a recount of the votes cast based in part on the net gain of 31 votes for Plaintiff on a Rita Ward recount before the unofficial results were declared, and no response was received from the CEO until 14 December 2015 – almost three weeks later. During the interim between the time of Plaintiff's request for a recount on 26 November and 14 December 2015, the Chief Electoral Officer (CEO) Robson Yasiwo Almen, announced the unofficial results of that election on 04 December 2015, triggering the time for officially petitioning for a recount under § 180 of

the RMI Elections and Referenda Act 1980 (ERA). By way of letter dated Monday, 14 December 2015, and hand delivered to the CEO on Tuesday, 15 December 2015 (see CEO's receipt attached hereto as Exhibit "A" and incorporated herein by this reference), Plaintiff (within the time limit for petitioning for a recount) formally petitioned the CEO for a recount; demanded that the issues raised in that letter and Plaintiff's prior letter dated 26 November 2015, be referred to the High Court for determination pursuant to ERA Section 188(2); and challenged numerous violations of the ERA.

Instead of making the referral of issues to the High Court as demanded by Plaintiff in his formal petition for a recount, ruling on his petition for a recount, and responding to the petition, as required under applicable law, the CEO totally disregarded the formal petition of Plaintiff for a recount and challenging various aspects of the election as not being in compliance with the ERA and RMI Constitution; failed to respond to the petition of Plaintiff; and failed to refer questions to the High Court for resolution, leaving Plaintiff no alternative but to file and serve his Complaint upon the CEO on Friday, 18 December 2015, protect his rights under the ERA treating in effect, the CEO's failure to respond to Plaintiff's petition as a denial of the petition and forcing Plaintiff to appeal that effective denial to the High Court. On Saturday, 19 December 2015, the CEO announced the final results of the election, despite having personally received Plaintiff's formal petition for recount and demand for referral of questions to the High Court on 15 December 2015, and filing and service of Plaintiff's Complaint upon the CEO, the Ministry of Internal Affairs, and the Attorney General's Office, on 18 December 2015. This extraordinary failure by the CEO to follow the law, was followed by the equally extraordinary swearing in ceremony of Ladie Jack as Mayor for Majuro Atoll Local Government, on 22 December 2015 –

all prior to the High Court ruling on Plaintiff's election challenges and resolution of the issues raised in Plaintiff's petition and Complaint, which ruling was required under applicable RMI law. [2 MIRC, Chapter 1, §188(2).]

Plaintiff submits that the declaration of final results of the election of 16 November 2015 for the Mayoral race for Majuro Atoll should **NOT** have been announced, until a final determination of the issues raised by Plaintiff in his petition of 15 December 2015, and the issues raised in Plaintiff's Complaint filed and served on 18 December 2015, had been made. No final results could have been certified by the CEO until an order of the High Court has issued on the matter raised in Plaintiff's formal petition and Complaint. [ERA Section 185(2).]

This Motion seeks a declaration by this Honorable Court that the actions of the CEO were in violation of RMI law; that the CEO could not certify as "final" the election results of the Mayoral race for Majuro Atoll Local Government until the issues in this case are finally determined; that the certification that the election results of the Mayoral race for Majuro Atoll Local Government must be decertified; that Mayor Mudge Samuel is and should have been the sitting holdover Mayor for Majuro Atoll Local Government pending the complete resolution of these proceedings; and that the Court issue an appropriate order and Writ of *Mandamus* or *Quo Warranto*, that he continues in the office of Mayor for Majuro Atoll Local Government pending the outcome of these proceedings and a valid "final" certification is issued by the CEO **after** this action is finally concluded.

The CEO's extraordinary and illegal actions in rushing the certification of the final results of the election, on 04 December 2015, followed very shortly thereafter by the swearing in of Mr. Ladie M. Jack as the duly elected Mayor for Majuro Atoll Local Government, was illegal and

therefore quite simply should not be allowed without consequence. An affront and usurpation of this Court's jurisdiction and authority by the blatant disregard of the letter of the law by the CEO under RMI law, should not be condoned. The election for Mayor has still to be determined and until today, there is no duly elected Mayor for Majuro Atoll Local Government.

Under the circumstances, the declaration of the final result of that election for Mayor, while election matters were still unresolved does not give the declared winner the kind of certainty required in elections – the touchstone of which is to protect the integrity and fairness of the voting process and the election. The final results must be decertified, and Plaintiff as the duly elected Mayor since the election of 2011 should be recognized as a holdover official entitled to his office and salary pending final resolution of the issues raised in his petition and Complaint.

As far as the undersigned is aware, the issues raised in the instant proceeding are issues of first impression.

#### ARGUMENT

What is so troubling about this case is the speed with which election results were announced, and the total disregard for the statutory and constitutional rights of Plaintiff and the voters for Majuro Atoll Local Government, exhibited by the CEO *vis-a-vis* the election of Mayor for Majuro Atoll Local Government, in the election held on 16 November 2015. As will be shown in further proceedings on the issues raised by Plaintiff in his formal petition for recount and his subsequently filed Complaint, Plaintiff suspects a pattern of bias and prejudice towards him by the CEO in the election of Plaintiff's opponent, Ladie M. Jack.

While constitutional issues abound in this case, the instant motion relates basically to three issues at this time: (1) under applicable RMI law, should the High Court decertify the final

election results for the Mayoral race for Majuro Atoll Local Government, due to the failure of the CEO to follow the mandates set forth in the ERA – specifically, for failing to respond to Plaintiff’s petition for recount and challenges to the election procedures, for failing to refer questions that were specifically requested to be referred to the High Court for determination pursuant to ERA §188, and for prematurely declaring the final results of the election before the High Court could rule on Plaintiff’s petition questions and appeal following the timely filing of Plaintiff’s petition for recount and challenges to constitutional issues relating to the election, tabulating and procedures of the entire election process; (2) under RMI law, should Mudge Samuel continue to sit as holdover Mayor for MalGov pending disposition of the legal issues raised in his petition for recount and challenge to the operation of the general election held on 16 November 2015; and (3) under RMI law, should Mudge Samuel be entitled to the salary that he would have earned as Mayor from the time his opponent was illegally sworn in as Mayor, until this action is completely resolved and a valid final certification and qualification is declared either by the CEO or this Honorable Court, as the case may be.

The pertinent provisions of the ERA as they pertain to this motion is as follows.

ERA §180(3) requires a petition for recount to be filed “within two weeks after the date of the announcement of the unofficial results of the result of the election . . . .”

ERA §181(1) requires an appeal of a rejection of a recount petition by the CEO, to be filed with the High Court within 5 days of the date of rejection.

ERA §185(2) states:

(2) If after an election in an electorate a petition for a re-count is received within the period allowed by Section 180(3) . . . the Chief Electoral Officer shall publically announce the unofficial result already announced . . . as the official

result of the election:

\* \* \* \* \*  
\* \* \* \* \*

( c ) if he rejects the petition and an appeal is made to the High Court within the period by Section 181(1) of this Chapter for appeals, then:

(1) if the appeal is upheld, on the day after he receives the certified result of the recount by the court . . . OR

(2) if the appeal is rejected, on the day after the court announces its decision. (Emphasis added.)

ERA §188(2) and (3) state in pertinent part as follows:

(2) **At any stage** of an election, a candidate . . . may require the Chief Electoral Officer to refer to the High Court **any** question that has arisen concerning the right of a person to vote in the election, and the Chief Electoral Officer **shall refer the question to the High Court accordingly.**

(3) Unless the High Court otherwise orders . . . no . . . reference under Subsection (2) of this Section shall be allowed to delay the polling , the count or recount of votes or the declaration of the official result of an election. (Emphasis added.)

What is crucial in this case is the time line and the underlying circumstances surrounding the filing of Plaintiff's petition for recount, the delay by the CEO in responding to Plaintiff's request for a recount prior to issuing his unofficial result, the filing of Plaintiff's appeal as a result of the CEO never timely responding to Plaintiff's formal petition which was delivered to the CEO within the time prescribed for petitioning for recount, and the premature declaration of the official results of the Mayoral election for Majuro Atoll Local Government shortly after the filing of Plaintiff's Complaint appealing the CEO's presumed rejection of Plaintiff's timely filed petition. What is clear is that the delay by the CEO in responding to Plaintiff's informal request for a recount by way of his letter dated 26 November 2015, and the CEO's subsequent failure to timely respond to Plaintiff's formal petition for recount in his petition dated 15 December 2015 before the earliest date for announcement of the final results of an election (in this case 19



December 2015), left Plaintiff no alternative but to file his Complaint with this Court to protect his rights under the ERA; effectively treating the CEO's failure to respond to Plaintiff's petition as a rejection of the petition. In fact, despite the timely filing of his petition and challenges to operations of the election by the CEO, Plaintiff was left with no recourse but to file his civil action on 18 December 2015, in order to protect his rights under the ERA. In fact, it was fortunate that Plaintiff did, as the very next day (19 December 2015) after filing his Complaint, the CEO announced the final results of the mayoral election for Majuro Atoll Local Government; which would have foreclosed any subsequent effort by Plaintiff to challenge the election. This calculated and blatant effort by the CEO to thwart Plaintiff's attempts to legally challenge the election, involved the CEO's breaking the law even after receiving hand delivery of Plaintiff's formal petition for a recount (on 15 December 2015) and service of the subsequent filing of his complaint with this Court (which was served personally upon the CEO on 18 December 2015), and with clear knowledge of Plaintiff's objections and demand for referral of questions to the High Court for resolution prior to announcement of the final results of the election on 19 December 2015. These affronts to justice, fairness and democracy by the CEO should not be tolerated; the results of which must now be undone by the tribunal which was charged with resolving the issues raised by Plaintiff in his petition and Complaint.

What is particularly disturbing was the speed and total disregard to election law by the CEO, who rapidly proceeded to conclusion of the election by announcing the final results of the contested election for Mayor of Majuro Atoll Local Government at the earliest possible date allowed under the terms of the ERA, followed almost immediately by the swearing in ceremony of Ladie Jack as the newly "elected" Mayor.

What is clear under the circumstances, is that the CEO acted as party, judge, and jury in this case, totally and arbitrarily ignoring and disregarding Plaintiff's right to resolution of his challenges before the High Court under applicable RMI law and the laws and regulations which the CEO was responsible to uphold and to enforce as part and parcel to properly running the election in order to assure the integrity and fairness of that election. What happened instead was the premature announcement of the official results and the conclusion of the election of Mayor for Majuro Atoll Local Government on Saturday, 19 December 2015 – in total violation of election law. What was the rush to announce the official results of the election? Why didn't the CEO refer the questions raised by the Plaintiff to the High Court as required by law? Why didn't the CEO timely respond to the Petition for recount filed by the Plaintiff **before** announcing the official results of the election for Mayor for Majuro?

All that we are left with is a timely challenge to the election, a timely demand by Plaintiff for referral of questions to the High Court for resolution, a failure by the CEO to properly and timely respond to the issues raised by Plaintiff in his informal request for recount and in his formal petition, a forced appeal of the CEO's effective denial of Plaintiff's petition for a recount and challenges to rejections of ballots by the CEO due to the threatened deadline for appealing a decision by the CEO on Plaintiff's petition, a breach of the law by the CEO prematurely declaring the final results of the election for Mayor of Majuro Atoll Local Government when he really should have referred questions to the High Court and deferred declaration of the final results pending the disposition of Plaintiff's petition and appeal of the CEO's effective denial of Plaintiff's petition for recount and challenge to voting irregularities, all as required by RMI law.

The declaration of final results on 19 December 2015, was illegal and should never have

been declared.

A critical provision of the ERA for the instant proceedings, is ERA §188(2), which provides that any candidate can “at any stage of an election”, require the CEO to refer a question concerning the right of any person to vote in a election to the High Court for determination, “and the Chief Electoral Officer *shall* refer the question to the High Court accordingly.” (Emphasis added.) Clearly, the CEO failed to refer the questions specifically asked by Plaintiff in his petition for recount dated 15 December 2015, to be referred to the High Court for determination as required by ERA §188(2). The language of this provision is clear, unambiguous, and mandatory. The intent of that provision is equally clear – the CEO should have referred the questions raised by Plaintiff to the High Court for immediate determination so as not to delay the results of an election. [See *Lekka v. Kabua, et al.*, 3 MILR 167, 171 (2013) – what is stated in a statute is what was intended by the Nitijela.] Plaintiff followed the letter of the law, but the CEO chose to disregard his legal responsibilities under ERA §188(2). The CEO was required to refer.

Although there appears to be a discrepancy between the terms of ERA §185(2) preventing the announcement of the official results of an election pending court resolution of the issues raised in a petition/appeal, and §188(3) allowing for the announcement of the final results of an election although questions on the right of a voter to vote in an election may have been referred to the High Court for resolution; the only reasonable interpretation harmonizing this apparent inconsistency is that a referral of questions to the High Court for resolution on the right of voters to vote in an election contest, should not prevent the CEO from continuing to “count or recount votes or (to declare) the official result of an election.” That is, §188(3) allows the march towards a conclusion for all other election contests other than the one questioned. However, if a petition

for recount has been filed or an appeal of the CEO's decision is made to the High Court on the issue of recount, no final certification of an election race relating to the recount or subsequent appeal until the recount or appeal, as the case may be, can be declared. [ERA §185(2).]

Regardless, under any circumstance of an election, ERA §188(2) is clear: a candidate *may* request for referral of questions to the High Court and once a referral is made to the CEO for consideration by the High Court, "the Chief Electoral Officer *shall* refer the question to the High Court accordingly." (Emphasis added.) It is important to note that in selecting the words "may" and "shall" in the same sentence, the Nitijela gave strong evidence of the difference between the discretionary choice to refer a question to the High Court if a candidate wished to; and the mandatory referral of questions by the CEO to the High Court, once a referral request is made. The referral once made, is *mandatory*.<sup>1</sup>

In the instant case, not only did Plaintiff raise questions concerning the right of voters to vote in the Mayoral election for Majuro Atoll Local Government and the procedures employed by the CEO in denying their right to vote, but he also petitioned for a recount and effectively appealed the presumed rejection of his petition and right to vote issues when the CEO's response was not forthcoming before the impending deadline for appeal of a CEO's rejection of the petition. Under any analysis, the CEO had failed to properly carry out his duties and responsibilities by failing to respond to the petition delivered by Plaintiff on 15 December 2015, failed to make the required referral of issues for resolution by the High Court pursuant to ERA §188(2) as requested by Plaintiff, and had violated ERA §185(2) by prematurely declaring the

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<sup>1</sup> "Unless the context otherwise indicates use of the word 'shall' (except in its future tense) indicates a mandatory intent." [1A Singer, *Statutes and Statutory Construction*, 7 ed. at p. 589 (2009).]

final results of the election for Mayor of Majuro Atoll Local Government on 19 December 2015, when the CEO had full knowledge of Plaintiff's petition, and Plaintiff's appeal to the High Court which was required under the circumstances due to the CEO's failure to respond to the petition which was deemed to be an effective denial of the petition.

Plaintiff submits that the failure by the CEO to follow the clear and unambiguous mandates of the ERA, require the decertification of the election results for the office of Mayor for Majuro Atoll Local Government until final resolution of the issues raised in these proceedings.

Assuming that the Court agrees with Plaintiff's analysis of the election law, it follows that because there has been no official final election certification, no winner could be declared; and therefore, Plaintiff should still be the sitting holdover Mayor until his term ends under law, i.e., until a legal, valid and proper certification of the official results has been declared and his successor duly elected under applicable law.<sup>2</sup> See generally, 63 Am.Jur.2d "Public Officers and Employees", §§147-150; 67 C.J.S. "Officers and Public Employees", §§154-160. And expiration of a term does not produce a vacancy. See generally, 67 C.J.S. *supra*, §158.

In this regard, the Court is directed to the Constitution for Majuro Atoll Local Government, a copy of which is attached hereto as Exhibit "B" and incorporated herein by this

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<sup>2</sup> "[A]n officer, though elected . . . for a definite term, is entitled to remain in office until his successor is lawfully elected . . . and has been *duly qualified*." (Emphasis added.) Rhyne, *The Law of Local Government Operations*, at p. 234 (1980).

"In general, an incumbent holds over after the conclusion of his term until the election and *qualification* of a successor." (Emphasis added.) Rhyne, *supra*, at p. 236.

reference.<sup>3</sup> Under Part III, Section 6(1)(c), of the Constitution of the Majuro Atoll Local Government, the Mayor is a member of the Council. Under Part III, Section 8, states as follows:

Section 8. Term of Office.

(1) The term of office of a member referred to in Section 6(1)(c) is 4 years and –

(a) commences on the day after the day on which his election . . . *is certified; and*

(b) *terminates . . . on the day before the new member takes office.*  
(Emphasis added.)

As no valid certification of the final results have been declared, Ladie M. Jack cannot commence to take office as Mayor of Majuro Atoll Local Government. And because no valid certification of final result has been declared, Mudge Samuel's term has not terminated pursuant to the terms of the Constitution of the Majuro Atoll Local Government. Under the general principals outlined above, the Court should therefore decertify the election, issue a writ of *mandamus* or *quo warranto*, ordering that Ladie M. Jack vacate his office<sup>4</sup>, and that Mudge Samuel continue on as holdover Mayor until a *valid certification of final results* of the election of 16 November 2015 for Mayor for Majuro Atoll Local Government has been declared pursuant to ERA §185(2).

It is axiomatic that under the circumstances, not only should Mudge Samuel be placed

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<sup>3</sup> This Constitution was accepted by the RMI Supreme Court and the High Court as the Constitution of Majuro Atoll Local Government. See, *In re Vacancy of Mayoral Seat, Majuro Atoll Local Government*, 3 MILR 114 (2009).

<sup>4</sup> “While it is the general rule that *quo warranto* is the procedure to try title, it is also the general rule that where one has a clear legal title to an office, or a *prima facie* right thereto, he may be put in possession of the office by *mandamus*.” Rhyme, *supra*, at p. 234.

back into his office of Mayor to serve until a **final certification** is declared and the mayoral victor duly **qualified**, i.e., until these proceedings have been resolved, and his successor, if any is declared the duly **elected and certified** Mayor for Majuro Atoll Local Government; but also, that the salary that was paid to Ladie M. Jack should be forfeited to the Majuro Atoll Local Government as salary improperly paid, and Mudge Samuel should likewise be paid for his salary for the entire time that Mr. Jack has been illegally and wrongfully occupying the office of Mayor under color of law, until removed by this Court pursuant to these proceedings.

The sum and substance of this present motion is that if the CEO had followed the letter of the law and performed his function properly, that these proceedings would not have been necessary. However, his failure to even respond to Plaintiff's formal petition for recount and challenges to how the election of 16 November 2015 was run, his failure to refer questions to the High Court as required by law, and his subsequent rush to certify the final results of the election of 16 November 2015, followed by the extraordinary installation of Ladie M. Jack as Mayor despite the actual knowledge of Plaintiff's pending petition and the filing of Plaintiff's Complaint with the High Court, has caused the present state of affairs. And the proposed solution to a part of these mistakes as suggested by the present motion, is the natural result of these failures and legal lapses committed by the CEO. The letter of the law is clear and unambiguous. The solution to these egregious acts and/or failures to act by the CEO is likewise clear and is provided for under RMI statutory law and the Constitution of the Majuro Atoll Local Government.

The requests of Plaintiff herein, under the circumstances, should be granted as a matter of law. "A democracy can only flourish with free elections untainted by any questionable conduct."

[*Bien v. Jorlang, et al.*, 2 MILR 94, 96 (1997).]

CONCLUSION

The circumstances forming the basis for this motion occurred shortly after the petition for recount and challenges to the election procedures for the election held on 16 November 2015, were delivered to the Defendant Almen on 15 December 2015, and shortly after the Complaint herein was filed with this Court on 18 December 2015. Had the CEO complied with the applicable law on the issues presented, there would have been no need for the orders sought for herein. Due to the change of circumstances caused by Defendant's actions since the filing of the Complaint herein and the Amended Complaint shortly thereafter, the Orders sought herein are matters which are inseparably related to the issues raised in the original Complaint and first Amended Complaint. The CEO did not follow the law, failed to timely respond, and certified the final results of the election despite having actual knowledge of Plaintiff's challenges to the election. As a result, this Court is now being requested to undo what the CEO has done in violation of the election law by certifying the final results in the face of Plaintiff's challenges to the election. The relief requested is mandated by the ERA.

Therefore, for all of the reasons stated herein above, Plaintiff moves this Honorable Court for the following:

1. an order decertifying the final results of the election for Mayor for Majuro Atoll Local Government for the election held on 16 November 2015;
2. an order (enforced either by issuance of a Writ of *Mandamus* or a Writ *Quo Warranto*, that Ladie M. Jack relinquish his office and that Plaintiff is entitled to resume his office as Mayor of Majuro Atoll Local Government until such time as this present civil action is finally



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determined and his holdover term ends upon declaration of a subsequent valid certification of final results of the election held on 16 November 2015;

3. an order that Ladie M. Jack immediately and forthwith refund and pay over to the Majuro Atoll Local Government, Department of Finance, the entire salary paid over to him from the time he took office from 22 December 2015 until the present as monies wrongfully paid to him as Mayor, when in fact he had no right to assume title thereto due to the invalid certification of final results declared by the CEO on 19 December 2015;

4. an order that Mudge Samuel be paid said sums as his salary as holdover officer, and that he be given such salary as he may earn in the future, until such time as the issues raised in these proceedings have been finally decided and a valid final certification of results for the election of Mayor for Majuro Atoll Local Government for the election held on 16 November 2015, is declared by this Honorable Court, or the CEO as the case may be, under applicable law under the ERA; and

5. such other orders as may be just and equitable under the circumstances.

DATED: Honolulu, Hawai'i, 16 June 2016.

  
\_\_\_\_\_  
ROY T. CHIKAMOTO

Attorney for Plaintiff MUDGE SAMUEL

*Robert Almen*  
12/15/15

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14 December 2015

Chief Robson Yasiwo Almen  
Chief Electoral Officer  
Ministry of Internal Affairs  
Majuro, Marshal Islands 96960

HAND DELIVERED

Re: Challenge to Rejected Postal Ballots and  
PETITION for Re-Count of All Ballots  
Cast for Majuro Mayor's Election

Dear Chief Almen:

It is my understanding that the unofficial results of the 16 November 2015 election for Mayor of Majuro were announced on 04 December 2015. Further to the Mayor's request for recount and audit of all Majuro votes (on island and now postal ballots) in my letter dated 26 November 2015, the Mayor also now Petitions for a recount of all ballots cast in the election for Mayor of Majuro Atoll Local Government based on the grounds raised in my letter dated 26 November 2015, and makes the following additional objections to the election and believes that a recount will substantially affect the outcome of the election for Mayor of Majuro Atoll Local Government.

Postal Ballots That Were Rejected Should Have Been Counted

Section 173(6) of the Elections and Referenda Act 1980 (hereinafter referred to as the "ERA") dealing with conduct of elections, clearly states that when voting on election day:

"(a) The voter must sign his name next to his printed name as it appears on the list of voters ...

(b) The list of voters shall have at the top of EVERY page a printed affidavit stating that the voter who signs that document swears or affirms under penalty of law that the following are true and correct:

(i) that the person is currently qualified to vote in the election in that election ward and electoral district as provided in the list of voters;

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(ii) that all of the information printed in the list of voters with respect to that person is true and correct including but not limited to that voter's name, election ward, electoral district, date of birth, and address; and

(iii) that person has not already voted in that election.

(c) The voter who places his signature on the list of voters in accordance with Subsection 6(a) of this Section shall be deemed to be signing an affidavit, under penalty of law as to the truthfulness of the facts stated in the voters list. An election official shall observe the act of signing by the voter in the list of voters.

Under Section 162 of the ERA, similar language requires postal ballot voters to submit an affidavit with their ballot "verifying his right to vote in the election ... and his right to a postal vote ...." (Section 162(1)(c)). That affidavit must be completed and "sworn to before a person authorized to administer oaths in the place where the applicant is ...." (Section 162(2)(c)).

The decision to reject postal ballots because of irregularity in the affidavits required of off island postal voters is a violation of the equal protection clause of the RMI Constitution (Article II, Section 12), in that you are requiring off island postal voters to sign affidavits accompanying their ballots, yet did not require all voters in the RMI to attest to their signatures and voter status due to your failure to include the affidavit language required by Section 173(6) of the ERA, at the top of each page of the voter lists as required by Section 173 of the ERA; nor did your election officials even require all voters to sign their full names, as it appears on the voter list as required by that same Section 173(6). In fact, many voters merely initialed on the voter lists when voting, and some did not even sign or initial next to their name on the voter list at all. See the attached affidavit of Charles Kelen.

In addition, of those postal ballots rejected because they were not placed in the correct return envelope, the Mayor believes that these postal ballots should all be counted due to the fact that they followed the spirit of the requirements and were placed in an envelope or box and timely delivered to your office, just as local ballots were placed into secured (but not locked) ballot boxes and delivered to be counted at the ICC building. In fact, it is the Mayor's understanding that what you did was to accept one of several ballots in the large envelopes, reasoning that you would count one of those ballots to correspond to the one envelope that the several postal ballots were mailed in (an arbitrary and capricious method of allowing a vote to be counted). Again, under equal protection reasoning, all of those off island ballots that were

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ultimately rejected because they were batched and placed in one return envelope, were rejected unfairly and arbitrarily. Having accepted one postal ballot per large envelope containing multiple ballots in this situation as I am told you did, should mean that all similarly situated ballots should be accepted, especially since you have already arbitrarily chosen one ballot out of several to be accepted.

Although you state your position that you are trying to give voters every opportunity to cast their vote [see your response to Wase Kaminaga attached, paragraph 1(3)] you seem to be inconsistent with interpreting the law liberally in one situation and taking a strict stance in another. This pattern of decision making and the inconsistent decisions of your staff only confirms that decisions that have been made during this election have been arbitrary and capricious rather than consistent and reasonable.

Should you insist on the continued rejection of the postal ballots, by this letter, the Mayor formally lodges his complaint for rejection of those postal ballots for the reasons stated herein and for such additional reasons to be determined depending upon the actual reasons for initial rejection of those other postal ballots, which we are requesting again that you provide the Mayor in writing as promised. See attached Affidavit of Stacy Samuel. Again, neither the exact reasons for rejection have been provided, nor the numbers of the ballots for each reason. We are therefore forced to "stab in the dark", so to speak as to the reasons for your rejection of postal ballots. If the postal ballots were allowed to be counted, those ballots would substantially affect the outcome of the election for Mayor.

Despite this challenge to the rejected ballots for the reasons stated hereinabove and such other reasons that may be made after receipt of the actual reasons for rejecting the overwhelming majority of off island postal ballots, there is an even more disturbing issue directly relating to the rejection of postal ballots.

You had made a decision to examine the postal ballots outside of the view of poll watchers/candidate representatives when the postal ballot box was opened, and conducted the acceptance/rejection process outside of the view of the poll watchers/candidate representatives, therefore preventing poll watchers/candidate representatives for challenging your decisions to accept or reject on the spot. This initial process of screening of all postal ballots outside of the view of poll watchers/candidate representatives and the exclusion of those members of the public

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allowed to view the opening of all ballot boxes and was obviously not open and transparent, and should not have occurred. (*Clanton v. Marshall Islands Chief Electoral Officer Shiro Riklon*, 1 MLR 146 (1989) – “The Counting and Tabulating Committee *must publicly* open the ballot boxes . . . . Candidates and their authorized representatives are expressly entitled to be present. . . .” (*Supra*, at p. 154.) It was only after the fact that the public for the first time saw postal ballots after the out of view screening took place, and then could only view those ballots accepted by you and your staff (after the private review and rejection of ballots) which were brought out for public counting.

According to a Journal article appearing in the 04 December edition, you stated to the reporter that poll watchers were not allowed to be present because the law does require them or police officers to be present. See page 3 04 December 2015 Journal edition. Under these circumstances, no challenge really could occur at the time of the screening and rejection of postal ballots, because the private screening process never really allowed the public to challenge your private rejections. You did not even officially announce and disseminate in writing, the exact amount of postal ballots rejected or the exact reasons for rejection. (See attached affidavit of Stacy Samuel). Till this day the exact reasons for rejection have been kept a secret, with only 5 days remaining to petition for recount. Because of the violation of Section 178 of the ERA, the Mayor demands that a recount of *all postal ballots* be made immediately; that poll watchers/candidate representatives be allowed to view all postal ballots being recounted and be allowed to object to any category of rejection raised by you and your staff – a right that was never granted to the Mayor's poll watchers/candidate representatives that were assigned to oversee ballot box openings, challenge of ballots, and observation of counting and tabulation.

Complaints Related To The Failure of Election Officials to Call Out Voter Names Before Issuing Ballots Were Ignored, Causing Poll Watchers Problems In Verifying Eligibility of Voters

The Mayor's poll watchers had complained to your poll staff that they should be announcing “in a clear and loud voice” the name of each voter as they checked in before receiving their ballots as required by Section 173(1)(b) of the ERA, only to be rebuffed by your staff at the polls. The purpose of the announcement is to allow the poll watchers to check off and verify eligibility of voters on the lists provided by your office prior to the election. This obviously was not done during the election, although complaints were made to correct the situation. See attached affidavits of Karen Aister, Jerima Jacklick, and Anelang Toring.

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This fact alone justifies a recount and audit of the entire election for Mayor as we need to go through a count and verification process all over again due to the simple failure of your poll workers to call out the names of voters who are about the vote, in a clear and loud voice. As required by 2 MIRC, Chapter 1, §173(1)(b). The purpose of this requirement is to allow poll watchers to check their lists and to verify eligibility of voters before they voted. This failure justifies a recount and audit to confirm that voters did not vote more than once, and were eligible for voting.

Majuro Absentee Ballots For the Outer Islands Should Not Be Rejected For Failure of Absentee Voters to Sign The Voter List

Based on the attached affidavits of Wase Kamingana, and Murdoch Sualau, Majuro absentee ballots for Jaluit, Kili and Aur were rejected by your office on the basis that those rejected ballot voters failed to sign the voter lists before leaving the polling place. This was unfair, particularly when under Section 156(4)(b), it is the responsibility of the election official to require the signature of the voter lists for those atolls before ballots are issued. Although Section 158(2) merely states that absentee voters shall sign the master list of voters, the point is that it is the responsibility of election officials to assure that the law is being followed in the elections process. Yet you made a decision that those absentee ballots should be rejected. The Mayor challenges that decision and argues that those ballots should be counted under equal protection arguments – voters on Majuro did not sign their respective voter lists in compliance with election laws, yet their votes were allowed; however, outer island absentee voters are not being afforded the same treatment. The Mayor believes that the counting of those improperly rejected outer island absentee ballots would significantly affect the outcome of the election for Mayor of Majuro Atoll Local Government.

Legally Registered Voters for Majuro Were Denied the Right To Vote for The Majuro Election

There is also evidence that Majuro voters on the outer islands that registered to vote in the Majuro election were even denied the right to vote in the Majuro election, and were forced to vote for another local government election. See the attached Affidavit of Iso Langkio. We do not know the extent of this error, but we have evidence that it was occurring, justifying a recount and audit of the election for Mayor for Majuro Atoll Local Government.

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The Failure to Adequately Provide Polling Places With Sufficient Voting Ballots Forcing Voters To Search For A Polling Place To Cast Their Vote Justifies A Recount And Calls Into Question The Validity of the Election Itself

The ERA mandates that your office provide each polling place with adequate supplies to conduct the election, and specifically requires your office to have provided 100 more ballots than there were registered voters in the ward in which the polling station was located. See ERA §§152(1) and 169. It is my understanding that the polling places in Laura, Woja, and Ajeltake had run out of ballots and causing voters to have to travel to other special polling places. See attached affidavits of Julita Samson and Mildina DeBrum. What of those voters who were not able to travel to the special voting places to cast their votes?

My information is that additional ballots were attempted to be supplied to the Laura end of the island is that a batch was delivered late in the day, but they were for the wrong atoll requiring another attempt to supply ballots which were finally delivered near closing of the polls. How many voters were prevented from voting under these circumstances, but this is a factor to be considered in determining whether the election itself was improperly run and violative of the electorate's right to vote.

Either the number of ballots cast exceeded the number of registered voters in those wards, plus the 100 extra ballots required to be supplied to each of those wards under §§152(1) and 169 of the ERA, or your office violated the mandates of those Sections, by providing far less ballots than required, begging the question why those polling places were not given adequate ballots as required by law in the first place. What is also pertinent to this issue is that the voter lists for those polling places that we know of which were not supplied with enough ballots indicate that the number of registered voters were as follows: Laura (Jeirok, Eolap, Lobat and Lomar) 3,184; Woja - 447; and Ajeltake - 594. And the total number of votes cast at those polling places per the Journal were Laura (Jeirok, Eolap, Lobat and Lomar) - 855; Woja - 208; and Ajeltake - 196. The only explanation is that far less ballots were supplied to those wards than required under the ERA. But the question is how many ballots were supplied to begin with for those wards? How many voters were turned away because there were insufficient ballots? How many voters failed to vote as a result of this grave error? Because those wards ran out of ballots, both a recount of ballots cast, and audit of registered voters for those and all other polling places should be conducted, the results of which could substantially affect the outcome of the election for Mayor

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of Majuro Atoll Local Government. The Mayor therefore petitions for a recount and audit of all polling places and challenges the validity of the entire election on this basis.

Evidence of Counting and Tabulation Errors In One Ward Leading To a Substantial Change in Vote Count For The Mayor Justifies A Recount and Re-Tabulation For The Entire Atoll

Because of the recount of the Rita ward votes requested by Charles Kelen before the unofficial results were announced, the Mayor gained a net 31 votes over his challenger. This is further reason for a recount as computation and tabulation errors may have occurred in the other wards as well, which would substantially affect the outcome of the election.

The Failure To Obtain the Confined Voters' Ballots Within The Prescribed Times During Which the Polling Places Were Open, Invalidates Those Votes, And Constitutes A Denial of Their Right To Vote By Your Office

Section 167 of the ERA and ERA Regulation 120 issued thereunder provides the only resources for special guidance pertaining to "confined" voters, or those voters who are unable to travel to a polling place. No other regulations have been promulgated relating to this class of voters. Because ERA §167 and ERA Regulation 120 fail to address the issue of voting times for the special voting places created by ERA Regulation 120(3), and there being no other applicable law or regulation pertaining to voting by "confined" voters, the general voting times set forth in ERA §170 would have to apply, i.e., those special polling places can remain open only from 7:00 a.m. until 7:00 p.m. Yet it is common knowledge that you allowed confined voters to vote even after polling places and special voting places were closed pursuant to ERA §170. In fact, your staff took the "confined" voter ballot box outside of the confines of the ICC Building between the hours of 7:00 p.m. on 16 November 2015 until 3:00 a.m. on 17 November 2015, without including poll watchers/candidate representatives to be present at the voting by "confined" voters. See Affidavit of Wase Kaminaga enclosed.

The validity of these ballots is seriously questioned based upon the ERA provisions and ERA Regulations as they were not cast within the time allowed, i.e., between the hours of 7:00 a.m. and 7:00 p.m. on 16 November 2015. The casting of votes was also not in compliance with the open and transparent policy set forth in the ERA because of the failure to allow poll watchers/candidate representatives to be present at the time of the vote casting. The unilateral



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extension of voting hours and denial of the "public" to view of the voting process were in the control of your office. Under these circumstances, there is no alternative but to invalidate the votes obtained outside of the polling hours mandated by the ERA and ERA Regulations. There is no provision in either the law or regulations promulgated thereunder that would allow for such a gross extension of time for votes to be cast up to 8 hours after the close of the polls.

The law allows an extension of time only for voters that are standing in line at a polling station but cannot vote because the line of voters prevents a voter from casting his/her vote by the 7:00 p.m. deadline. What actually occurred in this election was a clear misinterpretation of the law now calling into question the validity of those confined ballots cast after the close of the polls. What this also means is that through the error and gross negligence of Electoral Administration officials, the Administration and/or the CEO has potentially denied the right to vote of otherwise eligible voters in this past election for Majuro, held 16 November 2015. The Mayor challenges the "confined" votes cast after the close of polling hours on the basis that election laws were inconsistently applied to the voters of Majuro, a violation of the equal protection provision of the RMI Constitution.

For the foregoing reasons, Mayor Samuel reserves the right to challenge the election in its entirety, but at the minimum, petitions you to begin the recount and audit process immediately, for the reasons stated herein and in my letter dated 26 November 2015, which is incorporated herein by this reference, supported by all of the affidavits submitted with the 26 November letter and those affidavits submitted herewith. Mayor Samuel also demands that you supply the reasons for rejection of postal ballots and the amount of ballots rejected for each of your reasons immediately so that we can review your decisions and file appropriate challenges. **BECAUSE THE UNOFFICIAL RESULTS WERE ALREADY ANNOUNCED, PLEASE NOW CONSIDER THESE REQUESTS AS A PETITION FOR OFFICIAL AUDIT AND RECOUNT OF ALL BALLOTS CAST FOR THE OFFICE OF MAYOR FOR MAJURO. THIS PETITION SHOULD ALSO PLACE YOU ON NOTICE THAT THE MAYOR RESERVES HIS RIGHT TO CHALLENGE THE ENTIRE ELECTION ON THE BASES THAT YOUR OFFICE HAS REPEATEDLY VIOLATED THE PROVISIONS OF THE ELECTION AND REFERENDA ACT 1980, AND VIOLATED THE CONSTITUTIONAL RIGHTS OF THE VOTERS OF THE REPUBLIC.**

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*As the Mayor's initial request was made over a week ago, I will give you until close of business today in which to respond to last week's request and this current PETITION, both of which should be treated as petitions for full recount and audit of all ballots and voter lists for regular polling places and special voting places. Your failure to respond by close of business 15 December shall be considered a rejection of this petition for recount. For the record, we have not received any response to the letter dated 26 November 2015, hand delivered to you earlier last week.*

*Please send your written response to this petition by close of business, 15 December 2015, addressed to the Mayor and have it hand delivered to the Mayor at his residence.*

In addition, pursuant to ERA §188(2), the Mayor demands that all of the inconsistencies of the election held on 16 November 2015, and the issues raised herein concerning the violation of rights of voters to vote in this past election for Mayor of Majuro Atoll Local Government, be referred to the High Court for opinion and determination – particularly whether the “confined” votes were valid to begin with raising denial of right to vote and equal protection issues protected by the RMI Constitution; whether the secret opening of the postal ballots and review process of postal ballots with the resultant rejection of postal votes was valid and whether your office violated the ethical conduct mandate of the RMI Constitution; whether the segregation of the voting and ballot box area from view of poll watchers in Woja violated the ethical conduct mandate of the RMI Constitution; whether the rejection of postal ballots for irregularities in the affidavits accompanying those ballots (failure to include an affidavit, procedural failure in execution of the affidavit, etc.) – if in fact that was a basis for rejection – violated the equal protection provisions of the RMI Constitution vis-a-vis RMI voters who failed to sign their voter lists and where the CEO failed to place the affidavit language at the top of each page of the voter lists so that local voters did not even attest to their right to vote; where the private opening of the off island ballot box and screening of the off island ballots outside of public scrutiny violated the open and transparent policy of the vote counting process and ethical conduct provision of the RMI Constitution; and whether the failure of election staff at the polling places to mark voters with indelible markers may have possibly inflated the number of voters who may have voted in multiple polling places.

IN MAKING YOUR REFERRAL OF THESE QUESTIONS, THE MAYOR SPECIFICALLY REQUESTS THAT THE HIGH COURT ISSUE A STAY OF THE FINAL

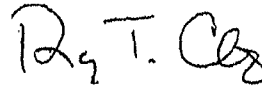
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CERTIFICATION OF THE RESULTS OF THE ELECTION UNTIL THE HIGH COURT, AND  
IF NECESSARY THE RMI SUPREME COURT, FINALLY DISPOSES OF THE ISSUES  
RAISED IN THIS REQUEST AS THEY INVOLVE CONSTITUTIONAL ISSUES.

Otherwise, the Mayor requests that his Petition be acted upon forthwith and that the  
recount and audit of all ballots cast for the office of Mayor for Majuro Atoll Local Government  
begin immediately.

The Mayor's Affidavit supporting this Petition request is also enclosed herewith.

Sincerely,



Roy T. Chikamoto

encls. -

Affidavit of Mudge Samuel  
Affidavit of Stacy Samuel  
Affidavit of Wase Kaminaga  
Affidavit of Murdoch Sualau  
Affidavit of Charles Kelen  
Affidavit of Jacob Amram  
Affidavit of Jerima Jacklick  
Affidavit of Karen Aister  
Affidavit of Anelang Toring  
Affidavit of Iso Langkio

cc: Mayor Mudge Samuel

CONSTITUTION  
OF THE  
MAJURO ATOLL LOCAL GOVERNMENT

PART I. - PRELIMINARY

SECTION 1. Name of the Local Government.

The name of the local government is Majuro Atoll Local Government.

SECTION 2. Capitol.

The principal office of the local government shall be as agreed and declared by the Majuro Legislature, signified by resolution.

SECTION 3. Local Government Area.

The area of jurisdiction of the local government is all of Majuro Atoll and, in accordance with Article IX, Section 1(2) and (3) of the Constitution of the Marshall Islands, extends to the sea and the seabed of the internal waters of Majuro Atoll and to the surrounding sea and seabed to a distance of 5 miles from the baselines from which the territorial sea of Majuro is measured.

PART II. - WARDS

SECTION 4. Division of the Local Government Area into Wards.

(1) In accordance with Section 19 of the Local Government Act 1980, the local government area is divided into the following wards, as more particularly described in Schedule 1, each electing the number of representatives set out against its name: -

- (a) Jarej Ward, returning 2 representatives; and
- (b) Uliga Ward, returning 1 representative; and
- (c) Dalap Ward, returning 2 representatives; and
- (d) Rairok Ward, returning 1 representative; and
- (e) Ajeltake Ward, returning 1 representative; and
- (f) Woja Ward, returning 1 representative; and

- (g) Jeirok/Arrak Ward, returning 1 representative; and
- (h) Eolap Ward, returning 1 representative; and
- (i) Lobat Ward, returning 1 representative; and
- (j) Lomar Ward, returning 1 representative; and
- (k) Rongrong/Aenkan Ward, returning 1 representative.

(2) The representative so elected from each ward pursuant to Subsection (1) above shall be known and referred to as Councilman, however, the legislature may, by Resolution, declare alternative titles.

(3) The Legislature may, by Ordinance and on a 2/3 majority vote of its total membership, provide for the reapportionment of the wards and returning representatives as set out in Subsection (1) of this Section, to accord an equality of representation. Such reapportionment shall be made no more than once in every ten years and shall be based on the national voter's registry for the wards above mentioned, for the year immediately preceding that year in which the reapportionment is considered.

### PART III. - LEGISLATURE

#### SECTION 5. Establishment of the Legislature.

A legislature, to be known as the Majuro Council, is hereby established for the local government, and in accordance with Section 13(1) of the Local Government Act 1980 the Ordinance - making, taxing and appropriation powers of the local government under Article IX, Section 2 of the Constitution of the Marshall Islands are vested in it.

#### SECTION 6. Membership and Elections.

- (1) The Council shall consist of 16 members, being: -
  - (a) the 13 members elected by the wards, as specified in Section 4; and
  - (b) 2 voting Iroij members; and
  - (c) 1 Mayor.

(2) The members referred to in Subsection (1) (a) shall be elected by ballot by the eligible voters of the ward from which each member is standing for election as provided for by Sections 13 and 23 of the Local Government Act 1980.

(3) The Iroi membership referred to in Subsection (1) (b) of this Section shall comprise of one member representing each of the two mona on Majuro Atoll and shall be appointed by the Mayor in accordance to the following: -

(a) one Iroi to be nominated by the authority for Jebrik's side; and

(b) the Iroi laplap for the other mona, or a person, who by reason of his family ties is entitled to sit on the Iroi laplap's behalf, nominated by him; and

(c) the two Iroi members shall each serve a term of four years, said term to be deemed commencing from the date of official results of the elections pursuant to Subsection (2) of this Section.

(4) Failure to make a nomination in accordance with Subsection (3) of this Section shall not be construed so as to prevent the Council from convening.

(5) The first general election of members referred to in Subsection (1) (a) shall be held on a date as soon as practicable after the effective date of this Constitution, and thereafter as near practicable to the fourth anniversary of the date to the preceding general election, fixed by the Council.

#### SECTION 7. Qualifications.

(1) The qualifications for election as a member referred to in Section 6(1) (a) are as set out in Section 9(1) of the Elections and Referenda Act 1980.

SECTION 8. Term of office.

- (1) The term of office of a member referred to in Section 6(1)(a), (b) and (c) is 4 years and -
- (a) commences on the day after the day on which his election or appointment is certified; and
  - (b) terminates (unless the seat of the member becomes vacant earlier under Section 9) on the day before the new member takes office.

SECTION 9. Vacation of Seats.

- (1) The seat of a member of the Council becomes vacant if, and only if -
- (a) his term of office terminates in accordance with Section 8; or
  - (b) he ceases to possess the qualifications for election that he was required, under Section 7, to have at the time of his election or appointment; or
  - (c) he dies; or
  - (d) he resigns his seat by notice in writing to the local government; or
  - (e) he is removed from office under Subsection (2).
- (2) The Council may, by the affirmative vote of not less than  $3/4$  (75%) of its total membership, remove a member from office from cause.

SECTION 10. Casual Vacancies.

(1) If the seat of a member of the Council referred to in Section 6(1)(a) becomes vacant otherwise than by the termination of his term of office in accordance with Section 8, the vacancy shall be filled as soon as practicable by a special election in the ward that he represented.

(2) If the seat of a member referred to in Section 6(1)(b) becomes vacant otherwise than by the termination of his term of office, the vacancy shall be filled as soon as practicable by a special election in the ward that he represented.

Authority representing such mona.

SECTION 11. Meetings.

(1) Meetings of the Majuro Council shall be held at least once in every three months of the calendar, on such days not to exceed 10 calendar days and at such times as are fixed by the Council by resolution, or in default, by the Mayor by notice in accordance with the Rules of Procedures of the Council.

(2) The Mayor shall, as soon as practicable after the certification of the results of the first general election for the Council, by notice to all members, call a meeting of the Council.

(3) The Mayor may at any time, and shall as soon as practicable after the receipt of a petition of a majority of the members of the Council stating the business to be dealt with, call a special meeting, by notice in accordance with the Rules of Procedures of the Council, stating the business to be dealt with.

(4) A special meeting shall deal only with the subject stated in the notice calling the meeting.

(5) Meetings of the Council shall be held in public.

(6) The quorum for a meeting of Council is a majority of the total number of its membership.

(7) The Mayor shall preside at all meetings at which he is present and, subject to Section 18 and to the Rules of Procedures of the Council, in his absence or during a vacancy in his office, a member of the Executive Committee appointed by him or the Executive Committee shall preside.

(8) Except as otherwise provided by the Local Government Act 1980, all questions before a meeting of the Council shall be determined in accordance with the majority of the votes of the members present and voting, but no question shall be decided on an evenly-devided vote.

SECTION 12. Procedures.

(1) The Council shall keep and publish a journal of its proceedings.

(2) The Council shall make Rules of Procedure.



with any Central Government law, this Constitution or any ordinance of the Local Government, for the regulation and orderly conduct of its proceeding and the despatch of its official business.

(3) Subject to any Central Government law, this Constitution or any ordinance of the Local Government, the Council may regulate its own proceedings.

SECTION 13. Voting.

(1) Each member of the Council, as provided for under Section 4(1) and (2), shall each exercise one and only one deliberative vote on any single issue.

(2) The Mayor shall not have a vote on any matter before the Council, provided, however, that in the event of an evenly-divided vote, he shall exercise a casting vote.

SECTION 14. Committees.

The Council may establish standing and other committees to deal with any matter that can, in its opinion, more properly or more conveniently be dealt with by a committee.

PART IV. - THE HEAD OF THE LOCAL GOVERNMENT

SECTION 15. Office of the Head of the Local Government.

An office of the Head of the Local Government, who shall be known as the Mayor, is hereby established. The Mayor shall be an ex-officio member of the Council.

SECTION 16. Qualifications.

(1) The Mayor must be of good standing, have nor prior criminal record, and be at least 25 years old.

(2) The Mayor must have land rights on Majuro Atoll.

SECTION 17. Elections.

- (1) The Mayor shall be elected by the registered voters of Majuro Atoll.
- (2) The candidate who receives the greatest number of votes, provided that the votes received by such candidate constitutes a majority, shall be the Mayor. In the event such majority is not achieved, a run-off election shall be held between the two candidates who received the highest number of votes within 30 days.

SECTION 18. Vacation of Office.

- (1) The office of the Mayor becomes vacant if, and only if: -
  - (a) his seat becomes vacant under Section 8; or
  - (b) he ceases to possess the qualifications for election that he was required, under Section 16, to have at the time of his election or appointment; or
  - (c) he dies; or
  - (d) he resigns his seat by notice in writing to the Clerk of the Local Government; or
  - (e) his seat becomes vacant under Subsection (2).
- (2) The Council may, by the affirmative vote of 3/4 of its total membership, dismiss the Mayor from office for cause.

SECTION 19. Acting Head of the Local Government.

- (1) In the event of the absence or incapacity of the Mayor, his functions shall be performed by a member of the Executive Committee appointed by him or in default, the Executive Committee.
- (2) For the purpose of performing any function of the Mayor that a member of the Executive Committee is authorized to perform by virtue of Subsection (1), the member shall be deemed to be the Mayor, and any reference in any law or in the Rules of Procedures of the Council to the Mayor shall be read as including a reference to that member, accordingly.

SECTION 20. Function of the Mayor.

The Mayor has such powers, functions, duties and responsibilities as are conferred or imposed on him by a Central Government law, this Constitution, an ordinance of the local government or the Rules of Procedures of the Council.

SECTION 21. Salary and Compensation.

The salary and compensation for the Mayor, Executive Committee members, and Councilmen shall be set by Ordinance.

PART V. - THE EXECUTIVE

SECTION 22. Establishment of the Executive.

(1) An executive branch of the Local Government, to be known as the Executive Committee, is hereby established, which shall, in accordance with Section 14(1) of the Local Government Act 1980, be the principal executive arm of the Local Government.

(2) The Executive Committee is collectively responsible for the local government area, for the performance of the functions of the Executive Committee by members under a Central Government law, this Constitution or an enforcement of any ordinance of the Local Government.

SECTION 23. Composition.

(1) The Executive Committee shall consist of -

(a) the Mayor; and

(b) three not to exceed five members of the Council appointed by the Mayor and confirmed by the Council, signified by resolution; and

(c) one non-voting member from the Majuro Nitijela delegation nominated by the Majuro delegation to the Nitijela.

(2) The quorum for a meeting of the Executive Committee is four.

SECTION 24. Vacation of Office.

(1) The office of the Mayor becomes vacant in accordance with Section

- (2) The office of an Executive Member becomes vacant if, and only if -
- (a) his seat in the Council becomes vacant under Section 9; or
  - (b) the office of the Mayor becomes vacant under Section 18(2); or
  - (c) he is dismissed from office under Subsection (3); or
  - (d) he resigns his office by notice in writing to the Mayor.

(3) The Mayor may at any time, with cause, dismiss an Executive member from office:

(4) If the office of the Mayor becomes vacant otherwise than by reason of his dismissal under Section 18(2), the Executive Members shall continue to perform their functions (including the function of appointing under Section 19 a member of the Executive Committee to perform the function of the Mayor).

(5) If the office of an Executive Member becomes vacant by reason of the termination of the term of his office as a member of the Council under Section 8, he may continue to perform the functions of an Executive member until a new Mayor is elected, but unless he becomes again a member of the Council, he shall not vote or take part in its deliberations.

#### SECTION 25. Acting Appointment.

In the event of the absence or incapacity of an Executive Member, the Mayor may: -

- (a) appoint another Executive Member to perform some or all of his functions; or
- (b) appoint a member of the Council to act as an Executive Member, or both, during the absence or incapacity.

#### SECTION 26. Allocation of Responsibilities to Executive Members.

(1) Subject to any Central Government law, this Constitution and any ordinance of the Local Government, the Mayor may from time to time allocate to an Executive Member the responsibility for matters within the competence of the Executive Committee (including responsibility for the admini-

(2) The Mayor is responsible for any matter of responsibility for which is not for the time being allocated under Subsection (1).

(3) Nothing in this section affects the collective responsibility of the Executive Committee under Section 22(2).

SECTION 27. Functions of the Executive Committee.

The Executive Committee has such powers, functions duties and responsibilities as are conferred or imposed on it by this Constitution, a legislation of the Local Government or a Central Government law.

SECTION 28. Advice to the Council, etc., of certain matters

(1) The Mayor shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matter of -

- (a) the appointment, dismissal or resignation of a member of the Executive Committee; or
- (b) the appointment, or the termination of the appointment, of a member of the Council to act as an Executive Member under Section 25(b); or
- (c) the appointment by him of a member of the Executive Committee to perform the functions of the Mayor under Section 19(1); or
- (d) the allocation under Section 26(1) of responsibilities to Executive Members and the appointment under Section 25(a) of an Executive Member to perform functions of another Executive Member.

(2) The Executive Committee shall promptly notify the Council and the Minister of the Government of the Marshall Islands responsible for local government matters of the appointment by it of a member of the Executive Committee to perform the functions of the Mayor under Section 19(1).

(3) The Clerk of the local government shall promptly notify the Council and the Minister of the Marshall Islands Government responsible for local government matters of the

PART VI. - FINANCE

SECTION 29. Control of Revenue and Expenditures.

(1) No taxes shall be imposed and no revenues shall be raised, and no money of the government shall be expended, unless authorized by law.

(2) All money received by the government shall be deposited or paid into a general fund or account established in accordance with such Ordinance.

SECTION 30. Treasury.

There is hereby established a Treasury office of the Majuro Atoll Local Government, whereby records of revenues realized and collected pursuant to legislation and such other laws shall be accounted for appropriation purposes.

SECTION 31. Appropriations.

(1) The Majuro Atoll Local Government shall not expend any money, except by appropriations authorized pursuant to an Appropriation Ordinance and only upon passage of such a ordinance by 3/4 votes of the members of the Majuro Council in or during a formal meeting.

SECTION 32. Anticipated Indebtedness.

(1) There shall be no loan(s) raised or charged against the future revenues of the Majuro Atoll Local Government without an ordinance enacted by the Government specifying the principle sum to be borrowed, the interest to be paid, the term and conditions of repayments and the purpose of the loan(s).

(2) Only fifteen percent (15%) of the total local revenues collected in the previous financial year shall be available for the raising of loans if such has been authorized as prescribed by Subsection (1).

SECTION 33. Fiscal Accountability.

(1) On or before December 31st of each financial year, the Treasurer shall submit to the Cabinet and the Auditor-General, an accounting of all financial transactions that occurred during the prior financial year.

(2) The Auditor-General or anyone appointed or designated by him to act on his behalf shall audit the accounts and

Majuro Atoll Local Government. A copy of the audit report shall be made available to the Council.

(3) The general public shall have the right to examine any and all audit reports.

#### PART VII. - MEMBERS AND STAFF

##### SECTION 34. Employment of Staff.

(1) The Mayor, on behalf of the local government, and upon approval of the Council, may appoint a Clerk and Treasurer of the Local Government: -

(a) the Clerk shall be responsible directly to the Mayor and the Executive Committee and shall announce the time and place of council meetings, keep a record or journal of the council meetings, arrange for publication of notices, ordinances and resolutions, keep the Local Government Ordinances on file, open to the public, and other such duties that may be assigned by the Mayor or Executive Committee; and

(b) the Treasurer shall be responsible directly to the Mayor and the Executive Committee, and shall head the Treasury Office and be responsible for the performance of all duties imposed upon the office as prescribed in Section 29 of this Constitution and/or any other duties which the mayor or the Council may bestow upon him.

(2) The Mayor may appoint such other officers and employees as he considers necessary for the effective operation of the Local Government insofar as funding has been provided for such officers and/or employees in the Appropriation Ordinance.

(3) The terms and conditions of appointment and employment of the Clerk and the Treasurer shall be determined by or under Ordinance of the Local Government

(4) The terms and conditions of appointment and employment of officers and employees of the Local Government, other than the Clerk and the Treasurer, shall be determined by regulations issued by the Executive Committee.

(5) The Local Government is the employer of the Clerk and the Treasurer, and other officers and employees.

SECTION 35. Salaries of Members and Staff.

(1) The salaries and compensations of members and staff of the Majuro Atoll Local Government shall be made by an ordinance; and shall be included in the Appropriation Ordinance introduced before the Council.

PART VIII. - AMENDMENT OF THE CONSTITUTION

SECTION 36. Method of amendment.

(1) This Constitution may be amended by Ordinance of the local government approved by a two-thirds majority of the total membership of the Council and approved by the voters of Majuro Atoll in a referendum.

(2) If the Minister of the Government of the Marshall Islands responsible for local government matters recommends to the local government amendments to this Constitution, the Council shall consider those amendments, but need not adopt them, without modification.

PART IX. - MISCELLANEOUS

SECTION 37. Central Government Recommendations as to Ordinance, etc.

If the Minister of the Marshall Islands responsible for local government matters recommends to the local government that an Ordinance be made, amended or repealed, the Mayor shall cause the recommendation to be presented to the Council together with the comments of the Executive Committee on it.

SECTION 38. Advice as to Validity of Ordinance, etc.

(1) The Mayor may, and shall if so directed by the Council request the Minister of the Government of the Marshall Islands responsible for local



government matters for a report by the Attorney-General on the validity of an Ordinance or proposed Ordinance of the local government, or of any action by the local government.

(2) If the Minister furnishes a report as requested in accordance with Subsection (1), the Mayor shall present the report to the Council.

SECTION 39. Vacancies.

The validity of any thing done by the Council or the Executive Committee or, subject to any Ordinance of the local government and to the Rules of Procedure of the Council, of a committee of the Council is not affected by any vacancy in its membership, provided that the number necessary to form a quorum for a meeting remains.

SECTION 40. Service.

Where any document or thing is to be given to, served on or communicated to a local government at a time when -

- (a) there is a vacancy in the office of the Mayor or the Mayor is absent or incapacitated; and
- (b) there is no person appointed under Section 19, it is sufficient if it is addressed to the Clerk of the local

government.

SECTION 41: Effective Date.

This Constitution shall be effective on a date fixed by the Minister of the Government of the Marshall Islands responsible for local government matters.

ROY T. CHIKAMOTO, ESQ.  
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Attorney for Plaintiff

IN THE HIGH COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2015-233
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
ROBSON YASIWO ALMEN, ET AL.,	)	
	)	
Defendants.	)	
<hr/>		
election 2015 m order decertifying election		

CERTIFICATE OF SERVICE

Plaintiff's Motion For Orders Decertifying the Final Official Results of the Mayoral Election for Majuro Atoll Local Government held on 16 NOVEMBER 2015; For Ladie M. Jack to Vacate His Position As Mayor for Majuro Atoll Local Government And For Mudge Samuel To Resume His Office As Mayor As A Holdover Officer Pending Final Resolution of this Civil Action; An Order Directed to Ladie M. Jack to Refund his Salary Paid By Majuro Atoll Local Government From the Time He Was Sworn In As Mayor to the Present; And An Order For Such Other Relief As May Be Just and Equitable Under the Circumstances; Memorandum In Support of Motion; Exhibits "A" and "B"; were duly served on the following by way of electronic means on 16 June 2016:

SAMUEL V. ALMEN, ET AL., RMI HIGH COURT, CA NO. 2015-233; CERTIFICATE OF SERVICE

---

FALAI TAAFAKI  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 890  
Majuro, Marshall Islands 96960  
Email: [ftaafaki@gmail.com](mailto:ftaafaki@gmail.com)

Attorney for Defendants

DATED: Honolulu, Hawai'i, 16 June 2016.

  
\_\_\_\_\_  
ROY T. CHIKAMOTO

Attorney for Plaintiff MUDGE SAMUEL

EXHIBIT "B"

FILED

IN THE HIGH COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

FEB 13 2017

*Eschue*  
ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,  
  
                  plaintiff,  
  
                  v.  
  
ROBSON YASIWO ALMEN, in his  
capacity as Chief Electoral Officer, Ministry  
of Internal Affairs, Government of the  
Republic of the Marshall Islands,  
  
                  defendant.

CIVIL ACTION NO. 2015-233

**ORDER REMANDING CASE FOR CEO  
DECISION**

TO: Roy T. Chikamoto, counsel for plaintiff  
Attorney-General Filimon Manoni and Assistant Attorney-General Falai Tafaaki, counsel  
for defendant

This matter is before the Court on the plaintiff's "Amended Complaint Appealing  
Decision of the Chief Electoral Officer Denying Petition for Recount."

On February 6, 2017, the Court issued an order to the effect that the Court has reviewed  
the parties' filings but has been unable to locate the Chief Election Officer's written rejection of  
plaintiff Samuel's December 14, 2015 petition for recount. Under Section 181 of the Elections  
and Referenda Act 1980, 2 MIRC § 181, "[i]f the [CEO] rejects a petition under Section 180 of  
this Chapter he shall advise the petitioner in writing accordingly, giving his reasons, and the  
petitioner may, within five (5) days after receipt of the advice, appeal to the High Court against  
the decision."

The Court has seen the CEO's December 10, 2015 response to the plaintiff's counsel's November 26, 2015 letter. However, the Court cannot locate in its file the CEO's written rejection of the plaintiff's December 14, 2015 petition. The record on appeal to the High Court must comprise plaintiff Samuel's petition for recount and the CEO's rejection.

In its February 13, 2017 Order, the Court stated that if by 4:30 p.m. on February 13, 2017, counsel do not provide the Court with a copy of the CEO's written rejection of plaintiff Samuel's December 14, 2015 petition for recount, the Court may remand this matter to the CEO for compliance with the Elections and Referenda Act.

Counsel for the defendant timely filed a response stating "the defendant is unable to produce a copy of the 'rejection' of the plaintiff's petition or recount of December 14, 2015." The Court did not receive a timely response from the plaintiff. The Court infers that the CEO never issued the written rejection. Accordingly, the Court remands this matter to the CEO. If the CEO rejects plaintiff Samuel's December 14, 2015, for recount, he must advise plaintiff Samuel in writing, giving his reasons, and plaintiff Samuel may, within five (5) days after receipt of the advice, appeal to the High Court against the decision.

Entered: February 13, 2017.


  
\_\_\_\_\_  
Carl B. Ingram  
Chief Justice

EXHIBIT "C"

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The Marshall Islands **JOURNAL** \$1 on Majuro

Friday, December 25, 2015 • Volume 46, Number 52

# Ladie plans new era for MALGov

GIFF JOHNSON

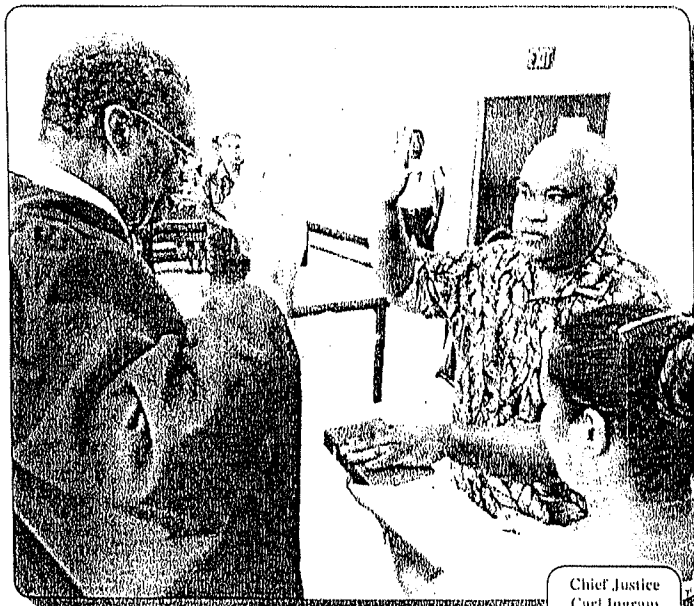
New Majuro Mayor Ladie Jack took up the reins of government at MALGov headquarters this week, following a swearing in with his executive council members by Chief Justice Carl Ingram at the High Court Tuesday.

The local government's constitution states that once the RMI Electoral Administration declares "final official" results from the election, newly elected mayor and council members can take office. Jack said a formal inauguration and swearing in ceremony for the entire council will be held late the first week of January following the seating of the new Nitijela January 4.

He has named the following council members to his executive council: Rita Councilman Arlington Tibon, Finance; Aenkan Councilwoman Betty Tibon-Imaikta, Health, Education and Social Affairs; Waja Councilman Randy Jack, Parks and Recreation; Rairok Councilman Jasper Lanki, Sports; and Delap Councilman Austen Jurelang, Justice.

"My main goal is to get an accountability system in place so that we can perform as a government," Jack said Tuesday.

In response to his request to begin audit preparations at MALGov, the RMI Auditor General Junior Patrick dispatched a team



from his office to check MALGov records last week while the previous administration was still in office. After a brief inspection, the audit team informed MALGov officials they would return

Continued page 2

**Mudge fires back: Page 2**

Chief Justice Carl Ingram swears in Mayor Ladie Jack as assistant clerk Tanyu Lomue holds the Bible. Photo: Hilary Huslin.

Shut the doors, close the curtains ... deals are going down

GIFF JOHNSON

As the Marshall Islands heads into the heat of the holiday season, with exuberant celebrations of dance and music ongoing from last week through the first week of January at island churches, another type of frenzy is building in force with a January 4 deadline: Negotiations to form a new government for the Marshall Islands.

While jeptas are stomping their "biit" (dance) to the tune of ear-shattering keyboard music, senators-elect are choosing a lower-profile approach as they group and regroup at Sandy's, DAR, Marshall Islands Resort, and other venues during this holiday period in search of a way to cobble together at least 17 senators needed to elect a new President and forge a national government.

The 2016 election results produced three groupings with similar numbers: the current government party, the KIA opposition group, and the newcomers, known as the "Solids" after their original announcement of a "Solid Six," which soon increased to eight.

Continued page 2

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Days Julia M. Alfred was placed on administrative leave by PSC without due process as described by PSC regulations and the RMI Administrative Procedures Act.

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**Lucky draws for Neal, Aik, Carleen**

One mayor and two council people are the lucky winners of a draw, ending tied election contests.

The Mejit mayor's race, despite one candidate violating the law of running without being registered to vote at Mejit, was decided by drawing a name out of a hat, while Arno and Rongelap council races were similarly decided.

In the case of the Mejit mayor's race

that was tied between Robert Rilang and Neal Keju, Keju was registered to vote at Kili, a violation of both the RMI election law and Mejit local government constitution. This was pointed out in a complaint by Rilang filed with Chief Electoral Officer Robson Almen after the election results were tabulated.

Continued page 3

**249**

Number of days passed with no response from the Public Service Commission to petitions for reinstatement of Julia Alfred submitted by Ministry of Health staff and Majuro traditional leaders and residents.

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# Mudge: 'My actions legal'



Former Majuro Mayor Mudge Samuel (pictured) disputes new Mayor Ladie Jack's contention that what he and the previous MALGov Council did with vehicles and assets of the local government was illegal. "Everything in my time is legal," he said Wednesday when asked about sale or donation of vehicles in the past few weeks. "All the things we sold were approved by executive minute."

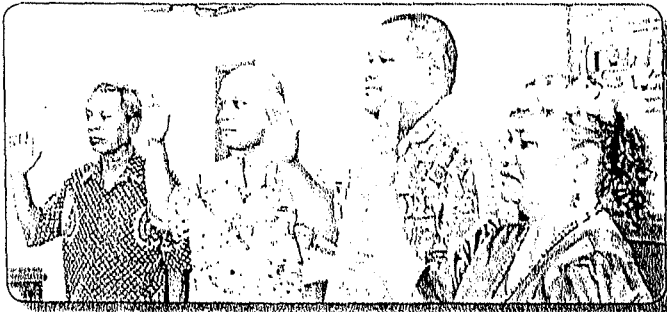
He said he gave some vehicles as a donation to help Laura farmers. "Donations were approved by the council as part of the

budget," he said. "This is legal (the donations) because it's under my budget. It's up to me to give these. Everything in my time was under my authority."

As to sale of MALGov vehicles at discounted prices, Samuel said the price approved by executive council decision "was the right price (because) the vehicles were not considered new."

Samuel, who lost a hard-fought election to Jack on November 16, said bluntly about Jack's statements: "What he thinks is not what I think."

New MALGov Executive members from left: Jasper Lanki, Arlington Tibon, Randy Jack, and Betty Tibon-Imaika. Photo: Hillary Hosin



# Ladie: 'I'm captain of a ship that has no GPS'

From page 1  
the following day for more detailed work. When they returned the next day, the main computer servers, other computers and documents were missing, Jack said.

"I'm captain of a ship with no compass or GPS," Jack said. "My campaign platform was for MALGov to be transparent and accountable to the people." He said one of his top priorities is to get MALGov audited and then continue annual audits as is the practice for government offices. "Unfortunately, this was not done the last

four years," he said. "We want an audit in place and are working closely with the Auditor General."

Jack also said he was meeting with the Attorney General's office Wednesday this week to discuss legal recourse to gain return of MALGov assets, including numerous recent vintage vehicles that he says the former local government executive sold to themselves and MALGov officials for 25 percent of original cost paid for by government money. "I am meeting with the Attorney General to discuss recovering local government assets,"

he said. "They were taken illegally."

The main thing, said Jack, is to get the legal issues sorted out and get an accountability system established "so that we can move forward."

In addition to the newly sworn in executive council members, the Majuro council includes the following line up as confirmed by the Electoral Administration: Jonban Kabua (Iolap), Jim David (Jeirok), Jimmy Ceasar (Lobat), Lina Bohanny Amsa (Lomar), Bouz Lamdrik (Ajetlake), Stacy Samuel (Delap), Bilimon Sonny Milne (Uluga), Charles Kelen (Rita).



# KEA, Solids form powerful new coalition

From page 1

then 10 and reportedly now 12. With each group controlling roughly a third of the 33-seat chamber, a coalition is required to make a new government.

This week, both KEA and the Solids announced formation of a coalition government that they say has at least 20 senators. "We established ground rules and guidelines for election of candidates," said Kwajalein Senator-elect Alvin Jacklick. He said this agreement is paving the way for cooperation between the two groups. "We've agreed to establish a Coalition Government."

Both Jacklick (above left) and Ailinglaplap Senator-elect Alfred Alfred, Jr. (above right), a member of the "Solids," confirmed that a meeting was scheduled for late Wednesday among the new coalition for the purpose of conducting a "primary election" for president.

Alfred said the new coalition has agreed on a five-five split of Cabinet portfolios between the two groups, with the specific ministerial assignments to be left to the discretion of a new President. Under the coalition agreement reached earlier this week, the Speaker would be from the KEA party and the Vice Speaker from the Solids.

Both groups were meeting Wednesday in advance of the coalition meeting later in the day to prepare for this "primary."

But don't count out the government party led by President Chris Loenk. One longtime election observer described the current political environment as "very fluid" with discussions and gambits among the different groups ongoing in the build up to the Nitijela's opening day, January 4. "There are 10 more days until January 4," said the election observer. "Nothing is done until it's done (by vote on January 4)."

The announcement by both KEA and the Solids of the new coalition government plan, with an agreed-to split of the top positions in government, shows a level of cooperation that was not evident as recently as a week ago. Still, given the lack of an absolute majority by any single group heading into the new parliament in January, the current government party will be looking for ways to gain traction with a handful of KEA senators or newly elected senators to produce a 17-vote majority.

With incumbent Senator-elect David Kabua in the last few days talked with various players showing his interest in vying for the presidency and Aur incumbent Senator-elect Dr. Hilda Heine is also said to be under consideration, while President Loenk is hopeful for a second term. In the background is savvy power broker Kwajalein Iroij and Senator Mike Kabua. The current government party has its share of political "pros" who are working overtime to generate a majority despite the apparent odds against it.

Among names the Journal has heard in discussions over recent past weeks for the top post from the KEA/Solids side include Jacklick, Tony Muller and David Kramer of Majuro, former President Likotwa Tunening (Wojje), Casten Nemra (Jalait), and, although he is apparently not formally affiliated with either coalition partner, former President Kessai Note of Jabot.

Meantime, Jacklick described this week Wednesday's coalition primary vote for president as "the moment of truth."

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	Vancouver WA	12/25	12/25	12/25	12/25	12/25	12/25
	Los Angeles CA	12/25	12/25	12/25	12/25	12/25	12/25
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\*Cargo to LAUKWA, TORANA & MAJURO T/S over Suva

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KIRIBATI: Tarawa\*

MARSHALL ISLANDS: Majuro\*

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Attorney for Plaintiff

**IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS**

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF DELIVERY FOR
	)	SERVICE
ROBSON YASIWO ALMEN, in his	)	
capacity as Chief Electoral Officer;	)	
MINISTRY OF INTERNAL AFFAIRS;	)	
GOVERNMENT OF THE REPUBLIC	)	
OF THE MARSHALL ISLANDS; and	)	
LADIE M. JACK,	)	
	)	
Defendants.	)	

election 2015 msj on complaint decert election

**CERTIFICATE OF DELIVERY FOR SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing Motion For Summary Judgment And For Order To Vacate The Office of Mayor; Memorandum In Support of Motion For Summary Judgment And for Order To Vacate The Office of Mayor; Exhibits "A" – "C"; Certificate of Delivery for Service, were delivered to the Court Bailiff for service upon the following:

FILIMON MANONI, ESQ.  
RMI Attorney General's Office  
Majuro, Marshall Islands 96960  
Attorney for Defendant ROBSON YOSIWO  
ALMEN and RMI Government

LADIE M. JACK  
Majuro, Marshall Islands 96960  
*Pro Se*

SAMUEL V. ALMEN, ET AL., RMI HIGH COURT CA NO. 2016-121; CERTIFICATE OF  
DELIVERY FOR SERVICE

---

DATED: Majuro, Marshall Islands, 17 February 2017.



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ROY T. CHIKMOTO

Attorney for Plaintiff

# APPENDIX 2

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ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

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IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

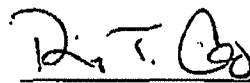
MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR RECONSIDERATION;
	)	MEMORANDUM IN SUPPORT OF
ROBSON YASIWO ALMEN, et al.,	)	MOTION FOR RECONSIDERATION;
	)	CERTIFICATE OF SERVICE
Defendants.	)	

\_\_\_\_\_ )  
samuel election 2015 holdover case m recon

MOTION FOR RECONSIDERATION

COMES NOW Plaintiff, by and through his undersigned counsel, and moves this Honorable Court for reconsideration of its Order Denying Plaintiff's Motion For Summary Judgment, and Order Granting Defendant Alemn's Motion For Dismissal, filed 14 December 2017. This Motion is made pursuant to MIRCPC Rules and 7, 59 and 60, and is based upon the attached Memorandum In Support of Motion For Reconsideration, and such oral argument as may be heard at the hearing of this Motion, if any.

DATED: Honolulu, Hawai'i, 17 December 2017.

  
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Attorney for Plaintiff

IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR RECONSIDERATION;
	)	MEMORANDUM IN SUPPORT OF
ROBSON YASIWO ALMEN, et al.,	)	MOTION FOR RECONSIDERATION;
	)	CERTIFICATE OF SERVICE
Defendants.	)	
	)	

\_\_\_\_\_ )  
samuel election 2015 holdover case m recon

MOTION FOR RECONSIDERATION

COMES NOW Plaintiff, by and through his undersigned counsel, and moves this Honorable Court for reconsideration of its Order Denying Plaintiff's Motion For Summary Judgment, and Order Granting Defendant Almen's Motion For Dismissal, filed 14 December 2017. This Motion is made pursuant to MIRCPC Rules 7, 59 and 60, and is based upon the attached Memorandum In Support of Motion For Reconsideration, and such oral argument as may be heard at the hearing of this Motion, if any.

DATED: Honolulu, Hawai'i, 17 December 2017.

  
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Attorney for Plaintiff

IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR RECONSIDERATION
ROBSON YASIWO ALMEN, et al.,	)	
	)	
Defendants.	)	

\_\_\_\_\_ )  
samuel election 2015 holdover reply jack

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

INTRODUCTION

With all due respect to this Honorable Court, the Orders Denying Plaintiff's Motion for Summary Judgment, and Granting Defendant Almen's Motion For Dismissal, filed herein on 14 December 2017, misapply and misstate the rules of law on this matter, and fail to consider the nature of this case. While there is the "preeminent" rule that when interpreting a statute or constitutional provision which is unambiguous, the rule that a provision's plain and literal meaning is the rule that must be applied to "interpreting" that provision is required to be used, is only one of several rules of construction, which should be applied together.

While it is true that statutory and constitutional analysis begins with the so called plain and literal meaning rule of construction, that rule is supplemented by limitations; the most

pertinent one being that if the result is absurd in applying that rule of construction, the plain and literal meaning rule must be tempered. And even if one were to apply the plain and literal meaning rule of construction in this matter, the only logical meaning of the use of the term “certified” in Section 8(1) of the MALGOV Constitution encompasses only legally valid certifications, i.e., declarations of final results after consideration of petitions for recounts and challenges to an election.

The case should also not have been dismissed as there were constitutional questions involved in the case that still required consideration that affected the election, principally an admitted meeting between Defendant ALMEN and Defendant JACK while the election was still in progress – a clear violation of the RMI Constitutional right to an ethical government and the Government Ethics Act 1993. As was stated at the hearing on Plaintiff’s motion for summary judgment, this case is different from the other filed case which will be referred to as the recount case, in that this case involves a challenge to the election itself and its attendant decertification, while the recount case deals with challenges to violations of the Elections and Referenda Act 1980.

### ARGUMENT

MIRCP Rule 59(e) states:

A motion to alter or amend a judgment or a decision must be filed no later than 14 days after the filing of the judgment or the decision. The opposing party has 14 days after being served to file a response.

MIRCP Rule 60(b) states in pertinent part as follows:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:



(6) any other reason that justifies relief.

The Court's Orders having been filed on 14 December 2017, this motion is timely for reconsideration.

With all due respect to the Court's simplistic analysis of the issues involved in these proceedings and its conclusion that under the plain and literal meaning rule in statutory construction, it is submitted that the Court has overlooked the universally accepted limitation on the plain and literal meaning rule in statutory construction and interpretation – that if the literal meaning of the word or phrase under consideration leads to an absurd result, a court should interpret the word or phrase so that its required interpretation is consistent with the intent and context in which the word or phrase is used. See generally, *2A Singer, Statutes and Statutory Construction, 7<sup>th</sup> Ed., §46:7 (2014)*.<sup>1</sup> Webster's unabridged Third New International Dictionary defines the term "certified" as follows:

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<sup>1</sup> Thus Professor Singer states:

Judicial opinions are rife with many expressions favoring a literal interpretation. However, case law is equally clear that if the literal text of an act is inconsistent with legislative meaning or intent, or leads to an absurd result, a statute is construed to agree with the legislative intention. The Supreme Court explained that courts may look beyond an act's literal text where:

[A] literal interpretation would lead to an incongruous result. For example, if a literal reading of the statute would impute to Congress an irrational purpose, or would thwart the obvious purposes of the statute, or would lead to a result at variance with the policy of the legislation as a whole, then literal interpretation will be eschewed in favor of resort to the legislative history to ascertain the intent of Congress. [Citing *U.S. v. Oregon, 366 U.S. 643 (1961)*.]

[E]ndorsed authoritatively: guaranteed or attested as to quality, qualifications, fitness, or validity.

Black's Law Dictionary 5<sup>th</sup> Edition, defines certificate of election as follows:

Issued by governor, board of elections, or other competent authority that the person or persons named have been duly elected.

In analyzing the issues in this case, the Court has focused on the plain and literal meaning rule to the exclusion of the equally applicable limitation to that rule – that a literal interpretation should be avoided if the result is an absurd one. With all due respect to the Court's analysis, the Plaintiff submits that its interpretation of the prevailing law is in error for not applying the exception to the general rule of plain and literal meaning – that if the application of that rule would lead to an absurd result, the Court should inquire further into and interpret the provision under consideration. If this Court's order is left to stand, the Court's interpretation would lead to an incongruous result; a result that has been criticized by the U.S. Supreme Court as stated in footnote 1 hereinabove.

In fact, a reasonable reading of the word “certified” as used in Section 8(1) of the MALGOV Constitution, even under the plain and literal meaning rule, would require the application of another rule of statutory construction – that to determine the intent of a statute, the whole statute must be read together. Therefore, the word “certified” modifies the word “election” to which the certification relates.<sup>2</sup> And as stated in his Motion For Summary

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<sup>2</sup> Another statutory interpretation rule that requires the provision under consideration to be viewed as a whole, rather than piecemeal – “[i]f the statutory language is unambiguous and **the statutory scheme is coherent and consistent**, judicial inquiry must cease.” *Miranda v. Anchondo*, 684 F.3d 844, 849 (9 Cir. 2012) cited by *Lekka v. Kabua*, 3 MLR 167, 171 (2013). See also, 2A Singer, *Statutes ad Statutory Construction*, supra, at p. 204:

A statute is passed as a whole and not in parts or sections and is animated by one

Judgment, Plaintiff had stated that the Defendant ALMEN could not legally issue his declaration of the final results of the election – in essence certifying the validity of the election results – if there was a timely filed petition for recount as has occurred in this election (which recount petition is presently on appeal in RMI High Court CA No. 2017-037), as the results could not be final under the Elections and Referenda Act 1980 (2 MIRC, Chapter 1, §185) because of the subsequent filing of the petition for recount within the time period allowed for petitioning for recount following the announcement of the preliminary results. As was stated in Plaintiff’s Motion For Summary Judgment, under *Roudebush v. Hartke*, 405 U.S. 15,25 (1972), if a challenge to an election is made and a recount petitioned for, since the recount process is an integral part of the election process, the election is treated as still ongoing until the recount and challenge is finally determined.

As for the judicial authority relied upon by this Court, in citing the RMI Supreme Court’s decision in *In the Matter of the Vacancy of the Mayoral Seat*, 3 MILR 114 (2009), this Court pointed out the Missouri case of *State ex rel. Randolph County v. Walton*, 206 S.W.2d 979, 982 (Mo. 1947), upon which the RMI Supreme Court relied upon to support its ruling that “[t]he duty and function of a court is to construe, not to rewrite a constitution.” *In the Matter of the Vacancy, supra*, at p. 120. Research of Missouri case law discloses that, the Missouri Supreme Court has embraced the rule limiting the plain and literal meaning rule stating that if the literal meaning would lead to an absurd result, interpretation must be employed to determine the intent of the word or phrase under consideration. See, *Akins v. Director of Revenue*, 303 S.W.3d 563,

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general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section to produce a harmonious whole.

565 (Mo. 2010). Likewise, the Court's citation of *Lekka v. Kabua*, 3 MILR 167, 171 (2013), also relies upon the United States Ninth Circuit Court of Appeals which has embraced the limiting rule on the plain and literal meaning rule of statutory construction. See, *Ink v. Commissioner of Internal Revenue*, 912 F.2d 325 (9 Cir. 1990), wherein the Ninth Circuit stated:

A court may look beyond a statute's clear meaning in exceptional circumstances. At least as long ago as *Crooks v. Harrelson*, 282 U.S. 55, 60, 51 S.Ct. 49 50, 75 L.Ed. 156 (1930), the Supreme Court noted that a court may depart from a statute's literal meaning in cases of gross absurdity and contrary Congressional intent. *Ink, supra*, at p. 326.

Thus, it is clear that the RMI Supreme Court, while espousing the cardinal rule that all interpretation of statutes or constitutional provisions start first with a determination of whether the statute or constitutional provision under consideration is clear and unambiguous, and if so, inquiry must cease; also has relied upon courts that embrace the limiting rule on literal construction, that if the result of adopting the plain meaning or literal language of a statute or constitutional provision would result in absurd results, that the Court is free to "interpret" that provision to avoid the absurd result.

As stated herein above, because the word "certified" relates to and qualifies the word "election" in Section 8(1) of the MALGOV Constitution, to "interpret" the term "certified" piecemeal and standing alone, as including illegal, premature, or unauthorized declarations under the Elections and Referenda Act 1980 (hereinafter referred to as the ERA), i.e., any "certification", itself violates the plain meaning and literal meaning rule, the acceptance of which would result in the absurd situation suggested by this Court. In order to harmonize the word "certified" with the rest of Section 8(1) of the MALGOV Constitution, the only logical analysis is that the declaration of final results in an election must have been based upon the proper

applicable election laws and regulations which in turn would trigger the issuance of a valid declaration or certification of the final results of the election in question upon which the term of office for Mayor is based. And since there was a timely petition filed with the Defendant ALMEN, and now that a timely appeal of that decision is making its way through the RMI High Court in CA 2017-037, it is only logical and reasonable that the term “certified” as used in Section 8(1) of the MALGOV Constitution refers to a valid and legal certification or declaration of final results by the Defendant ALMEN, which cannot and could not have been issued because of the timely filing of the petition for recount by Plaintiff. Elections and Referenda Act 1980 (2 MIRC, Chapter 1, §185).

Finally, there are other constitutional issues which were brought up to the Court’s attention, that need to be determined and should not have been dismissed as well, principally whether the admitted clandestine meeting between Defendant LADIE JACK and Defendant ALMEN during the election constitutes inappropriate conduct prohibited by the RMI Constitution, Article II, Section 16, and the Ethics in Government Act 1993 (3 MIRC, Chapter 17) so as to call into question the entire election for Mayor for MALGOV, and supporting the decertification of the last election for Mayor for MALGOV, and call for a special election.

### CONCLUSION

Based upon the foregoing argument and authorities, Plaintiff submits that the Court has erred in solely relying upon the plain and literal meaning rule, which the Court has read in a vacuum, without considering the exception to that rule and an analysis of what the plain and literal meaning of the term “certified” means *vis-a-vis* the use of the word election in the same sentence. The limitation imposed by other Courts and (by relying upon those jurisdictions

embracing the limitation on the plain and literal meaning rule) impliedly endorsed by the RMI Supreme Court, is simply that if application of the plain and literal meaning rule will lead to an absurd result, that a Court is allowed to inquire into and interpret the term under consideration, despite its apparent unambiguous meaning. And in this case, if allowed to stand, the Court's Order denying Plaintiff's Motion for Summary Judgment would in fact lead to an absurd result, particularly because the "premature" certification or declaration of final results for the election for Mayor for MALGOV, was illegal under the ERA.

Even under a plain meaning or literal meaning analysis, a premature certification would be illegal and could not possibly be justified as a statement that Defendant LADIE JACK was "duly elected" (the plain definition for an "election certification") when the election, by law, was still deemed to be in progress, and will continue to be in progress until final disposition of the claims herein and in the recount case.

For the foregoing reasons and based upon the foregoing authorities, Plaintiff requests that this Honorable Court reconsider its Order denying Plaintiff its Summary Judgment on the issue of whether Plaintiff should be installed as holdover Mayor, and to reconsider its ruling that the Court cannot "interpret" the word "certified" as that term is used in Section 8(1) of the MALGOV Constitution; and also reconsider its decision to dismiss this case. And that this Court determine the remaining issues of Plaintiff's constitutional claims requiring the invalidation of the general election of 2015, and the declaration of a special election for Mayor for MALGOV, while reinstalling Plaintiff as a holdover Mayor during the interim.

As to the issue of holdover status, Plaintiff directs the Court to Mechem, *The Law of Public Offices and Officers (1890)* as additional authority supporting Plaintiff's request for

SAMUEL V. ALMEN, ET AL., RMI HIGH COURT CA NO. 2016-121; MEMORANDUM IN  
SUPPORT OF MOTION FOR RECONSIDERATION

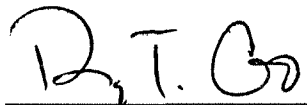
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issuance of a writ *quo warranto* to place Plaintiff back into office as Mayor pending the outcome of his various recount and election challenges. That old publication by Professor Floyd Mechem states the very old concept of a holdover officer. As stated by Professor Mechem:

It is usually provided by law that officers elected or appointed for a fixed term shall hold not only for that term but until their successors are elected and qualified. Where this provision is found, the office does not become vacant upon the expiration of the term if there is then no successor elected and qualified to assume it, but the present incumbent will hold until his successor is elected and qualified, even though it be beyond the term fixed by law. Mechem, *The Law of Public Offices and Officers, supra*, §397, at p. 257.

And as stated at the hearing on Plaintiff's Motion For Summary Judgment, the Trust Territory High Court, Appellate Division case involving Chuji Chutaro, established recognition of the *de facto/de jure* offices in the Republic. *Chutaro v. Election Commissioner of the Marshall Islands, et al.*, 8 TTR 209 (ADHC 1981). Plaintiff should be declared the *de jure* holdover Mayor for MALGOV and reinstated as Mayor for Majuro pending final determination of Plaintiff's recount case and decertification challenges.

DATED: Honolulu, Hawai'i, 17 December 2017.



---

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IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL, )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 ) CERTIFICATE OF SERVICE  
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 )  
 ) ROBSON YASIWO ALMEN, et al., )  
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 ) Defendants. )  
 )

\_\_\_\_\_ )  
samuel election 2015 holdover reply jack

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Plaintiffs Motion for Reconsideration, Memorandum In Support of Motion for Reconsideratoin, Certificate of Service, was electronically served upon the following at their email addresses of record:

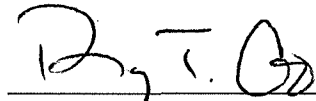
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DATED: Honolulu, Hawai'i, 18 December 2017.

  
\_\_\_\_\_  
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# APPENDIX 3

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IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	REPLY TO OPPOSITIONS TO
	)	PLAINTIFF'S MOTION FOR RECONSID-
ROBSON YASIWO ALMEN, et al.,	)	ERATION; CERTIFICATE OF SERVICE
	)	
Defendants.	)	

\_\_\_\_\_ )  
samuel election 2015 holdover m recon

REPLY TO OPPOSITIONS TO  
PLAINTIFF'S MOTION FOR RECONSIDERATION

Upon further reflection on his Memorandum In Support of Motion For Reconsideration, the arguments raised by the Defendants herein in opposition to Plaintiff's Motion for Reconsideration, and further research, Plaintiff submits the following in reply.

The primary argument of Defendants and the reasoning of this Court in its Order of 14 December 2017 is that the general rule of statutory construction limiting the authority of the Court to the plain or literal meaning of what the word "certified" means as that term is used in the MALGOV Constitution, applies in these proceedings. However, that interpretation totally disregards another generally accepted rule of statutory construction raised by Plaintiff which, as previously argued by Plaintiff in his Motion for Reconsideration, modifies the general rule: that

if the plain or literal meaning of a statute (or constitutional provision that is under consideration by the court, as in the instant case) results in an absurd outcome, the court must construe the language under consideration so as to result in a harmonious and reasonable reading of the statutory (constitutional) provision, thus negating the plain or literal meaning rule. Plaintiff directs the Court to the case of *Dribo v. Bondrik*, 3 MILR 127, 138 (2010), which stands for the precise proposition argued by Plaintiff herein. In that case, appellant Bondrik argued that the word “trial” as used in Rule 9 of the Traditional Rights Court Rules of Procedure, meant precisely what it said, thus requiring (it was argued by appellant Bondrik) the High Court to hold (in essence) a second trial, after proceedings before the Traditional Rights Court on customary issues where evidence and testimony was presented in assisting the Traditional Rights Court to come to their opinion as required by the RMI Constitution. In essence, the appellant Bondrik argued that his literal construction of the word “trial” as that term was used in Rule 9, required two trials -- a totally absurd result. In dispatching that argument, the RMI Supreme Court stated emphatically the correct rule of law applicable to cases where the application of the plain and literal meaning rule results in an inconsistent outcome:

It has long been recognized that the literal meaning of a statute will not be followed when it produces absurd results. See *e.e., Lamie v. United States Trustee*, 540 U.S. 526 534 (2004) (“It is well established that ‘when the statute’s language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms.’”) [Quoting *Hartford Underwriters In. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1,6 (2000)]; see also *Helvering v. Hammel*, 311 JU.S. 504, 510-11 (1941); *Sorrells v. United States*, 287 U.S. 435, 446 (1932). We are to avoid constructions that produce “odd” or “absurd results” or that is “inconsistent with common sense.” See *Public Citizen v. United States Dep’t of Justice*, 491 U.S. 440, 454 (1989); 2A N. Singer, *Sutherland Statutes and Statutory Construction*, sec. 45:12, at 92 (6<sup>th</sup> ed. 2000). *Dribo, supra*, at p. 138.

The *Dribo* case is apposite. If the Court's prior Order is allowed to stand, this Court by mechanically applying the plain and literal meaning rule to interpret Section 8(1) of the MALGOV Constitution and interpreting the word "certified" as that word is used therein as meaning exactly what it says, i.e., any certification (premature or illegal); the Court is stating that an illegal declaration of final results qualifies the illegally certified candidate to assume an office to which he was illegally certified to have won. The characterization of the Defendant ALMEN's actions in declaring Defendant JACK as the winner of the Mayoral election of 2015, despite the pending petition for recount that was timely filed by Plaintiff, as merely "premature" by the Court, was a mis-characterization of the legal effect of that wrongful declaration of final results by Defendant ALMEN. The declaration was simply illegal under RMI election law. 2 MIRC, Chapter 1, §185. With all due respect, Plaintiff submits that the Court's draconian interpretation is a misapplication of law in total disregard of the rule of statutory construction approved by the RMI Court in the *Dribo* case.

As argued by Plaintiff in his Motion, to adopt this Court's interpretation of Majuro Atoll Local Government's (MALGOV's) Constitutional provision relating to the term of office for the Mayor's position, would disregard the intent and common sense interpretation of Section 8(1) of the MALGOV Constitution. The word "certified" as that word is used in Section 8(1) of the MALGOV Constitution, modifies the word election. And it would be "odd" if the Defendant CEO's announcement of the final results of the election for Mayor for MALGOV under applicable RMI election law, even though illegal (or "premature" as the Court characterized that announcement), satisfies the intent of the word "certified" as used in Section 8(1) of the MALGOV Constitution. Plaintiff submits that the declaration of final results had to have been

legally declared before Defendant JACK could legally take office pursuant to MALGOV Constitution Section 8(1). And, there could not have been a legal declaration of final result for the election for Mayor for MALGOV, because upon the timely filing of the petition for recount, that election was and still is, not final. *See, Roudebush v. Hartke, 405 U.S. 15,25 (1972)*. How could one assume an elected office when the election could not yet be finally determined? How could one take office when the final result was declared illegally under applicable RMI election law? Yet this is the result if the Court's initial Order stands. This Court's Order of 141 December 2017, did not take into consideration the rule announced by the *Dribo* case, and it would be a gross misapplication of the generally accepted rule of law in this matter, and an absurd result prohibited under the reasoning of generally accepted law and *Dribo, supra*.

To summarize Plaintiff's arguments succinctly, under RMI election law, the final results of an election cannot be announced when a recount petition has been filed. 2 MIRC, Chapter 1, §185. The final results cannot, under RMI election law, be announced until after final disposition of the petition has been determined by the courts. *Id.* Under MALGOV Constitution Section 8(1), an officer cannot take office after an election has been held and the officer has been certified the winner. Any certification cannot be issued until a final result has been determined judicially in the case of a petition and election challenge. 2 MIRC, Chapter 1, §185. Under this statutory and constitutional background, common sense dictates that there cannot be any legally certified winner while the election is under protest or subject to recount.<sup>1</sup> And under *Dribo*,

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<sup>1</sup> The Court correctly points out that no certification was ever issued by the Defendant ALMEN, as Chief Electoral Officer (CEO), that Defendant JACK was the winner of the election of 2015. On this issue, the plain and literal meaning rule *would* apply to deny Defendant JACK the office he now currently occupies as there was no certification issued by the CEO as required by the MALGOV Constitution. Nevertheless, it is Plaintiff's position that no certification could

Plaintiff should have prevailed in his motion for partial summary judgment.

As argued by Plaintiff at the hearing of his Motion, this Court is charged with dispensing justice in matters brought before it. While hard questions must be answered in this case in order to determine the truth, no less than the integrity of the electoral process and democracy itself is at stake in these proceedings. And as forcefully argued by the Plaintiff at the hearing on his motion for partial summary judgment, the recent Kenya Supreme Court ruling regarding last year's presidential election is very appropriate to these proceedings in this regard. That Court recognized that the Court was the gatekeeper to determine whether democracy will flourish or flounder in that republic, and was applauded by the world for maintaining its strength and integrity in applying the rule of law in that country and enforcing it when it nullified the first election for president on the basis that the election board failed to follow the Kenya election law.

As with the Plaintiff in the Kenya case, the Plaintiff herein has sought all along in these proceedings to seek justice and fair treatment as dictated and guaranteed by the Constitutions of both the RMI and MALGOV. That is what the Plaintiff asks this Court to do in this case.

Plaintiff submits that this Honorable Court should reconsider its Order issued 14 December 2017, and hold that Plaintiff is a holdover Mayor until such time as the recount petition is finally determined, including any appeals thereof. If this Court should grant Plaintiff's motion for reconsideration, it is respectfully requested that this Honorable Court also maintain jurisdiction over the process of installing Plaintiff as holdover Mayor, and issue orders consistent with the installation process to assure a smooth transition.

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issue pending final disposition of the recount case.

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OPPOSITIONS TO PLAINTIFF'S MOTION FOR RECONSIDERATION

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Finally, there are the remaining constitutional issues that are inextricably interwoven with the holdover issue in these proceedings, primarily whether the Defendant ALMEN violated his duty to conduct the Mayoral election of 2015 in a fair and impartial manner, when he was seen meeting with Defendant JACK during the election process in violation of Article II, Section 16, and the Ethics in Government Act 1993 (3 MIRC, Chapter 17), the violation of which is further reason to decertify the election for Mayor of MALGOV entirely. Those issues still remain and stand on their own, and it is submitted that, with all due respect, it is inappropriate for the Court to dismiss all issues raised in these proceedings solely upon the Court's ruling on the holdover issue.

CONCLUSION

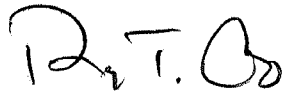
Based upon the arguments of Plaintiff in his original Motion For Summary Judgment, the arguments made at the hearing of that Motion, and the present Motion for Reconsideration, Plaintiff respectfully requests that this Honorable Court reconsider its Order filed 14 December 2017, denying Plaintiffs Motion For Summary Judgment and dismissing this matter, and declare that Plaintiff is under applicable RMI law, entitled to be installed as holdover Mayor for MALGOV pending the final outcome of the election of 2015, including any appeal thereof; and to allow the election challenge to continue as to the constitutional issues raised in these proceedings as to whether or not a special election for Mayor of Majuro should be declared.

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OPPOSITIONS TO PLAINTIFF'S MOTION FOR RECONSIDERATION

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Finally, Plaintiff requests that a ruling issue as soon as possible, as any further delay in these proceedings only exacerbates the denial of the constitutional property rights of Plaintiff to his position and benefits associated therewith that were denied to Plaintiff when the illegal declaration of final results were first issued back in December 2015 by the Defendant ALMEN. See generally, *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

DATED: Honolulu, Hawai'i, 05 January 2017.



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IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	CIVIL ACTION NO. 2016-121
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
ROBSON YASIWO ALMEN, et al.,	)	
	)	
Defendants.	)	
	)	

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samuel election 2015 holdover reply m recon

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Plaintiff's Reply to Oppositions To Plaintiff's Motion for Reconsideration, Certificate of Service, was electronically served upon the following at their email addresses of record:

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DATED: Honolulu, Hawai'i, 07 January 2017.

  
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**FILED**  
MAY 09 2018  
ASST. CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

THE SUPREME COURT

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,	)	H. CT. CIVIL ACTION NO. 2016-121
	)	S. CT. CIVIL APPEAL NO. 2018-001
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	
ROBSON YASIWO ALMEN, in his	)	
capacity as Chief Electoral Officer;	)	CERTIFICATE OF SERVICE
MINISTRY OF INTERNAL AFFAIRS;	)	
GOVERNMENT OF THE REPUBLIC	)	
OF THE MARSHALL ISLANDS; and	)	
LADIE M. JACK,	)	
	)	
Defendants-	)	
Appellees.	)	

samuel election 2015 appeal opening brief holdover

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Opening Brief; Certificate of Service, was electronically served upon the following at their email addresses of record:

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SAMUEL V. ALMEN, ET AL., SUPREME COURT, CIVIL APPEAL NO. 2018-001; CERTIFICATE OF SERVICE

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DATED: Honolulu, Hawai'i, 08 May 2018.

  
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