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IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LUCAS L. MENDIOLA,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG.

Contestants,

v.

JOVITA TAIMANAO and  
ABRAHAM R. TAIMANAO,

Defendants.

VINCENT MANGLONA,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG,

Contestants,

v.

JOE INOS,

Defendant.

VICENTE M. ATALIG,  
FRANCES M. SABLAN, and  
EFRAIN M. ATALIG,

Contestants,

v.

JOVITA TAIMANAO and  
ABRAHAM P. TAIMANAO,

Defendants.

) Consolidated Cases:  
) Civil Action No. 94-24  
) Civil Action No. 94-25  
) Civil Action No. 94-26

) DECISION AND ORDER ON  
) MOTION TO REJECT PLEADINGS  
) AND MOTION TO DISMISS

1           On February 4, 1994, this matter came on for a hearing on  
2 Defendants' motions to reject Contestants' filings and to dismiss  
3 these election contests. Present at the hearing were Daniel Del  
4 Priore on behalf of Contestants and David A. Wiseman on behalf of  
5 Defendants.

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7                           I. FACTS

8           On January 13, 1994, Contestants in the above-captioned cases  
9 filed complaints for declaratory relief pursuant to election  
10 contests. See *Complaint for Declaratory Relief Pursuant to*  
11 *Election Contest; Election Contest Complaint* (Jan. 13, 1994)  
12 [hereinafter "*Original Complaint*"]. In each case, the signature  
13 page contained the following statement: "Each contestant who  
14 signs below has read this Complaint and, except where allegations  
15 are based on information and belief declare under penalty of  
16 perjury that all contained herein is, to the best of their  
17 knowledge, true and accurate." Contestants on Rota signed the  
18 signature pages of the respective Original Complaints and faxed  
19 them to the Office of Robert O'Connor, as evidenced by the  
20 facsimile transmission lines.

21           Upon receiving the complaint, Gregory Koebel, an associate of  
22 Mr. O'Connor's and a contestant in the above-captioned cases,  
23 signed the facsimile signature pages. The facsimile signature  
24 pages were then attached to the text of the respective complaints  
25 and the complaints were filed with this Court.

26           On January 14, 1994, Contestants filed amended complaints.  
27 See *First Amended Complaint for Declaratory Relief Pursuant to*  
28 *Election Contest; Election Contest Complaint* (Jan. 14, 1994)

1 [hereinafter "*Amended Complaint*"]. The signature pages of these  
2 complaints appear to be identical to those of the Original  
3 Complaints, including their facsimile transmission lines and  
4 dates. The only difference between the Original Complaints and  
5 the Amended Complaints is that Mr. Koebel's signature appears  
6 twice. Defendants contend that the facsimile signature pages from  
7 the Original Complaints were copied and used as the signature  
8 pages for the Amended Complaints.

9 The parties agree that Contestants served their Original  
10 Complaint on the Board of Elections via facsimile during the  
11 evening of January 13, 1994, and served original copies of their  
12 Amended Complaints on the Board on January 17, 1994. On January  
13 19, 1994, a Board member delivered a copy of both the Original and  
14 Amended Complaints to Defendant Joseph Inos' secretary. Affidavit  
15 of Carmen Masga. Mr. Inos did not personally receive the  
16 Complaints until the following day. *Affidavit of Joseph Inos*. On  
17 January 24, 1994, the Board delivered copies of the Complaints to  
18 Defendants Abraham and Jovita Taimanao. *Affidavits of Jovita and*  
19 *Abraham Taimanao*. According to Mr. Taimanao, the Complaints were  
20 not served on him personally, but delivered to the Mayor's office.  
21 *Id.*

22 On January 31, 1994, Defendants and Mr. Koebel stipulated to  
23 the dismissal of Mr. Koebel as a party in the above-captioned  
24 cases. The Court granted the dismissal.

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**II. ISSUES**

Five issues are raised by Defendants' motions:

1. Does Contestants' submission of facsimile signatures verifying their Original Complaints, and the apparent failure of all of Contestants with the exception of Mr. Koebel to sign the Amended Complaints at all, deprive this Court of jurisdiction under 1 CMC § 6423(b), which requires Contestants to "verify the statement of contest"?

2. Does the provision of 1 CMC § 6423(b) requiring a contestant to file a contest within "seven days after discovery of the fact supporting the contest" bar Contestants' action, where it appears that they were aware of the allegations of their Original Complaints more than seven days before they were filed?

3. Does the failure of the Board to serve the Original Complaints on Defendants within the five day period prescribed by 1 CMC § 6423(d) deprive this Court of jurisdiction?

4. Do the Original Complaints filed by Contestants contain allegations sufficient to state a valid contest under the four grounds set forth in 1 CMC § 6421?

5. Does the Administrative Procedures Act give this Court jurisdiction in this action to adjudicate allegations which do not fall within the grounds enumerated in 1 CMC § 6421?

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**III. ANALYSIS**

**A. STANDARDS GOVERNING ELECTION CONTESTS**

Election contests were unknown at common law and are purely statutory in nature. *Montoya v. McManus*, 362 P.2d 771, 774 (N.M. 1961); *Liberal Party of Palau v. Election Comm'r*, 3 T.T.R. 293,

1 295 (H.C. Tr. Div. 1967). Strictly speaking, the adjudication of  
2 election contests is a legislative, rather than a judicial,  
3 function. *Liberal Party, supra*. This statutory grant of  
4 authority to courts over election contests is, therefore, strictly  
5 construed. *Seman v. Aldan*, 2 CR 916 (N.M.I. Tr. Ct. 1986), *aff'd*  
6 3 CR 152 (N.M.I App. Div. 1987) (failure to file contest within  
7 statutory seven day limit prevents court from assuming  
8 jurisdiction); *Yocham v. County Election Board of Creek County*,  
9 180 P.2d 831, 833 (Okla. 1947) (court had no jurisdiction to hear  
10 contest on ground other than that authorized in statute); *Chandler*  
11 *v. Workman*, 348 A.2d 185, 188 (Del. 1975) (where contest statute  
12 required votes to have been challenged on election day, court had  
13 no jurisdiction to hear contest based on votes not so challenged).

14 However, once a valid claim has been stated under a contest  
15 statute and a court has properly assumed jurisdiction, procedural  
16 defects in the adjudication of the contest will not strip a court  
17 of the jurisdiction thus assumed. As the California Supreme Court  
18 stated in *O'Dowd v. Superior Court of San Francisco*, 111 P. 751,  
19 753 (Cal. 1910),

20 It is the wholesome purpose of the statute to invite  
21 inquiry into the conduct of popular elections. [. . .]  
22 With this view it has provided the means of contesting  
23 the claims of persons asserting themselves to have been  
24 chosen to office by the people. When such a statement  
25 is presented by an elector to the tribunal whose duty it  
is to investigate its merits, it should not be received  
in a spirit of captiousness, nor put aside on mere  
technical objections designed to defeat the very search  
after truth which the statute intended to invite.

26 The *O'Dowd* court thus distinguished between the initial statutory  
27 requirements for assuming jurisdiction, which are mandatory, and  
28 those governing procedures after jurisdiction has been assumed,

1 which are directory. *Id.* at 753-754; see also *Montoya, supra*, 362  
2 P.2d at 776 (in construing contest statute, intent of legislature  
3 must be given effect, even if that intent is contrary to letter of  
4 statute in particular case). This reasoning has led courts to  
5 reach the merits of election contests even though some procedural  
6 particulars have not been complied with in the adjudication  
7 process. See *Babnew v. Linneman*, 740 P.2d 511, 513 (Ariz. App.  
8 Ct. 1987) (court's failure to hold contest hearing within  
9 statutory period did not strip it of jurisdiction); *Diaz v.*  
10 *Superior Court*, 579 P.2d 605, 606 (Ariz. App. Ct. 1978) (failure  
11 of sheriff to timely serve contest on defendants did not strip  
12 court of jurisdiction); *Moore v. Superior Court*, 128 P. 946, 948  
13 (Cal. Ct. App. 1913) (having assumed jurisdiction over contest,  
14 court did not lose it by continuing hearing past statutory  
15 period).

16 With these general principles in mind, the Court now turns to  
17 Defendants' specific objections.

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### 19 B. FORMAL SUFFICIENCY OF THE COMPLAINTS

#### 20 1. Statutory Requirement of Verification.

21 Defendants stress that the Amended Complaints are defective  
22 because they do not meet the statutory requirement of a verified  
23 statement of contest. They allege that the signature pages from  
24 the Original Complaints were copied and used as the signature  
25 pages for the Amended Complaints. According to Contestants,  
26 however, this claim of recycling of the signatures to the Amended  
27 Complaint is "simply unfounded". *Contestant's Opposition on*  
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1 Motion to Reject Filing (Feb. 2, 1994). The Court agrees with  
2 Defendants.

3 The election contest statute requires a contestant to "verify  
4 the statement of contest and . . . [to] file it within seven days  
5 after the discovery of the fact supporting the contest, . . ." 1  
6 CMC § 6423(b). The term "verify" is defined, *inter alia*, as  
7 follows:

8 To confirm or substantiate by oath or affidavit.  
9 Particularly used of making formal oath to accounts,  
10 petitions, pleadings, and other papers. The word  
11 "verified," when used in a statute, ordinarily imports  
12 a verity attested by the sanctity of an oath. It is  
13 frequently used interchangeably with "sworn."

14 BLACK'S LAW DICTIONARY 1400 (5th ed. 1979); accord *Commonwealth of*  
15 *Pennsylvania v. Jones*, 369 A.2d 733, 734 (Pa. Super. Ct. 1977)  
16 ("for legal purposes verification means confirmation of the truth  
17 of a statement by oath or affirmation.").

18 In *Corbly v. City of Colton*, 278 N.W.2d 459 (S.D. 1979), a  
19 citizen circulated a petition to initiate a voter referendum  
20 concerning a zoning ordinance law. At the time the petition was  
21 circulated, two statutes required that the petition be verified.  
22 *Id.* at 461-62. In the context of voter referendums, the purpose  
23 of verification is to ensure that the persons whose names appear  
24 on the petition did, in fact, sign it. *Id.* at 462. As such, the  
25 circulator must swear that he or she personally observed each  
26 signature. The *Corbly* court reasoned that, in the absence of such  
27 verification, there was no reason to believe that the circulator  
28 properly collected the signatures or that the petition was valid.  
*Id.* The court, therefore, held that the oath of the circulator  
was a substantial requirement of the statute and as such, the

1 absence of the verification rendered the petition invalid. *Id.*;  
2 accord *Bjornson v. City of Aberdeen*, 296 N.W.2d 896, 899 (S.D.  
3 1980); cf. *Burns Kurtenbach*, 327 N.W.2d 636 (S.D. 1982)  
4 (nominating petition was invalidated due to a failure to include  
5 the circulator's executed verification prior to the statutory  
6 deadline).

7 This Court sees no reason why the analysis concerning a  
8 verification requirement in an election contest should be any  
9 different from that of a voter referendum. Thus, the dictates of  
10 section 6423(b) must be followed in order for this Court to assume  
11 jurisdiction.

12 The verification requirement appears to serve a two-fold  
13 purpose. Section 6423(b) protects the interests of voters, the  
14 candidates, and the Commonwealth as a whole by mandating that  
15 contestants confirm that they have personal knowledge of the facts  
16 that give rise to the election contest. Further, the Commonwealth  
17 has a very strong interest in ensuring that the democratic process  
18 operate smoothly and fairly and that properly elected officials  
19 are not forced to operate under the cloud of an election contest  
20 unless the grounds are genuine. In light of these purposes, the  
21 verification requirement can hardly be viewed as a mere  
22 technicality.

23 With this in mind, the Court now turns to the Amended  
24 Complaints. The signatory pages of these complaints include an  
25 oath made under penalty of perjury that all of the allegations  
26 are, "to the best of their knowledge, true and accurate."  
27 However, a problem arises from the fact that the signature pages  
28 to the Amended Complaints are clearly duplicates of those from the



1 Original Complaints.<sup>1</sup> Only Mr. Koebel appears to have signed the  
2 Amended Complaints.<sup>2</sup> Therefore, the record before the Court does  
3 not contain any evidence that the other contestants have read the  
4 allegations contained in the Amended Complaints and that they have  
5 personal knowledge of them. The recycling of the signature pages  
6 from the Original Complaints does not comport with the  
7 verification requirements of 1 CMC § 6423(b).

8 It is thus clear to this Court that Contestants never  
9 effectuated a valid amendment of their Original Complaints, and  
10 thus the Amended Complaints are stricken. In each case, multiple  
11 contestants brought suit against Defendants. Nonetheless, only a  
12 single contestant in each suit, namely Mr. Koebel, signed the  
13 documents Amended Complaints. All of the contestants would have  
14 had to have signed the Amended Complaints in order to have  
15 effectuated an amendment of their Original Complaints. See Com.  
16 R. Civ. Pro. 11 ("A party who is not represented by an attorney  
17 shall sign his pleading, motion, or other paper . . ."). To  
18 hold otherwise would allow a single contestant to force an

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20 <sup>1</sup> The Court bases its conclusion upon four facts. First  
21 and foremost, the respective signatures of the complaints are  
22 identical, with the exception that Amended Complaint contained two  
23 signatures of Mr. Koebel's. Second, in Civil Action Nos. 94-24  
24 and 94-25, the Contestants were unsuccessful in cutting off all of  
25 the information from the facsimile transmission line. The line  
26 indicates that the document was faxed from Dean's Mobil. Third,  
27 in the *Taimanao* cases, the transmission line on the signature page  
28 of the Original Complaint shows that it was the sixth page to be  
transmitted; the transmission line shows that the same is true of  
the Amended Complaint in that case. The *Inos* case followed the  
same pattern, except that in that case, the signature page was the  
fourth page to be transmitted. Fourth, although the Contestants  
filed the Original Complaints on January 13, 1994, and the Amended  
Complaints on the 14th, both signature pages are dated January 13,  
1994. These similarities are hardly a coincidence.

<sup>2</sup> The signature pages of the Amended Complaints show two  
signatures by Greg Koebel.

1 amendment of a complaint in an election contest on the other  
2 contestants.

3 It is, therefore, essential to analyze the Original  
4 Complaints to ensure that they comport with the verification  
5 requirements contained in section 6423(b). Here, the signature  
6 pages of the Original Complaints include an oath which declared  
7 that the allegations made by Contestants are truthful and  
8 accurate. The presence of Contestants' signatures under this  
9 statement supports a conclusion that the Original Complaints have,  
10 in fact, been properly verified in compliance with 1 CMC §  
11 6423(b).

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13 2. Rule 6(f) of the Commonwealth Rules of Practice.

14 As Defendants point out, Contestants have not fully complied  
15 with Rule 6(f). This provision states:

16 (f) Time and Place of Filing. The original of all  
17 papers required to be served shall unless otherwise  
18 submitted to the court, be filed in the office of the  
19 clerk within three (3) days after service has been  
20 completed.

19 Com. R. Prac. 6(f).

20 Admittedly, the Original Complaints filed with this Court  
21 included signature pages which were sent by facsimile from Rota to  
22 Mr. O'Connor's office. The Contestants have not supplanted with  
23 these facsimile signature pages with those of the Original  
24 Complaints which the Contestants actually signed. This procedural  
25 defect may have arisen because of the distance between the three  
26 contestants on Rota and the one on Saipan and may have been  
27 further occasioned by the short period of time in which to file an  
28 election contest.

1           Regardless of the reason, the failure to comply with this  
2 court rule is truly a technicality. Contestants have not alleged  
3 that there were facsimile transmission errors or that the text of  
4 the pages of the Original and Amended Complaints would differ.  
5 Therefore, the Court holds that the right to contest an election  
6 constitutes an important right of which contestants should not be  
7 deprived because of the mere failure or oversight to file the  
8 original signature page.

9           In conclusion, the Court finds that the Amended Complaints  
10 were not verified by Contestants within the meaning of section  
11 6423(b) and must therefore be stricken. However, because the  
12 Original Complaints were signed and verified by all Contestants,  
13 the only defect being their failure to file the original signature  
14 page following the facsimile page which was filed, the Original  
15 Complaints substantially complied with the requirements of section  
16 6423(b). On the basis of the Original Complaints, then, this  
17 Court assumes jurisdiction over this action.

### 18 19                           C.    UNTIMELY FILING OF COMPLAINTS

20           Title 1 CMC § 6423(b) requires Contestants to file their  
21 action "within seven days after discovery of the fact supporting  
22 the contest." Defendants claim that Contestants were aware of the  
23 allegations in the Complaint more than seven days before they  
24 filed it, and that the Complaint is therefore time-barred.

25           This Court recently considered the seven-day time limit in  
26 the context of a contest alleging a winning candidate's  
27 ineligibility for office. *Ruben v. Ogumoro*, Civil Action No. 94-  
28 14, slip op. at 5 (N.M.I. Super. Ct. Feb. 8, 1994). There, the

1 Court pointed out that section 6421(a) authorizes a contest on the  
2 ground that the *person declared elected* will not be eligible for  
3 that office. Thus, one of the "facts supporting the contest" was  
4 that the defendant must have been declared elected, and the seven-  
5 day period of section 6423(b) did not begin to run until the Board  
6 declared its official results. *Id.* Likewise, section 6421(d)  
7 authorizes a contest where "the Board in the conduct of election  
8 or arithmetical tabulation of votes made errors sufficient to  
9 change the final result of the election as to any person *who has*  
10 *been declared elected*" (emphasis added). This language clearly  
11 makes the Board's certification of election results a "fact  
12 supporting the contest." Therefore, any challenge premised on  
13 this ground is not time-barred if filed within seven days of the  
14 certification.

15 Sections 6421(b) and (c) present a different question. They  
16 provide for contests when:

17 (b) The candidate has given an election official  
18 anything of value for the purpose of procuring his  
election;

19 (c) Illegal votes were cast. "Illegal votes"  
20 means any votes cast by a person who is not qualified to  
21 vote because of failure to meet age or residency  
requirements or has cast more than one ballot in the  
election. . . .

22 By their terms, these provisions do not require a declaration of  
23 election to have been made. Moreover, the use of the term  
24 "candidate" in subsection (b), rather than "person declared  
25 elected" as used in subsections (a) and (d), suggests a  
26 legislative intent that a contest be authorized as soon as an  
27 allegation of bribery is discovered, even if it takes place before  
28 the election.

1           However, the "actual prejudice" rule, codified in section  
2 6422, forecloses this interpretation.       According to that  
3 provision,

4           (a) No irregularity or improper conduct in the  
5 proceedings of an election may void an election result,  
6 unless the irregularity or misconduct resulted in a  
*defendant being declared either elected or tied for*  
*election.*

7           (b) An election may not be set aside on account of  
8 illegal votes cast, unless the number of votes given to  
9 the person *enabled him to win or to tie the election*  
10 and, if the illegal votes were taken from him, would  
11 reduce his legal votes so that he would have less votes  
12 than necessary to win or tie the election.

13 (Emphasis added). The requirement that the grounds for contest be  
14 causally-related to a defendant's election in order for a court to  
15 declare it void clearly presupposes that official results have  
16 already been declared. Furthermore, voiding an election result is  
17 the sole remedy available in an election contest; no other forms  
18 of relief are authorized, other than a judgment for costs of the  
19 litigation itself.

20           To interpret the statute as allowing a contest before  
21 election results are declared would require a finding that the  
22 Legislature empowered the Court to investigate charges of bribery  
23 before an election but denied the Court the power to grant a  
24 remedy if the charges were substantiated. This interpretation is  
25 unreasonable and will not be adopted. *Montoya v. McManus, supra,*  
26 *362 P.2d at 776; see also Commonwealth Ports Authority v.*  
*Hakubotan Saipan Ent., Inc., 2 N.M.I. 212, 224 (N.M.I. 1991);*  
*Ogumoro, supra, slip op. at 5.*

27           In sum, the Court holds that the declaration of official  
28 results is a "fact supporting the contest" for all four election

1 contest grounds, and that the seven-day period of section 6423(b)  
2 does not begin to run until the Board certifies the final results.  
3 Here, the results were declared on January 6, 1994, and the  
4 election contests were filed on January 13, 1994. The filings  
5 were therefore timely.

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7 **D. UNTIMELY SERVICE ON DEFENDANTS**

8 Title 1 CMC § 6423(d) provides: "[w]ithin five days from the  
9 receipt of the verified complaint, the Board shall cause to be  
10 delivered to the Defendant a copy of the complaint filed by the  
11 contestant." Defendants assert that the Board failed to serve the  
12 Original Complaints on them within the statutory period. The  
13 motion to dismiss further alleges that Contestants had a duty to  
14 serve the Original Complaints on Defendants, together with  
15 summonses, pursuant to Rule 4 of the Com. R. Civ. P.

16 Where election contest statutes have provided for service of  
17 the statement of contest *by the government*, courts have held that  
18 the contestants themselves are not required to serve their  
19 complaints on defendants. *Marsh v. Huffman*, 202 N.W. 581, 583  
20 (Iowa 1925); *Harris v. Caudil*, 300 S.W. 349, 350 (Ky. App. Ct.  
21 1927). *Franson v. Carlson*, 137 N.W.2d 835, 836 (Minn. 1965)  
22 reached the opposite conclusion; however, the statute in that case  
23 required service "in the same manner as provided for the service  
24 of summons in civil actions."

25 Here, the Commonwealth's contest statute clearly contemplates  
26 delivery of the complaint *by the Board* within five days of its  
27 receipt. The statute makes no mention of additional service by  
28 Contestants, pursuant to the Commonwealth Rules of Civil Procedure

1 or any other rule. If service by Contestants were required  
2 pursuant to Rule 4, the Board's delivery of the complaint would be  
3 superfluous, and section 6423(d) would be deprived of any meaning.  
4 A statute is not to be interpreted so as to render a portion of it  
5 meaningless. *In re Estate of Rofag*, 2 N.M.I. 18, 29 (N.M.I.  
6 1991). The Court therefore holds that Contestants were not  
7 required to serve the Complaint on Defendants.

8 Defendants next complain of untimely service by the Board  
9 itself. Contestants served their Original Complaint on the Board  
10 after business hours on January 13, 1994. Defendant Inos received  
11 service of this Complaint on January 20, 1994. Computed according  
12 to Com. R. Civ. P. 6, this date of delivery falls within the five  
13 days contemplated in section 6423(b).<sup>3</sup> Defendants Jovita and  
14 Abraham Taimanao did not receive service until January 24, 1994,  
15 well after the statutory period had elapsed. However, where the  
16 failure to serve a notice of election contest on time is  
17 attributable to the government and not to the contestant, the  
18 court is not deprived of jurisdiction and should proceed to the  
19 merits of the case. *Diaz, supra*, 579 P.2d at 606; *O'Dowd, supra*,  
20 111 P. at 754. The Court therefore finds that the failure of the  
21 Board to serve Mr. and Ms. Taimanao within five days of receiving  
22 the Original Complaint does not warrant dismissal of this action.

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27 <sup>3</sup> By its terms, Rule 6 applies when computing periods of time  
28 "prescribed or allowed by these rules, by order of court, or by  
any applicable statute" (emphasis added). Com. R. Civ. P. 6. An  
election contest is such an applicable statute. See *Rogers v.*  
*Nevada*, 455 P.2d 172, 174 (Nev. 1969).

1 E. DEFECTS IN PLEADING

2 Defendants next attack the sufficiency of the pleading in the  
3 Complaint. This portion of Defendants' motion is akin to a motion  
4 to dismiss under Com. R. Civ. P. 12(b)(6) for failure to state a  
5 claim upon which relief can be granted. In considering such a  
6 motion, this Court must accept the allegations in the Complaint as  
7 true and construe them in the light most favorable to Contestants.  
8 *Govendo v. Micronesian Garment Mfg., Inc.*, 2 N.M.I. 270, 283  
9 (N.M.I. 1991).

10 Defendants argue that the Original Complaint fails to state  
11 a claim under any of the four permissible grounds for election  
12 contests. Paragraph 10 of the Complaint contains the most  
13 succinct statement of Contestants' allegations, each of which  
14 allegedly "resulted in defendant[s] being declared elected when  
15 [they] should not have been declared elected":

16 A. On information and belief, the members of the  
17 board of elections received payment and/or were promised  
18 payment of value by V. Hocog as agent for the democratic  
19 candidates for deciding voter challenges in the  
20 administrative voter challenge hearings noted above, in  
21 favor of the democratic candidates and for the purpose  
22 of processing the election for these democratic  
23 candidates on Rota.

24 B. Illegal votes were cast by persons not eligible  
25 to vote because of residency and/or domiciliary  
26 requirements and legal votes were erroneously declared  
27 to be illegal votes and "counted" by the Board as if  
28 they were legal votes.

29 C. The Board in the conduct of the election,  
30 especially in the administrative hearings on voter  
31 challenges made errors which resulted in qualified  
32 voters being disqualified and unqualified voters being  
33 qualified. The Board counted votes from persons who  
34 were not qualified by reasons of domicile or residency  
35 to vote. The Board refused to count votes by voters who  
36 were qualified to vote.

37 The Court will evaluate these allegations in turn.



1           a.    Payment by "V. Hocog." Paragraph 10(A) of the Complaint  
2 alleges bribery of the Board by "V. Hocog as agent for the  
3 democratic candidates." Defendants point out that there are  
4 several persons identifiable as "V. Hocog" on Rota, and that there  
5 is no "V. Hocog" among Defendants. However, this is a strained  
6 reading of the Complaint, which alleges that "V. Hocog" acted as  
7 agent for Defendants. This allegation fairly falls within section  
8 6421(a), which authorizes a contest on the ground that "[t]he  
9 candidate has given to an election official anything of value for  
10 the purpose of procuring his election." To require pleading that  
11 a candidate personally delivered payments to the Board would  
12 render immune from challenge the far more likely scenario that a  
13 bribe is offered or accepted through an intermediary. The  
14 Legislature is unlikely to have intended this result, and the  
15 Court declines to adopt this reading of the statute.

16           b.    Illegal Votes. Defendants point to the fact that the  
17 complaint fails to allege which "illegal votes" were cast. They  
18 argue that Contestants' failure to specify a number of illegal  
19 votes greater than Defendants' respective margins of victory  
20 renders the Complaint insufficient to state a claim under section  
21 6421(c) that "illegal votes were cast."

22           Section 6423(c) provides:

23           When the counting of illegal votes is alleged as a cause  
24 of contest, it is sufficient to state generally that in  
25 one or more specific election districts illegal votes  
26 were given to defendant which, if taken from him, would  
27 reduce the number of his legal votes below the number of  
28 legal votes received by another candidate for the same  
office.

1 Here, Contestants' Original Complaints fail to meet this  
2 standard.<sup>4</sup> They allege, in Paragraph 7, that twenty-six people  
3 who voted on Saipan in the Rota election were ineligible to vote,  
4 and that the Board incorrectly adjudicated 160 voter challenges.  
5 But the Complaints do not say that of those 160 challenges, a  
6 sufficient number represented illegal votes which, when combined  
7 with the twenty-six Saipan votes, would deprive Defendants of  
8 their election victories if deducted from the results. The  
9 failure to plead the counting of illegal votes sufficient to  
10 change the election result renders the Original Complaints  
11 insufficient to state a valid ground of contest under 1 CMC §  
12 6421(c).

13 c. Errors in the Conduct of Election. Lastly, Defendants  
14 contend that the allegations of the Original Complaints do not  
15 state a claim under section 6421(d), which authorizes a contest if  
16 "[t]he Board in the *conduct of election* or arithmetical tabulation  
17 of votes made errors sufficient to change the result." (Emphasis  
18 added). Clearly, the Original Complaints do not allege mere  
19 arithmetic errors in counting the votes. The heart of  
20 Contestants' claim -- indeed, the heart of this election contest --  
21 - is the allegation that the Board of Elections applied an  
22 improper legal and/or factual standard in adjudicating 160 voter  
23 challenges from the First Senatorial District of Rota.

24 Defendants' argument, that these allegations do not fall  
25 within the meaning of "conduct of election" as used in section  
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27 <sup>4</sup> There are differences between the Amended and Original  
28 Complaints in this regard. However, since the Amended Complaints  
have been stricken for lack of verification, Contestants's claims  
will be measured by the allegations of the Original Complaints.

1 6421(d), presents a particularly difficult question of statutory  
2 construction. The phrase "conduct of election" is not defined in  
3 the contest statute. Section 6421 was added to the statute by the  
4 Legislature in 1986, through Public Law 5-7, and there are no  
5 Committee reports or other legislative history available as a  
6 guide for this Court's interpretation. Therefore, the Court must  
7 infer the meaning of the phrase from the statute itself, and from  
8 the context of related statutes and Board regulations. *CNMI*  
9 *Attorney General v. Cubol*, 3 C.R. 64, 73 (D.N.M.I. App. Div.  
10 1987).

11 Title 1 CMC § 6104 sets forth the duties of the Board of  
12 Elections. One of these is to "promulgate a manual of  
13 administrative procedures to be used *in the conduct of elections*,  
14 to include regulations to be followed by all election officials as  
15 well as descriptions of the necessary equipment and forms to be  
16 used in any election." 1 CMC § 6104(h) (emphasis added).  
17 Accordingly, the Board promulgated a set of "Adopted Rules and  
18 Regulations *for the conduct of elections* in the Northern Mariana  
19 Islands" on July 16, 1979. 1 Com. Reg. 9 at 307 (1979) (emphasis  
20 added). Within those Regulations, only one mention is made of  
21 ballot challenges such as the Board adjudicated here. Part VII of  
22 these Regulations is entitled "Conduct of Elections." It provides  
23 that, after election officials have "clearly and audibly"  
24 announced the voter at the polls, "a challenge may be interposed  
25 on the grounds that a ballot is subject to challenge under the law  
26 or regulations issued by the Board." 1 Com. Reg. 9, at 321. No  
27 other statute or regulation governs voter challenges before the  
28 Board.

1           These related statutes and regulations give rise to an  
2 inference that both the Legislature and the Board understood the  
3 phrase "conduct of elections" to mean its overall supervisory role  
4 over the electoral process, including adjudication of voter  
5 challenges, and that the meaning is not restricted to the  
6 administration of polling places on Election Day. However, this  
7 inference is by no means conclusive.

8           In the last analysis, the Court must choose the  
9 interpretation that most closely accomplishes what the Legislature  
10 intended. *Hakobotan, supra*, 2 N.M.I. at 224. The interpretation  
11 urged by Defendants would allow election contests based on  
12 allegations that illegal votes were counted in the results under  
13 section 6421(c). However, it would bar contests based on claims  
14 that legal votes were not counted, except where the failure to  
15 count them resulted from arithmetic errors or from the Board's  
16 actions in administering the polls. This result does not serve  
17 the public policy of providing a means for defeated candidates and  
18 other voters to contest the outcome of an election when they have  
19 substantial grounds to believe that that outcome did not reflect  
20 will of the majority of those legally voting.

21           Conversely, defining "conduct of election" in section 6421(d)  
22 to mean "all acts taken by the Board in its supervisory role over  
23 the election process" would serve this goal by allowing contests  
24 based on illegal votes counted as well as legal votes not counted.  
25 It might be argued that this interpretation would render section  
26 6421(c) meaningless, as both the failure to count legal votes and  
27 the failure to discount illegal ones could be deemed "errors" by  
28 the Board under section 6421(d). It is a basic rule that a

1 statute should not be interpreted so as to render part of it  
2 superfluous. *Subol, supra*, 3 C.R. at 78; *Ogumoro, supra*, slip op.  
3 at 9.

4 However, the argument that this reading of "conduct of  
5 election" renders section 6421(c) superfluous is flawed. There  
6 might easily be a situation where the illegality of a vote is not  
7 brought to the Board's attention, as allegedly happened here in  
8 the case of the twenty-six allegedly illegal Saipan voters whose  
9 ballots were not challenged before the Board. In that case, the  
10 legality of the vote, rather than any "error" by the Board, is at  
11 issue, and the contest would be brought under section 6421(c).  
12 Conversely, there is no plausible scenario whereby legal votes  
13 would be cast but not counted in the results unless the Board did  
14 commit an "error"; therefore, all such contests would have to fall  
15 under section 6421(d).

16 Weighing the merits of these competing interpretations, the  
17 Court finds that the phrase "conduct of election" in 1 CMC §  
18 6421(d) means "all acts taken by the Board in its supervisory role  
19 over the election process." This definition, of course, is  
20 subject to the limitation of section 6422(a) that those acts must  
21 have "resulted in a defendant being declared elected or tied for  
22 election." Returning to the contest in the instant case,  
23 Paragraph 10(A) clearly alleges errors by the Board in  
24 adjudicating 160 voter challenges in the Rota election. This  
25 number of votes is sufficient to alter the results of all three  
26 elections at issue. Viewing the allegations of the Original  
27 Complaint in the light most favorable to Contestants, the Court  
28 holds that they state a valid contest under 1 CMC § 6421(d).

1 F. OTHER REVIEW OF BOARD PROCEEDINGS

2 Finally, Defendants attack the other allegations contained  
3 within the Original Complaint that the Board of Elections violated  
4 challenged voters' constitutional rights (Paragraph 10(C)),  
5 improperly disqualified one Board member and failed to disqualify  
6 others (Paragraphs 11(a) and (B)), and conducted the challenge  
7 hearings in a biased, prejudiced and capricious manner (Paragraph  
8 11(F)).

9 Contestants make two arguments in defense of these  
10 allegations. First, Contestants claim that these allegations are  
11 material to their claim of errors committed by the Board, falling  
12 under section 6421(d). Paragraph 12 of the Original Complaints  
13 reads: "The irregularities, errors and misconduct [by the Board]  
14 as aforesaid resulted in defendant[s] being declared elected when  
15 but for these irregularities, errors and misconduct plaintiff[s]  
16 [sic] would have been elected." Whether Contestants will be able  
17 to prove the causal connection they allege is a matter for hearing  
18 on the merits. Here, it is sufficient to rule that, viewing the  
19 allegations in the light most favorable to Contestants, the  
20 Original Complaint does sufficiently link these allegations to  
21 actual prejudice to state a claim under 1 CMC § 6421(d).

22 Contestants' second argument, however, is considerably  
23 broader than the first. They assert that this Court has the power  
24 in this proceeding, above and beyond the four grounds stated in  
25 section 6421, "to determine whether the Board's final decision in  
26 the voter challenge hearings, contrary to the mandate of 1 CMC §  
27 9110(c) [of the Administrative Procedure Act] constitutes a  
28 violation of the contestants' constitutional or statutory rights."

1 Memorandum in Opposition to Motion to Dismiss, at 11. This  
2 argument must fail.

3 No appeal has been filed under the Administrative Procedure  
4 Act of the Board's action on the voter challenges. In its  
5 absence, this Court cannot refashion the narrow, statutory grant  
6 of authority over election contests into an all-terrain vehicle of  
7 judicial review, complete with standards of review and remedies  
8 found nowhere in the contest statute itself. To do so would fly  
9 in the face of the express limitations of the statute.

10 In sum, while the Court finds the allegations in Contestants'  
11 Original Complaint to be sufficiently pleaded under the grounds of  
12 the election statute, the proof at trial must be relevant to the  
13 four grounds of section 6421 and must be offered to show but-for  
14 causal linkage with the actual prejudice requirement of section  
15 6422. No claims of violation of constitutional rights or other  
16 abuses by the Board that are not causally-connected to the actual  
17 election results can be adjudicated in this action.

#### 18 19 IV. CONCLUSION

20 For the foregoing reasons, the Court hereby ORDERS:

21 1. The Amended Complaint filed by Contestants on January  
22 14, 1994, is stricken for failure of Contestants to verify it.

23 2. Defendants' motion to reject the filing of the Original  
24 Complaint is DENIED.

25 3. Defendant's motion to dismiss for failure to file the  
26 Original Complaint within seven days of discovering the "fact  
27 supporting the contest" is DENIED.  
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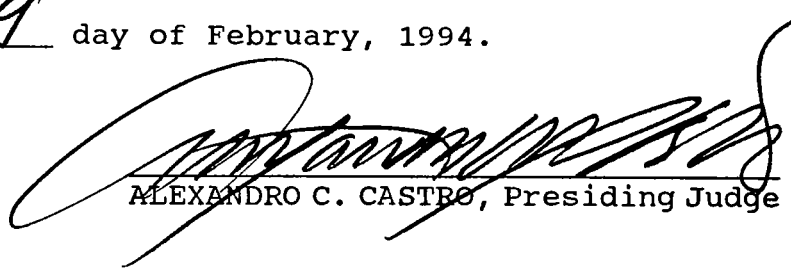
4. Defendants' motion to dismiss for failure to make timely service of the Original Complaint is DENIED.

5. Defendants' motion to dismiss for failure to state a claim under 1 CMC § 6421 is GRANTED with respect to 1 CMC § 6421(c) and DENIED with respect to 1 CMC §§ 6421(b) and (d).

6. Defendants' motion to dismiss Contestants' claim that this action should include judicial review of Board of Elections decisions pursuant to the Administrative Procedures Act is GRANTED.

7. This Action shall proceed to a hearing on the merits pursuant to 1 CMC § 6421(b) and (d) based upon the Court's Order Resetting Hearing, dated January 31, 1994. No continuances of the schedule set forth in this Order will be authorized.

So ORDERED this 9 day of February, 1994.



ALEXANDRO C. CASTRO, Presiding Judge