IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

MUDGE SAMUEL,

Petitioner/Appellant,

vs.

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

Respondents/Appellees.

Supreme Court No. 2018-001
(High Court Case No. 2016-121)

OPINION

BEFORE: CADRA, Chief Justice, SEABRIGHT,* and SEEBORG,** Associate Justices

SEABRIGHT, A.J., with whom CADRA, C.J. and SEEBORG, A.J. concur:

I. INTRODUCTION

In issuing this opinion, this Court will—nearly four years after the fact—at last resolve a dispute arising from the November 2015 election for mayor of Majuro Atoll. Defendant-Appellee Ladie Jack ("Jack") ran as a new candidate in the 2015 mayoral election against the incumbent, Plaintiff-Appellant Mudge Samuel ("Samuel"). A few weeks after the election was held, Defendant-Appellee Robson Yasiwo Almen, then Majuro's Chief Electoral Officer ("CEO"

* The Honorable J. Michael Seabright, Chief U.S. District Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, U.S. District Judge, Northern District of California, sitting by designation of the Cabinet.

or “Almen”), certified Jack as the victor. Jack has been serving as mayor of Majuro Atoll ever since.

In the court below, Samuel argued that because the CEO did not follow procedures mandated by the national Elections and Referenda Act of 1980 (“ERA”) in certifying the election results, Jack could not have legally assumed office under the Majuro Atoll Local Government Constitution (“Malgov Constitution”). Samuel further argued that, as incumbent, he is entitled to retain the office of mayor until the required procedure is carried out. The High Court disagreed with Samuel, interpreting the language of the Malgov Constitution to mean that any election certification issued by the CEO—regardless of whether that certification was valid under the ERA—unequivocally commences the mayoral term of the victor so certified. On this basis, the High Court denied Samuel’s Motion for Summary Judgment, granted the CEO’s Motion to Dismiss, and later denied Samuel’s Motion for Reconsideration. This appeal followed.

For the reasons set forth below, we disagree with the High Court’s interpretation of the Malgov Constitution. In order to be valid under the Malgov Constitution, a certification issued by the CEO must also be valid under the ERA—free from both substantive and procedural defects. To hold otherwise would yield an impermissibly absurd result. Here, because the CEO failed to complete the process mandated by the ERA before certifying Jack’s election, that certification is invalid. That said, it does not necessarily follow that an incumbent is legally entitled to remain in office pending proper certification of the presumptive victor’s election. We need not determine the consequence of improper certification here, however, because between the time of Samuel’s filing this appeal and the present, all necessary process has been completed, leaving Samuel without any possibility of relief.

Because Samuel no longer has a meritorious claim, the decision granting the CEO's Motion to Dismiss is AFFIRMED ON OTHER GROUNDS. Because our decision on the Motion to Dismiss dispenses with the case entirely, we need not reach the High Court's rulings on the Motion for Summary Judgment or Motion for Reconsideration.

II. BACKGROUND

A. Factual and Procedural Background

Samuel and Jack ran as opposing candidates in the November 16, 2015 election for mayor of Majuro Atoll. Samuel ran as an incumbent while Jack was a new challenger. Almen, at the time of the 2015 election, was the CEO for Majuro Atoll responsible for the supervision, conduct, and organization of the election, including counting ballots and certifying the election results. *See* ERA, 2 M.I.R.C. § 113.

Ten days after the election and before the unofficial election results were announced, Samuel submitted an informal petition to the CEO requesting a ballot recount on the basis of numerous alleged infirmities with the election process. Without responding to Samuel's petition, the CEO publicly announced the unofficial election results on December 4, naming Jack as the winner. A few days later, on December 10, Almen rejected Samuel's informal recount petition. On December 14, Samuel timely filed a formal petition requesting a recount of the election results with the CEO under the national ERA. 2 M.I.R.C. §180. Samuel also alleged that the conduct of the election had violated the rights of certain citizens to vote under Section 188 of the ERA and requested, pursuant to that section, that the CEO refer his allegations to the High Court for review. *Id.* § 188(2). The ERA provides that the CEO "shall" respond to recount petitions before announcing official election results but that he may announce such results before resolution of requests made under Section 188. *Id.* §§ 185, 188.

On December 17 and 18, Samuel filed two civil actions against the CEO in the High Court. In the first, Civil Action No. 2015-233, Samuel sought to enjoin the CEO from certifying the election results without first responding to Samuel's formal recount petition and referral request. In the second, Civil Action No. 2015-234, Samuel alleged that the 2015 election had been plagued with a variety of constitutional and statutory errors and requested that the results not be certified at all, that the election be declared void, and that a new, special election be held.

On December 19, 2015, without responding to either Samuel's formal recount petition or his referral request, the CEO publicly announced the unofficial election result as official, certifying Jack as the new mayor of Majuro Atoll. Jack was promptly sworn into office and has been serving as mayor ever since. The next regular election scheduled for November 2019. *See* Majuro Atoll Local Gov't ("Malgov") Const. pt. III, §8.

Roughly six months after Jack assumed office, in June 2016, Samuel filed the action on appeal here: Civil Action No. 2016-121. In this case, Samuel alleges that the CEO had violated the ERA by certifying the 2015 election results before responding to Samuel's formal recount petition and referral request. Samuel further argued that without a valid certification, Jack could not have legally assumed office under the Malgov Constitution and that Samuel, as an incumbent, is entitled to "hold-over" as mayor unless and until the election results are properly certified.

While Civil Action No. 2016-121 was pending in the High Court, that court issued decisions in Samuel's two prior lawsuits. On October 15, 2016, the High Court dismissed Civil Action No. 2015-234—the case alleging constitutional and statutory defects in the election—due to Plaintiff's failure to prosecute under Marshall Islands Rule of Civil Procedure ("MIRCP") 41(b). But, in Civil Action No. 2015-233, the High Court agreed with Samuel. On February 13,

2017, the High Court issued its decision in that case, holding that the CEO was required by the ERA to respond to Samuel's recount and referral petitions and remanding to the CEO with instructions to do so. On remand, the CEO rejected both Samuel's recount petition and his referral request. Samuel appealed the CEO's decisions to the High Court in Civil Action No. 2017-037.

Civil Action No. 2017-037 remained before the High Court for a year and a half. During the pendency of the appeal, Samuel filed a motion with the High Court and then a writ of mandamus to this Court seeking recusal of High Court Chief Justice Ingram on the grounds that Justice Ingram had issued the oath of office to Jack. This Court denied Samuel's writ of mandamus in September 2017. On August 31, 2018, the High Court issued its opinion on the merits of the appeal, concluding that the CEO had not erred in rejecting either Samuel's recount petition or his referral request. The High Court's denial of Samuel's appeal completed the recount procedures required by the ERA prior to certification of election results and leaves no doubt that Jack is the rightful victor of the 2015 election. The CEO did not re-certify the 2015 election following the High Court's decision.

When resolving Civil Action No. 2017-037, the High Court was also reviewing the action currently on appeal here, Civil Action No. 2016-121. Samuel filed a Motion for Summary Judgment in this case on February 17, 2017, relying on the argument that Jack's election was invalid because it failed to comply with the process required by the ERA. On that basis, Samuel asked the High Court to (1) remove Jack from office and reinstate Samuel as "hold-over" mayor until all necessary recount procedures are completed and the election results are properly certified; and (2) award Samuel backpay for the time during which Samuel alleges he was entitled to remain as mayor. Both defendants filed responses in opposition. The CEO

simultaneously filed a counter-motion seeking either abatement pending resolution of Civil Action 2017-037 or dismissal of the case altogether. Defendants argued that the December 2015 certification was proper and that, even if it was not, Samuel has no right to remain mayor pending proper certification.

The High Court denied Samuel's Motion for Summary Judgment and granted the CEO's Motion to Dismiss. Subsequently, Samuel filed a Motion for Reconsideration with the High Court, which was denied on January 9, 2018. On appeal, Samuel challenges the High Court's decisions on the Motion to Dismiss, the Motion for Summary Judgment, and the Motion for Reconsideration. At oral argument, however, Samuel narrowed the scope of issues before this Court. He clarified that he is no longer seeking backpay, indicating that if he wished to pursue that relief, he would file a separate civil action against Jack. Thus, in this appeal we only consider whether Samuel should be reinstated as mayor pending proper election certification.[1]

B. The High Court's Opinion

The High Court denied Samuel's Motion for Summary Judgment and granted the CEO's Motion to Dismiss based on its interpretation of the Malgov Constitution. Noting that "Section 8(1) of the Malgov Constitution is clear and unambiguous," the High Court invoked the

[1] In briefing submitted to this Court and at oral argument, Appellant also raised several allegations regarding the integrity of the 2015 election itself. While Samuel raised these integrity-based claims in other High Court actions (for example, the complaints in Civil Action Nos. 2015-233 and 2015-234 both allege that "[s]ituations creating the appearance of impropriety committed by the CEO and his staff have eroded the confidence that the electorate has in the electoral process because of ethical misconduct. . . ."), no such allegation was made in the complaint in this case. Where Samuel had an opportunity to litigate integrity-based claims in at least one other action, but did not even raise such claims in this case, the Court will not consider them. *Cf. Adams v. Cal. Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (stating that a plaintiff generally has "no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant") (citations and quotation marks omitted), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880 (2008).

"preeminent" rule of constitutional construction, which provides that courts must give effect to the plain meaning of unambiguous text. *Samuel v. CEO*, RMI High Court Case No. 2016-121, at 5-6 (2017). Applying this rule, the High Court read Section 8(1) of the Malgov Constitution, which provides that the mayor's term "commences on the day after the day on which his election . . . is certified," literally to mean that the mechanical step of the CEO declaring official election results initiates the term of the prevailing candidate, regardless of whether that declaration itself violated the ERA or any other applicable law. *Id.* Guided by this reading, the High Court concluded that although the certification in this case was issued "prematurely"—before the CEO undertook the process mandated by the ERA—it nevertheless triggered Jack's assumption of office under the plain language of the Malgov Constitution. *Id.* at 6. As such, "Jack became the mayor on December 20, 2015, the day after the CEO prematurely certified the election results." *Id.* In so holding, the High Court rejected Samuel's argument that such an interpretation leads to an impermissibly absurd result. *Id.* at 5.

III. STANDARD OF REVIEW

The High Court's interpretation of the Malgov Constitution and the ERA are questions of law reviewed *de novo*. *Dribo v. Bondrik*, 3 MILR 127, 135 (2010).

IV. DISCUSSION

A. Interpretation of the Malgov Constitution and the National ERA

The High Court's decision to dismiss appellant's case was grounded in a literal interpretation of Section 8(1) of the Malgov Constitution. On appeal, Samuel argues that in order to avoid an absurd result, the constitutional provision must be read more expansively, giving due regard to the requirements of the ERA. We agree. A reading that allows an illegal or incorrect act under the ERA to serve as a valid certification of an election under the Malgov Constitution is both absurd and odd. Rather, only a certification that is substantively and

procedurally valid for the purposes of the ERA can serve as a valid certification for the purposes of the Malgov Constitution.

Section 8(1) of the Malgov Constitution provides that the mayor's term of office "commences on the day after the day on which his election or appointment is certified." Malgov Const. pt. III, § 8(1)(a). The Constitution does not define "certified" or indicate what act is necessary to achieve certification. But all the parties and the High Court agree that the certification referenced in the Malgov Constitution is found in the ERA's requirement that the CEO shall "publicly announce . . . the official result of the election." ERA, § 185. We concur and conclude that the public announcement required by the ERA is the certification required by the MalGov Constitution.[2]

With this understanding of the word "certified," the High Court determined (incorrectly) that the Malgov Constitution "clearly and unambiguously" establishes that the prevailing candidate's mayoral term begins when the CEO announces election results as official—regardless of whether that announcement was itself valid under the ERA. In the High Court's view, to consider whether the CEO completed the process required by the ERA prior to certifying election results would require reading the words "not prematurely" into Section 8(1).

[2] In its provisions governing election results, the ERA does not use the word "certify" in relation to the CEO's public announcement of official results but does use it to require that the Counting and Tabulation Committee "certify" the unofficial ballot count to the CEO before the CEO announces official results. 2 M.I.R.C. §§ 178(4), 182(3). Nevertheless, the CEO's public announcement of official results is also a certification within the plain meaning of that word. "Certify" is defined as "to state something officially," *Certify*, Cambridge Dictionary, available at https://dictionary.cambridge.org/us/dictionary/english/certify (last visited Sept. 24, 2019); *see also Certify*, Merriam Webster Dictionary, available at https://www.merriam-webster.com/dictionary/certify (last visited Sept. 24, 2019) (defining "certify" as "to attest authoritatively"), which is precisely what the CEO does when declaring official results. Moreover, the word "certified" in the Malgov Constitution modifies the phrase "his [the prevailing candidate's] election." This phrasing suggests that the Constitution is addressing the official declaration of who won the election, which is made by the CEO, rather than the unofficial ballot count.

Samuel, RMI High Court Case No. 2016-121, at 5. That is, the provision would have to be read as stating that the new mayor's term "commences on the day after the day on which his election or appointment is *not prematurely* certified." *Id.* Such a reading, the High Court held, would contradict the "preeminent" rule of statutory and constitutional interpretation that courts must give effect to the plain meaning of the text, and thus "under no circumstances may the Constitution be interpreted to contain language or provisions that it does not contain." *Id.* (quoting *Niedenthal v. Almen*, RMI High Court Case No. 2014-263, at 5 (2015) and (citing *Lekka v. Kabua, et al.*, 3 MILR 167, 171 (2013)).

We disagree. As Samuel correctly points out, "it has long been recognized" in this jurisdiction "that the literal meaning of a statute will not be followed when it produces absurd results. . . . We are to avoid constructions that produce 'odd' or 'absurd results' or that [are] 'inconsistent with common sense.'" *Dribo*, 3 MILR at 138; (citing *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.'") (emphasis added) (other citations omitted)).

Here, the High Court's literal interpretation of the Malgov Constitution's term "certified" could allow an illegal act under the ERA to serve as the legal basis for assumption of public office under the Malgov Constitution. And such an outcome is obviously absurd, running contrary to both common sense and an ordinary sense of justice. First, the High Court's literal interpretation of the Malgov Constitution would render the procedural requirements of the ERA meaningless. The ERA's recount procedures are "basic to the legitimacy of the government of this Republic," *Clanton v. M.I. Chief Electoral Officer*, 1 MILR 146, 151 (1987), and necessary to ensure "the integrity and the finality of elections," *Matthew v. Jorlang*, 3 MILR 174, 180

(2014) (citation and quotation marks omitted). That the Malgov Constitution could nullify such a fundamental provision simply makes no sense.

And the absurdity of such a reading is further illustrated by the fact that the Malgov Constitution's authority is subordinate to that of the ERA. The Local Government Act of 1980 sets out the framework under which local governments operate, expressly stipulating that local government constitutions are inferior to national statutes and cannot contain provisions that are "inconsistent with this Chapter or any other Central Government law." 4 M.I.R.C. § 112. The High Court's literal interpretation of the Malgov Constitution upends this hierarchy of authority, allowing a local constitution to override the requirements of a national statute. Notably, by nullifying the recount provisions of the ERA, the High Court's cramped reading of the Malgov Constitution violates another cardinal rule of interpretation—that courts must read texts in a way that will "harmonize apparently conflicting or ambiguous provisions so that no provision is rendered meaningless." *In the Matter of the Vacancy of the Mayoral Seat*, 3 MILR 114, 118-19 (2009); *see also Bilski v. Kappos*, 561 U.S. 593, 608 (2010).[3]

Finally, a literal interpretation of the Malgov Constitution threatens unintended results beyond those exemplified in this case. This case concerns only the ERA's procedural requirements. But if taken to its logical conclusion, the High Court's reading would permit not

[3] Here, because both the ERA and the Malgov Constitution apply to the issue of election certification, they should be considered together. *See, e.g.*, *Lekka*, 3 MILR at 171; *Branch v. Smith*, 538 U.S. 254, 281 (2003) ("And it is, of course, the most rudimentary rule of statutory construction . . . that courts do not interpret statutes in isolation, but in the context of the corpus juris of which they are a part." (emphasis omitted)); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000) ("[A] reviewing court should not confine itself to examining a particular statutory provision in isolation. The meaning—or ambiguity—of certain words or phrases may only become evident when placed in context." (citations and quotations omitted)); *Linquist v. Bowen*, 813 F.2d 884, 888 (8th Cir. 1987) ("A primary rule of statutory construction is that when a court interprets multiple statutes dealing with a related subject or object, the statutes are *in pari materia* and must be considered together.").

only procedurally but substantively defective certifications to stand. Disallowing certification of inaccurate results would, by the High Court's logic, require reading into the Malgov Constitution words that are not there, i.e., that the mayor's term "commences on the day after the day on which his election or appointment is *not inaccurately* certified." Thus, by the High Court's logic, the CEO could officially announce the losing candidate—or even an individual who was not in the race—as victor, and that individual would be legitimately ensconced as mayor under the Malgov Constitution. An interpretation that allows an individual other than the prevailing candidate to be certified as mayor is plainly absurd, and would effectively empower the CEO to displace the choice of the voters with his own.

In short, the High Court erred. While the plain language rule is a foundational principle of statutory interpretation, it is not absolute. Here, this means that a "certified election" under Section 8(1) of the Malgov Constitution should be read only to encompass public announcements of official election results that are valid under the ERA (and any other applicable laws).

B. Conduct of the CEO

Having determined that only valid election certifications under the ERA can constitute valid election certifications under the Malgov Constitution, we must next decide whether the CEO acted lawfully in certifying the official results of the 2015 election while a formal petition for recount was pending. We find that because the CEO failed to comply with his duties under Section 185 of the ERA, the election certification was invalid.

Samuel claims that the CEO failed to respond to his recount petition under Section 185 and provide him with an opportunity to appeal that response.[4] Section 185 of the ERA lays out the procedural requirements for certifying the official results of a local election. Where, as here, the CEO receives a petition for recount, he "shall" announce the official results of the elections (i.e., certify the election) in one of four ways, depending on the circumstances. If the CEO grants the petition, he "shall" announce the results one day after the recount is conducted. 2 M.I.R.C. § 185(2)(a). If the CEO denies the petition and no timely appeal is filed, he "shall" announce the results one day after the expiration of the period allowed for appeals. *Id.* § 185(2)(b). If the CEO denies the petition and the petitioner timely files an appeal to the High Court, the CEO "shall" announce the results one day after the recount if the appeal is upheld. *Id.* § 185(2)(c)(i). And, finally, if the High Court denies the appeal, the CEO "shall" announce the results one day after the High Court announces its decision. *Id.* § 185(2)(c)(ii).

The plain meaning of the word "shall" in Section 185 is clear—the CEO *must* comply with these § 185 requirements in certifying an election; they aren't discretionary. *See Lekka*, 3 MILR at 171; *see also Lopez v. Davis*, 531 U.S. 230, 241 (2001) ("Congress used 'shall' to impose discretionless obligations."); *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 573-74 (9th Cir. 2000) ("The term 'shall' is usually regarded as making a provision mandatory, and the rules of statutory construction presume that the term is used in its ordinary sense unless there is clear evidence to the contrary."); *cf. Bien v. M.I. Chief Electoral Officer*, 2 MILR 94, 99 (1997) ("The Nitijela, by use of the word[] 'must,' created a mandatory requirement . . . ."). The

[4] Samuel also claims that the CEO failed to refer his voter's right complaint to the High Court under Section 188. This argument lacks merit—section 188 provides that "no requirement or reference under . . . this Section shall be allowed to delay . . . the declaration of the official result of an election [i.e., certification]." ERA § 188(3).

ERA's plain language and context leaves no doubt—the CEO had no discretion to ignore the recount petition or to certify the election results without first responding to the petition, allowing Samuel an adequate time to appeal, and receiving the outcome of that appeal. *See Bennett v. Spear*, 520 U.S. 154, 172 (1997) ("[D]iscretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decisionmaking."). Thus, the certification of Jack's election issued by the CEO in December 2015 was invalid.

The CEO's failure to comply with the law in this matter is extremely troubling. As the officer responsible for administering the election, the CEO understood or *should have* understood the basic procedural requirements of the statute he was charged with implementing.[5] And the fallout to a fair electoral process from the error cannot be overstated. As previously stated, faithful execution of the ERA's recount procedures is necessary to ensure "the integrity and the finality of elections," *Matthew*, 3 MILR at 180; *see also Roudebush v. Hartke*, 405 U.S. 15, 25 (1972) ("[O]ne procedure necessary to guard against irregularity and error in the tabulation of votes is the availability of a recount. . . . A recount of votes is an integral part of the . . . electoral process."). Here, the CEO's failure to follow basic statutory requirements has undermined confidence in the fairness of the electoral process.

C. Samuel's Claims on Appeal

Having determined that the certification issued by the CEO in December 2015 was invalid, we next turn to Samuel's claim on appeal that, as incumbent, he is entitled to remain in office as "hold-over" mayor until the recount procedures required by the ERA are complete and

[5] It is no excuse that the CEO had already rejected Appellant's informal recount petition prior to announcing the unofficial election results. This Court has clearly explained that, under the ERA, a formal recount petition must be filed after the unofficial election results are announced. *Matthew*, 3 MILR at 180 (explaining that pursuant to the plain language of the ERA, recount petitions must be filed after the CEO announces unofficial election results).

the election is properly certified. We find that because all necessary recount procedures have at this time been completed, Samuel is clearly not entitled to the relief that he seeks.

As discussed above, the CEO's election certification, issued in December 2015, was invalid at that time because the necessary recount procedures—a response from the CEO, an opportunity to appeal, and, if that option was exercised, a decision from the High Court—had not yet been completed. After this appeal was filed in January 2018, however, all necessary recount procedures have been carried out. On, February 13, 2017, in Civil Action No. 2015-033, the High Court ruled that the CEO must respond to Samuel's recount petition under Section 185 of the ERA and remanded to the CEO with an order to do so. The CEO rejected the recount petition two days later and, pursuant to the ERA, Samuel immediately appealed, initiating Civil Action No. 2017-037. The High Court issued a decision in Civil Action No. 2017-037 on August 31, 2018, finding that the CEO had not erred in rejecting the recount petition. This decision completed the recount procedures required by the ERA, thereby requiring the CEO to validly certify Jack's election. But, again, the CEO failed to comply with the law and did not recertify Jack's election following issuance of the High Court's August 31, 2018 order.

So, although Jack's election remains without the statutorily required certification, the High Court's August 31 order definitively concluded that a recount was not required and thus, Jack was the duly elected mayor of Majuro Atoll. Considering the principles that undergird our election laws—most prominently; fairness, equity, and upholding the will of the people—we conclude that because Jack was unquestionably elected as mayor, there is no basis whatsoever for removing Jack from that office and reinstating Samuel. As such, Samuel is left without any possible relief.

The High Court's August 31 order leaves no doubt that Jack was chosen as mayor by the people of Majuro Atoll. Given this fact, the only remaining basis for Samuel's claim is the failure of the CEO to recertify the (now undisputed) election results. To unseat Jack due to this oversight would only further undermine the integrity of the electoral process. And, as should be obvious, elections are intended to effectuate the will of the voters. *See, e.g.*, Malgov Const., pt. IV, sec. 17 ("The Mayor shall be elected by the registered voters of Majuro Atoll. . . . The candidate who receives the greatest number of votes . . . shall be the Mayor."); *Niedenthal*, RMI High Court Case No. 2014-263, at 10 ("The citizens of the Republic of the Marshall Islands reserved to themselves the right to choose who will represent them . . . . They were given that power in their Constitution, and those who they elect to the Nitijela do not have the power to take that from them.").

In short, that Jack's election remains uncertified is not a sufficient reason to upend the judicially affirmed validity of the election results and ignore the will of the voters. Rather, in light of the resolution of the substance of Samuel's claim with the High Court's August 31, 2018 order, that claim no longer has any possible merit.[6]

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[6] Samuel also claims that, under common law, he should be placed into office as a "hold-over" pending proper certification. Although we need not reach this argument, it is without merit. A post-election hold-over effectively presumes that the results of a challenged election are illegitimate until proven otherwise. This logic runs contrary to our strong presumption of election regularity. *See Bien*, 2 MILR at 97. For the same reasons, the American Law Institute has also registered strong disapproval of the doctrine as an "inappropriate thwarting of the electoral process" and a "particularly pernicious way to fill the office." Principles of the Law, Election Administration § 206, cmt. a & note (Am. Law Inst. 2019).

Moreover, where the "hold-over" doctrine is recognized in American law, it is justified by the policy objective of ensuring uninterrupted government operations. *See, e.g., State Bd. of Educ. v. Comm'n of Fin.*, 247 P.2d 435, 440 (Utah 1952) (explaining that the hold-over rule "is bottomed on the sound public policy of not permitting an office of trust created for the public good to cease operating for the lack of an office-holder"); *Walker v. Hughes*, 36 A.2d 47, 50

(continued . . .)

Regardless of this outcome, the procedures required for a recount are an "integral part of the electoral process" and should not be rendered inconsequential. *Roudebush v. Hartke*, 405 U.S. 15, 25 (1972). Ideally, recount procedures should be promptly completed before the new term is scheduled to begin in order to avoid a situation—like this one—where the election outcome remains in dispute nearly four years later. *See Matthew*, 3 MILR at 179-80 ("[C]ompliance with election laws may be assured to facilitate, not hinder by technical requirements, the quick initiation and disposition of such contests. . . . [T]he swift resolution of election contests is vital for the smooth operation of government." (citation and quotation marks omitted)); *see also* Principles of the Law, Election Administration § 206(a) ("[A]dministrative procedures for certifying the result of an election, including any recount necessary to verify the accuracy of the result, should be structured and administered so that they can be completed before the date upon which the term of office of the election's winner is scheduled to begin."). Indeed, in a situation where a recount ultimately proved necessary, a long delay like the one in this case could seriously undermine the legitimacy of the election results. Moreover, if a recount revealed that the election of the presumptive victor was in error, a long delay would be a gross injustice against both the true victor and the people of Majuro Atoll.

Swift completion of a recount eases the tension between the principle of presumed validity and the importance of procedural safeguards. Unlike many other jurisdictions, however,

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(Del. 1944) ("The purpose of [holding over] is to prevent a possible vacancy or interregnum in a public office where there is no properly qualified successor at the expiration of the usual statutory term, so that the public business will not be interrupted or subjected to doubt or dispute."). Treatises relied upon by Samuel provide the same. *See* Charles S. Rhyne, The Law of Local Government Operations § 13.11 (1980) ("The doctrine of holding over is designed to assure the continuation of public functions."); 3 Eugene McQuillin, The Law of Municipal Corporations §12.160 (2012) ("Absent provisions to the contrary, the public interest requires that public offices should be filled at all times without interruption."). Here, because Jack took office, there is no concern of uninterrupted government operations.

see Matthew, 3 MILR at 179-80, there is no timeliness requirement in the ERA for the CEO to respond to a recount petition or for the High Court to decide an appeal. Because courts cannot add words to a statute, we are unable to impose either. *Niedenthal*, RMI High Court Case No. 2014-263, at 5.[7]

V. CONCLUSION

We conclude that the High Court's August 31, 2018 resolution of Samuel's recount petition—which unequivocally confirmed the propriety of Jack's election—leaves Samuel without any possible relief. Accordingly, the High Court's December 17, 2018 Order Granting the Motion to Dismiss is AFFIRMED. Because the Opinion dispenses with this matter, we do not address the High Court's ruling of the Motion for Summary Judgment and Motion for Reconsideration.

Dated: September 25, 2019

/s/ Daniel N. Cadra
Daniel N. Cadra
Chief Justice

Dated: September 25, 2019

/s/ J. Michael Seabright
J. Michael Seabright
Associate Justice

Dated: September 25, 2019

/s/ Richard Seeborg
Richard Seeborg
Associate Justice

[7] Given the importance of quickly resolving election disputes and ensuring the integrity of the election process, we respectfully submit that the Nitijela may want to consider amending the ERA's recount provisions to include timeliness requirements both for the CEO to respond to recount petitions and for rulings by the courts.