E-FILED
CNMI SUPREME COURT
E-filed: Aug 22 2017 08:45AM
Clerk Review: Aug 22 2017 08:45AM
Filing ID: 61014504
Case No.: 2016-SCC-0004-CIV
NoraV Borja

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IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LUCIA L. BLANCO-MARATITA & LISA-MARIE B. AGUON,
Plaintiffs-Appellants,

v.

MARIA BARBARA BORJA, JOEY P. SAN NICOLAS, AND THE MUNICIPALITY OF TINIAN AND AGUIGUAN,
Defendants-Appellees.

Supreme Court No. 2016-SCC-0004-CIV
Superior Court No. 15-0047

SLIP OPINION

Cite as: 2017 MP 6
Decided August 22, 2017

Joseph E. Horey, Saipan, MP, for Plaintiffs-Appellants.

Matthew T. Gregory, Saipan, MP, for Defendants-Appellees.

BEFORE: JOHN A. MANGLONA, Associate Justice; KATHERINE A. MARAMAN Justice Pro Tem.; ROBERT J. TORRES, Justice Pro Tem.

MANGLONA, J:

¶ 1 Appellants Lucia L. Blanco-Maratita ("Blanco-Maratita") and Lisa-Marie B. Aguon ("Aguon") (collectively "Officers"), former officers of the Tinian Casino Gaming Control Commission, appeal the trial court's ruling that three local laws enacted by the Tinian Legislative Delegation were constitutional and that a formal staggering system controls the terms of the members of the Commission. For the following reasons, we AFFIRM the trial court's ruling as to the constitutionality of the local laws, VACATE the court's ruling as to the commissioners' terms, and REMAND for further proceedings consistent with this Court's opinion.

I. FACTS AND PROCEDURAL HISTORY

A. Legislative Delegation's Amendments to the Revised Tinian Casino Gaming Control Act

¶ 2 In 1989, voters in Tinian and Aguiguan proposed and passed a local initiative enacting the Tinian Casino Gaming Control Act of 1989 ("Act") pursuant to Articles IX and XXI of the NMI Constitution.[1] The Act legalized gambling in the second senatorial district, which consists of Tinian and Aguiguan, and established the Tinian Casino Gaming Commission ("Commission"), composed of five appointed members ("commissioners"). The Commission was empowered to hire officers and employees. In 1993, pursuant to a court order, the Act was revised and superseded by the Revised Tinian Casino Gaming Control Act of 1989 ("Revised Act").[2]

¶ 3 In 2004, the Tinian Legislative Delegation[3] enacted Tinian Local Law ("TLL") 14-1 amending the Revised Act to, among other things: allow the

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[1] Article IX provides, in relevant part: "The people may enact laws by initiative." NMI CONST. art. IX, § 1.

Article XXI provides: "Section 1: Prohibition. Gambling is prohibited in the Northern Mariana Islands except as provided by Commonwealth law or established through initiative in the Commonwealth or in any senatorial district." NMI CONST. art. XXI, § 1.

[2] In April 1993, the CNMI Superior Court struck down select provisions of the Act on constitutional grounds and directed the Commission to revise the Act consistent with its order. *Commonwealth v. Tinian Casino Gaming Control Comm'n*, Civ. No. 91-690 (NMI Super. Ct. Apr. 8, 1993) (Final Order at 15). Thereafter, the Superior Court issued an order approving and adopting the Revised Tinian Casino Gaming Control Act of 1989, which superseded and replaced the Act. *Tinian Casino Gaming Control Comm'n*, Civ. No. 91-690 (NMI Super. Ct. Aug. 18, 1993) (Order Approving and Adopting the Revised Tinian Casino Gaming Control Act of 1989).

[3] Established by 1 CMC § 1404, the Tinian Legislative Delegation is "comprised of the senators and representative from Tinian." 1 CMC § 1404(a)(2).

Commission to grant a casino license while a hotel-casino complex is being constructed in phases; lower the minimum age of casino employees from twenty-one to eighteen; reduce the casino license application fee from $200,000 to $5,000; reduce the penalty rate for late payment of casino license fees and gambling revenue tax from five to two percent of the unpaid balance; and allow casino operators to accept credit wagers.

¶ 4 In 2013, the Tinian Legislative Delegation enacted TLL 18-5 further amending the Revised Act to remove the gross revenue surtax and gambling amusement machine tax and replace the previous 12% gambling revenue tax with a two-tier rate structure: 5% on revenue from "premium players" and 12% on revenue from non-premium players.

¶ 5 In 2014, the Tinian Legislative Delegation and Tinian Municipal Council enacted Tinian Local Ordinance ("TLO") 18-3 to make appropriations for the Commission for fiscal year 2015. The challenged provisions of TLO 18-3[4] capped the number of positions in the Commission and the salary for each position.

¶ 6 In November and December of 2014, the Commission raised the salary of most of its officers and employees, including Blanco-Maratita, then-executive director, and Aguon, then-inspector. After making several payments at the increased rate, the Tinian Municipal Treasurer began issuing paychecks capped at the salary limits set by TLO 18-3.

¶ 7 In March 2015, Officers, joined by the Commission, brought an action seeking declaratory and injunctive relief claiming that TLL 14-1, TLL 18-5, and TLO 18-3 were unconstitutional because, among other reasons, the Tinian Legislative Delegation may not amend the Revised Act. The suit named as defendants: Charlene M. Lizama, Tinian Municipal Treasurer, later replaced by Maria B. Borja; Joey P. San Nicolas, Mayor of Tinian; and the Municipality of

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[4] The challenged provisions in TLO 18-3 are:

> Section 104(d) ("During the period of this Act, no funds shall be reprogrammed from personnel and non-personnel accounts to other personnel accounts to increase any salary from its current level or the level as set forth in the attached appropriation worksheet, Appendix A.");
>
> Section 404(c) ("No position or FTE pay level approved by this Act shall be increased and the funds appropriated herein shall not be reprogrammed to increase any pay level set forth in Appendix A attached to this Act."); and
>
> Section 404(i) ("Notwithstanding any law to the contrary and except as provided for in subsection (b) of this section, the funds appropriated pursuant to this Act shall not be used to increase the salary of any employee or position from its current level or new level as set forth and appropriated by this Act.").

Tinian, the appellees in this case (collectively "Tinian Government"). In November 2015, the trial court issued an order denying declaratory relief to Officers, finding that the Tinian Legislative Delegation could amend the Revised Act.

B. Commissioners' Terms

¶ 8 The initial five commissioners were appointed on March 30, 1990, to staggered terms. Pursuant to the Revised Act, after the initial terms elapsed, each new commissioner was appointed to a six-year term. Revised Tinian Casino Gaming Control Act of 1989 § 5(1); 10 CMC § 25129 Law Revision Comm'n cmt. (attachment to the Order Approving and Adopting the Revised Tinian Casino Gaming Control Act of 1989) (effective Aug. 18, 1993) [hereinafter Revised Act]. Officers assert, and the Tinian Government does not object, that until 2015 a new commissioner's term ran for six years from the date of his or her individual confirmation.

¶ 9 In June 2015, Mayor Joey San Nicolas ("Mayor") wrote a letter to commissioner Matthew Masga ("Masga") stating that in accordance with the Revised Act's clear intent to provide for staggered terms, the commissioners' terms have beginning and end dates predetermined by the 1990 initial appointments. The Mayor's determination affected two commissioners, Masga and Lydia Barcinas ("Barcinas") (collectively "Disputed Commissioners").[5] Masga began serving on the Commission on October 10, 2012, and Barcinas on October 20, 2012. According to the Mayor, both Disputed Commissioners' terms expired on March 30, 2014.

¶ 10 Officers and the Commission sought a declaratory judgment to determine the commissioners' terms. They argued a commissioner's term runs for six years from the date of his or her individual confirmation, not by dates predetermined by the 1990 initial appointments. The trial court issued an order finding that a formal staggering system controls the commissioners' terms, such that the terms are strictly bound by dates predetermined by the 1990 initial appointments.

¶ 11 Officers[6] now appeal the trial court's orders and final judgment as to the constitutionality of the local laws and the commissioners' terms.

II. JURISDICTION

¶ 12 The Supreme Court has jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. art IV, § 3. The Superior Court entered final judgment as to all claims asserted by Officers, who timely appealed. However, Officers' standing to bring these claims is being challenged. We consider this challenge as one of the issues on appeal.

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[5] Matthew Masga and Lydia Barcinas appeared as plaintiffs-intervenors in the underlying case at the trial court.

[6] Initially, Officers and the Commission appealed. The Commission later withdrew its appeal, leaving Officers as the remaining appellants.

III. Standard of Review

¶ 13 There are five issues on appeal. First, as a preliminary matter, we must determine whether Officers have standing to bring their claims. Whether a party has standing to bring a claim is a question of law, reviewed de novo. *Mafnas v. Commonwealth*, 2 NMI 248, 256 (1991). Second, whether the Tinian Legislative Delegation may amend the Revised Act is a matter of constitutional interpretation, reviewed de novo. *Pangelinan v. N. Mariana Islands Ret. Fund*, 2009 MP 12 ¶ 9. Third, whether the local laws in question unduly and unreasonably interfere with the second senatorial district's constitutional right to effectively establish gambling under the balancing test established in *Commonwealth v. Tinian Casino Gaming Control Comm'n*, 3 NMI 134, 147–48 (1992) [hereinafter *TCGCC*], is a matter of constitutional interpretation, reviewed de novo. *Pangelinan*, 2009 MP 12 ¶ 9. Fourth, whether TLO 18-3 violates the principle of separation of powers is a matter of constitutional interpretation, reviewed de novo. *Id*. Fifth, whether under the Revised Act, the commissioners' terms begin and end on dates predetermined by the initial appointments to the Commission is a matter of statutory interpretation, reviewed de novo. *Id.*

IV. Discussion

A. Standing

¶ 14 The issue of standing is a jurisdictional question; accordingly, we address it notwithstanding a party's failure to raise it in the court below. *Atalig v. Mobil Oil Mariana Islands, Inc.*, 2013 MP 11 ¶ 10 (citing *Cody v. N. Mariana Islands Ret. Fund*, 2011 MP 16 ¶ 23). In order to have standing, a plaintiff:

> (1) must have suffered an injury in fact—an invasion of a legally protected interest which is a) concrete and particularized, and b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of independent action of some third party not before the court; and (3) it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

Estate of Ogumoro v. Han Yoon Ko, 2011 MP 11 ¶ 19 (citations and internal quotation marks omitted).

¶ 15 We now turn to the three local laws to determine whether Officers have standing to challenge their constitutionality. Officers plainly have standing to challenge TLO 18-3. They suffered concrete, particularized, and actual injury-in-fact traceable to TLO 18-3 because the TLO capped their salary, barring them from receiving their increased salary. A favorable ruling from this Court would redress the injury. Because all three elements of standing are met, Officers have standing to challenge TLO 18-3.

¶ 16 Officers' standing to challenge TLL 14-1 and 18-5 is more tenuous. However, in the CNMI, standing is construed liberally. *See Mafnas v. Commonwealth*, 2 NMI 248, 261 (1991) (noting standing "is not a rigid or dogmatic rule but one that must be applied with some view to realities as well as practicalities" and "should not be construed narrowly or restrictively" (quoting *Washakie County School Dist. No. 1 v. Herschler*, 606 P.2d 310, 317 (Wyo. 1980), *cert. den.* 449 U.S. 824 (1980))). Further, when "assessing whether Plaintiffs have proper constitutional standing under the Commonwealth Constitution, we 'must accept as true all material allegations of the complaint.'" *Atalig*, 2013 MP 11 ¶ 10 (quoting *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). Under our liberally construed standard for standing, and accepting as true Officers' allegation that TLL 14-1 and 18-5 adversely affect the effectiveness of the Commission's operation and that Officers have an interest in the Commission's effective operation,[7] Officers have standing to challenge TLL 14-1 and 18-5.

¶ 17 As for the commissioners' terms issue, Blanco-Maratita has standing. According to the Mayor's method of determining the commissioners' terms, the Disputed Commissioners' terms expired and vacancy must be declared immediately. Blanco-Maratita alleges that the Mayor announced the new method because the Disputed Commissioners had denied his request to remove Blanco-Maratita from her role as the executive director of the Commission. Blanco-Maratita alleges the newly appointed commissioners would have removed her from her role. Because, accepting the allegations as true, she was at imminent risk of being removed and the injury was traceable to the Mayor's method of determining the commissioners' terms, we conclude she has standing. We, on the other hand, do not find Aguon to have standing on this issue, but because Blanco-Maratita does, we proceed to the substantive claims.

B. Legislative Delegation's Amendment to Gambling Law Enacted by Local Initiative

1. Local Law Act of 1983

¶ 18 Officers argue TLL 14-1, TLL 18-5, and TLO 18-3 are unconstitutional because a local law enacted by a legislative delegation (hereinafter "delegation law"[8]) may not amend a gambling law enacted by local initiative. We begin our

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[7] Officers argue they have an interest in the Commission's effective operation because as executive director of the Commission, Blanco-Maratita was charged with the duty of "organz[ing] the work of the Commission in a manner that will ensure its efficient and effective operation," Revised Act § 7; and similarly, as a Commission's inspector, Aguon was an officer "whose duties and responsibilities [were] related to or [were] in support of the effectual administration of th[e Revised] Act," Revised Act §§ 4, 12.

[8] We distinguish delegation law from the broader category of local law, because there are at least two types of local law: those enacted by a legislative delegation and those enacted by local initiative.

analysis with the power given to a legislative delegation. Article II, Section 6 of the NMI Constitution provides:

> Laws that relate exclusively to local matters within one senatorial district may be enacted by the legislature or by the affirmative vote of a majority of the members representing that district. The legislature shall define the local matters that may be the subject of laws enacted by the members from the respective senatorial districts . . . .

NMI CONST. art II, § 6. In other words, our Constitution grants a legislative delegation the power to enact local laws on local matters defined by the Legislature.

¶ 19 Pursuant to Article II, Section 6, the Commonwealth Legislature enacted the Local Law Act of 1983 to, among other things, define local matters that may be the subject of local laws. 1 CMC § 1402(a). Such local matters include gambling regulation. 1 CMC § 1402(a)(8).[9] Further, the Local Law Act of 1983 states, "Local laws . . . enacted . . . by initiative . . . may be amended, altered repealed, superceded [sic] or altered in any fashion by the enactment of a subsequent local law enacted by the Delegation." 1 CMC § 1409. In other words, the Local Law Act of 1983 expressly allows a delegation law to regulate gambling and to amend a law enacted by local initiative.[10] As such, barring other prohibitions, a delegation law may amend a gambling law enacted by local initiative. Officers argue, however, that such a reading conflicts with Article XXI of the NMI Constitution.

2. Article XXI

¶ 20 Officers argue that notwithstanding Article II, Section 6 of the NMI Constitution and the Local Law Act of 1983, Article XXI of the NMI Constitution prohibits a delegation law from amending a gambling law enacted

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[9] 1 CMC § 1402(a)(8)'s requirement that local laws on gambling regulation be "in addition to Commonwealth regulations" is satisfied because there are existing Commonwealth regulations on gambling. *E.g.*, 4 CMC § 2311–2328.

[10] Other courts have similarly held that a local legislative body may amend a law enacted by local initiative, absent contrary constitutional prohibitions. *See, e.g.*, *Townsend v. City of Dillon*, 486 S.E. 2d 95, 97 (S.C. 1997) ("We agree and hold an ordinance which repeals a voter initiated ordinance need not be submitted to the electorate for approval."); *Granger v. City of Tulsa*, 51 P.2d 567, 569 (Okla. 1935) ("We therefore hold that laws proposed and enacted by the people of Tulsa under the initiative provisions of the Constitution and the charter of the city of Tulsa are subject to the same constitutional limitations as are other statutes, and may be amended or repealed by the legislative body of the city at will."); *Cornell v. Mayor and Council of Watchung*, 229 A.2d 630, 631 (N.J. 1967) (stating there is "no reason to hamstring the discretion of the municipal governing body" from passing an ordinance essentially identical to another ordinance previously rejected by voters through a referendum election, unless the limitation is imposed explicitly by a statutory or constitutional mandate).

by local initiative. Specifically, citing to *Palacios v. Yumul*, 2012 MP 12 ¶¶ 14, 19, Officers argue Article XXI prohibits a delegation law from establishing gambling. They rely on our definition from a footnote in *TCGCC*, in which we stated "to establish" "has been defined as 'to found, to create, to regulate.'" 3 NMI 134, 149 n.9 (quoting Black's Law Dictionary (5th ed.1979)). They argue because Article XXI prohibits a legislative delegation from establishing gambling, and because in *TCGCC* we defined "to establish" as including "to regulate," a delegation law may not regulate gambling or amend a gambling law enacted by initiative.

¶ 21 Officers' argument is unavailing for two reasons. First, the *Palacios* holding does not draw any relationship between delegation law and the word "established" in Article XXI. Article XXI provides: "Gambling is prohibited in the Northern Mariana Islands except as provided by Commonwealth law or established through initiative in the Commonwealth or in any senatorial district." NMI CONST. art. XXI, § 1. In *Palacios*, we addressed the certified question: "Is a local law, enacted pursuant to Article II, Section 6 of the NMI Constitution by a senatorial district of the legislature, a Commonwealth law under Article XXI of the NMI Constitution?" 2012 MP 12 ¶ 1. We concluded that local law enacted under Section 6—namely delegation law according to our nomenclature today[11]—is not included in the phrase "Commonwealth law." *Id.* ¶¶ 8, 19. Thus, the effective meaning of the holding is, at most, that delegation law cannot do what Commonwealth law can do—that is, delegation law cannot provide for an exception to the prohibition on gambling in the CNMI.

¶ 22 Second, and relatedly, Article XXI only discusses who may set aside the prohibition on gambling. *Palacios*, 2012 MP 12 ¶ 7 ("By its 'plain meaning,' the two disjunctive clauses of Article XXI indicate that its prohibition on gambling may be set aside through two legal mechanisms: (1) through passage of contrary 'Commonwealth law'; or (2) by resort to the initiative process (in either 'the Commonwealth or in any senatorial district')." (citations omitted)). Read as a whole, Article XXI does not address who may or may not regulate gambling once gambling is permitted. Thus, Article XXI does not prohibit a delegation law from regulating gambling once the prohibition on gambling is lifted. Accordingly, pursuant to Article II, Section 6 and the Local Law Act of 1983, a delegation law may regulate gambling, including amending a gambling law enacted by local initiative.

C. "Undue and Unreasonable Interference" Balancing Test

¶ 23 Next, Officers argue the three local laws in question are unconstitutional for the additional reason that they unduly and unreasonably interfere with the second senatorial district's right to effectively establish gambling under the balancing test articulated in *TCGCC*, 3 NMI at 147–48. In *TCGCC*, the

[11] Strictly speaking, local law enacted under Section 6 would include both delegation law and local law enacted by local initiative, but the *Palacios* Court effectively discussed only delegation law in answering the certified question.

Commonwealth government challenged certain provisions in the Act regarding the Commission's collection and expenditure of funds on the grounds the provisions violated Commonwealth-wide laws enacted by the Commonwealth Legislature. In devising a standard for determining the relationship between Commonwealth-wide law and gambling law enacted by local initiative the Court stated: "There is a symbiotic relationship between Commonwealth-wide laws and the local laws of each senatorial district, including those enacted by local initiatives. Each set of laws should be able to co-exist harmoniously, without either doing violence to the other." *Id.* at 144.

¶ 24 We proceeded to establish a three prong test,[12] the first two prongs of which are inapplicable as they involve determining whether a gambling law enacted by local initiative is valid in the face Commonwealth-wide law or constitutional provisions. However, the third prong is useful in elucidating an appropriate standard for the relationship between delegation law and gambling law enacted by local initiative. Accordingly, we restate and apply the third prong of the test when the validity of a delegation law is at issue, as follows:

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[12] The three-prong test is:

> First, there is a presumption that the provisions of a local initiative concerning gambling which is duly enacted pursuant to Articles IX and XXI of the Commonwealth Constitution are valid unless any provision of the local initiative conflicts with a provision of the U.S. Constitution, the Commonwealth Constitution, or a Commonwealth-wide law. The opponent of a local gambling initiative has the initial burden to show by clear and convincing evidence which provisions of the local gambling initiative are inconsistent and in conflict with which constitutional provisions or Commonwealth-wide laws, and why.
>
> Second, if any provision of the local gambling initiative conflicts with a provision of the U.S. Constitution, the Commonwealth Constitution, or a Commonwealth-wide law, that provision must fall, unless, with respect to a Commonwealth-wide law, the application of the Commonwealth-wide law would frustrate the establishment of gambling in a senatorial district.
>
> Third, once it clearly is shown that there is a conflict between a Commonwealth-wide law and a local gambling initiative, then the Commonwealth-wide law prevails, unless the proponent of the gambling initiative demonstrates by clear and convincing proof that the application of a Commonwealth-wide law would itself violate Article XXI of the Commonwealth Constitution. In this case, the appellees must show that a Commonwealth-wide law, if it were to supersede a provision of the Act, would unduly and unreasonably interfere with the second senatorial district's constitutional right to effectively establish gambling.

TCGCC, 3 NMI at 147–48.

> A delegation law[13] falls when it is shown by clear and convincing proof that the application of a delegation law would itself violate Article XXI of the Commonwealth Constitution—namely, that a delegation law, if it were to supersede a provision of a gambling law enacted by local initiative, would unduly and unreasonably interfere with a senatorial district's constitutional right to effectively establish gambling.

As mentioned above, we stated in a footnote in *TCGCC* that "to establish" "has been defined as 'to found, to create, to regulate.'" *Id.* at 149 n.9 (1992) (citing Black's Law Dictionary(5th ed. 1979)).

¶ 25 Applying this balancing test to TLL 14-1 and TLL 18-5, we find TLL 14-1 and TLL 18-5 do not unduly and unreasonably interfere with the second senatorial district's constitutional right under Article XXI to establish—that is, to found, create, or regulate—gambling. We reiterate that gambling, once established pursuant to Article XXI, may be regulated by delegation law. *Supra* ¶ 22. Further, the amendments made in the TLL 14-1 and TLL 18-5—reduction of license application fee, reduction of penalty rate for late payment of casino license fees and gambling revenue tax, change of gambling revenue tax rate structure, reduction of minimum age of casino employees, etc.—reasonably relate to the governmental interest of promoting the competitiveness of the gambling industry in the second senatorial district. Therefore, the alleged interference TLL 14-1 and TLL 18-5 have on the Commission's regulatory operations cannot be considered "undue" or "unreasonable." Nor is there clear and convincing proof in the record showing the contrary.

¶ 26 Applying the balancing test to TLO 18-3, we first note TLO 18-3 was enacted pursuant to Revised Act § 50(5), which grants the Tinian Legislative Delegation the authority to enact appropriations of local gambling revenues for the Commission's operating budget. Revised Act § 50(5). Further, the salary requests for all twenty-nine personnel positions in the Commission's administrative division were granted, except for the $10,000 requested for the salary increase for the Blanco-Maratita's executive director position.[14] We do not find the denial of a single employee's salary increase unduly and unreasonably interferes with the second senatorial district's constitutional right to establish gambling, and there is no clear and convincing proof in the record showing the contrary. Accordingly, TLL 14-1, TLL 18-5, and TLO 18-3 are constitutional under the *TCGCC* balancing test.

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[13] As noted, *supra* ¶ 18, "delegation law" refers to a local law enacted by a legislative delegation.

[14] Because TLO 18-3's appropriation for the Commission's other divisions is not being challenged, we do not address the constitutionality of the appropriation for those divisions.

D. Separation of Powers

¶ 27 Officers further argue TLO 18-3 violates the principle of separation of powers because by capping the number of positions in the Commission and salary for each position, TLO 18-3 impermissibly interferes with the internal workforce and expenditure of funds within the executive branch. Specifically, Officers argue the principle of separation of power applies because Tinian has a "bifurcated executive branch" in which the Commission executes the Revised Act, while the Mayor executes all other local laws. They assert the Tinian Legislative Delegation, as the legislative branch for the Municipality of Tinian and Aguiguan, impermissibly interferes with both parts of the executive branch—the Commission and the Mayor. We address the separation of powers claim with respect to each purported part of the executive branch.

1. Interference with Commission's Functions

¶ 28 Officers argue the Tinian Legislative Delegation impermissibly interferes with the effective functioning of the Commission. "The separation of powers principle operates in a broad manner to confine legislative powers to the legislature, executive powers to the executive, and those powers which are judicial in character to the judiciary." *Marine Revitalization Corp. v. Dep't of Land & Natural Res.*, 2010 MP 18 ¶ 12 (citing *VanSickle v. Shanahan*, 511 P.2d 223, 235 (Kan. 1973)). "The separation of powers concept came into being to safeguard the independence of each branch of the government and protect it from domination and interference by the others." *Sablan v. Tenorio*, 4 NMI 351, 363 (1996) (citation and quotation marks omitted). Separation of powers, however, concerns distribution of powers only among coequal branches of government. *See Marine Revitalization Corp.*, 2010 MP 18 ¶ 12 ("The Commonwealth Constitution provides for a tripartite system of government. . . . This organization, distributing the powers among the *coordinate* branches of government, gives rise to the separation of powers doctrine." (emphasis added) (citation omitted)); *Touby v. United States*, 500 U.S. 160 (1991) ("The separation-of-powers principle focuses on the distribution of powers among the three coequal Branches of Government . . . ." (emphasis in original removed) (citation omitted)).

¶ 29 There is no issue of separation of powers because the Tinian Legislative Delegation and the Commission are not coequal branches of government. The Revised Act established the Commission and the Commission's organization and operations. Revised Act §§ 5–14. As discussed, *supra* ¶ 22, the Tinian Legislative Delegation, in turn, has power to amend the Revised Act pursuant to Article II, Section 6 of the NMI Constitution and the Local Law Act of 1983. Also, the Revised Act gives the Tinian Legislative Delegation authority to enact appropriations for the Commission's operating budget. Revised Act § 50(5). Therefore, the Tinian Legislative Delegation has both regulatory and appropriation power over the Commission. The reverse is not true: the Commission has neither regulatory nor appropriation power over the Tinian Legislative Delegation. Accordingly, we do not find the Tinian Legislative Delegation and the Commission to be coequal branches of government and

separation of powers is not implicated when evaluating the alleged interference with the Commission's functions.

2. Interference with Mayor's Functions

¶ 30 Officers next argue Tinian Legislative Delegation's interference over the Commission is an interference with the Mayor's executive function. We disagree because the Commission is independent from the Mayor. Even though the commissioners are appointed by the Mayor,[15] they are appointed with the advice and consent of the Tinian Municipal Council,[16] whose non-partisan members are elected at large.[17] The commissioners are removable by the Mayor only for-cause. Revised Act § 5(4). Further, the Revised Act charges the Commission, not the Mayor, with the administration of the Revised Act. Revised Act §§ 5(1), 5(8). The Commission's decision-making in carrying out its key duties—e.g., the granting of applications, cancelling or suspension of casino licenses—is not subject to review by the Mayor.[18] Nor is the Commission required to report to the Mayor for other decisions made during the implementation of the Revised Act. In fact, 1 CMC § 5107(e) states a mayor shall "have the power and duty to . . . have a voice, *but no vote*, in the proceedings of all local boards or commissions provided by law." 1 CMC § 5107(e) (emphasis added). Because the Commission is independent of the Mayor, any interference the Tinian Legislative Delegation has over the Commission does not impute interference with the Mayor's functions. *Cf. Nixon v. Sirica*, 487 F.2d 700, 745–76 (D.C. Cir. 1973) ("There is a great distinction between the office of the President and the myriad other agencies and departments that comprise the executive branch. . . . Our 'living Constitution' and the general separation of powers concept it embodies do not mandate a decision which blindly applies the same privilege to the entire executive branch." (citation omitted)). Accordingly, Officers' separation of powers argument is unavailing.[19]

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[15] Revised Act § 5(1).

[16] *Id.*

[17] NMI CONST. art VI, § 6(a).

[18] Section 25(3) provides: "A determination by the Commission to grant an application or to refuse an application is *final and conclusive*." Revised Act § 25(3) (emphasis added).

Section 28(23) provides: "A decision by the Commission to cancel or suspend a casino license or to direct the termination of casino lease or casino management agreement is *final and conclusive*." Revised Act § 28(23) (emphasis added).

Section 29(7) provides: "A decision by the Commission to approve or not to approve of a person pursuant to subsection (2) [in regards to mortgagees] is *final and conclusive*." Revised Act § 29(7) (emphasis added).

[19] Officers also advocate more broadly that the principle of separation of powers applies to the municipal government. But we need not address this issue because separation

E. Commissioners' Terms

¶ 31 As to the contention over the Disputed Commissioners' terms, Officers assert a commissioner's term runs for six years from the date of his or her individual confirmation, not dates predetermined by the 1990 initial appointments. "The most basic canon of statutory construction is that the statutory language must be given its plain meaning, where the meaning is clear and unambiguous." *Saipan Achugao Resort Members' Ass'n v. Wan Jin Yoon*, 2011 MP 12 ¶ 23 (citation and internal quotation marks omitted). "When the statute is not clear and unambiguous, however, we ascertain the legislature's intent by viewing the statute as a whole." *Ishimatsu v. Royal Crown Ins. Corp.*, 2013 MP 2 ¶ 4 (citation omitted).

¶ 32 Section 5(1) of the Revised Act, in relevant part, provides:

> The commissioners shall serve a term of six years except that upon the first five appointments, two shall serve six year terms, two shall serve five year terms, and one shall serve a four year term, to be determined by drawing of lots by the members after their confirmation. A person shall not serve more than one term as commissioner.

Section 5(5) provides:

> Vacancy in the Commission shall be filled in the same manner as in the original appointment upon which the member shall only serve the term remaining created by such vacancy.[20]

Section 5(7), in relevant part, provides:

> Each member of the Commission shall serve for the duration of his term and until his successor shall be duly appointed and qualified. In the event that a successor is not duly appointed and qualified within 120 days after the expiration of the member's term, a vacancy shall be deemed to exist.

¶ 33 Viewing the statute as a whole, the Revised Act clearly provides for a staggering system with terms not strictly bound by dates predetermined by the 1990 initial appointments. Under Section 5(1), there are five initial appointments. Two commissioners serve a term of six years, two serve a term of five years, and one serves a term of four years. Revised Act § 5(1). After the

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of powers does not apply to the case at bar for the reasons stated. *See Camreta v. Greene*, 563 U.S. 692, 705 (2011) ("[A] longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them." (citation and internal quotation marks omitted)).

[20] The vacancy discussed in Section 5(5) is premature vacancy, created when a commissioner does not finish her term. This is in contrast to natural vacancy, which occurs when the duration of a commissioner's term has elapsed.

initial set of appointments, each new commissioner serves a term of six years. *Id.*

¶ 34 Under Section 5(5), if a commissioner does not finish her term, another commissioner shall be appointed to serve the remainder of the unfinished term. For example, if Commissioner A leaves her position after four years of service, Commissioner B, who is appointed to fill in the vacancy, serves the remaining two years of Commissioner A's six-year term.[21]

¶ 35 Under Section 5(7), when a commissioner's term naturally expires, the Mayor has 120 days to appoint a successor. If the successor is not appointed and qualified within 120 days, a vacancy is deemed to exist, triggering Section 5(5). The successor then serves only the remainder of the six-year term that began when the vacancy was deemed to exist. If, however, the successor is appointed and qualified within the 120-day period, she serves a term of six years in full.[22]

¶ 36 An illustration is helpful. If Commissioner C's term is over on December 31, 2017, and if a successor is not appointed and qualified within 120 days after December 31, a vacancy is deemed to exist on April 30, 2018. Then, if Commissioner D is appointed and qualified as a successor on May 30, 2018, she serves a term that ends on April 29, 2024.[23] If, however, Commissioner D is appointed and qualified as successor on March 30, 2018, she serves a term of six years that ends on March 29, 2024.

¶ 37 Accordingly, the Revised Act provides for a staggering system with terms that, due to the 120-day period, are not strictly bound by dates predetermined by the 1990 initial appointments to the Commission.

V. CONCLUSION

¶ 38 For the foregoing reasons, we find that: (1) Officers have standing to challenge the constitutionality of TLL 14-1, TLL 18-5, and TLO 18-3 and the commissioners' terms; (2) pursuant to Article II, Section 6 of the NMI Constitution and the Local Law Act of 1983, a delegation law may regulate gambling, including amending a gambling law enacted by local initiative, and Article XXI does not impose a contrary prohibition; (3) TLL 14-1, TLL 18-5,

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[21] This defeats Officers' assertion that each commissioner is entitled to hold office for six years.

[22] She serves a term of six years in full because otherwise the last sentence in Section 5(7) would be rendered superfluous. *See Hearn v. W. Conference of Teamsters Pension Tr. Fund*, 68 F.3d 301, 304 (9th Cir. 1995) ("We may not interpret a statute so as to render some of its language superfluous; at any rate, we may not do so lightly."). This defeats the Tinian Government's assertion that the commissioners' terms are strictly bound by dates predetermined by the 1990 initial appointments to the Commission.

[23] Commissioner D would serve the remainder of the six-year term that starts when the vacancy occurred on April 30, 2018, and ends six years later on April 29, 2024.

and TLO 18-3 do not unduly and unreasonably interfere with the second senatorial district's constitutional right to effectively establish gambling; (4) TLO 18-3, which caps the number of positions in the Commission and salary for each position, does not violate the principle of separation of powers; and (5) the Revised Act provides for a staggering system with terms not strictly bound by dates predetermined by the 1990 initial appointments to the Commission. Accordingly, we AFFIRM the trial court's ruling as to the constitutionality of the local laws in question, VACATE the court's ruling as to the commissioners' terms, and REMAND for further proceedings not inconsistent with this Court's opinion.

SO ORDERED this 22nd day of August, 2017.

/s/

JOHN A. MANGLONA
Associate Justice

/s/

KATHERINE A. MARAMAN
Justice Pro Tem

/s/

ROBERT J. TORRES
Justice Pro Tem

E-FILED
CNMI SUPREME COURT
E-filed: Aug 22 2017 08:45AM
Clerk Review: Aug 22 2017 08:45AM
Filing ID: 61014504
Case No.: 2016-SCC-0004-CIV
NoraV Borja

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LUCIA L. BLANCO-MARATITA & LISA-MARIE B. AGUON,
Plaintiffs-Appellants,

v.

MARIA BARBARA BORJA, JOEY P. SAN NICOLAS, AND THE MUNICIPALITY OF TINIAN AND AGUIGUAN,
Defendants-Appellees.

Supreme Court No. 2016-SCC-0004-CIV
Superior Court No. 15-0047

JUDGMENT

Appellants Lucia L. Blanco-Maratita and Lisa-Marie B. Aguon, former officers of the Tinian Casino Gaming Control Commission, appeal the trial court's ruling that three local laws enacted by the Tinian Legislative Delegation were constitutional and that a formal staggering system controls the terms of the members of the Commission. For the reasons stated in the accompanying opinion, this Court AFFIRMS the trial court's ruling as to the constitutionality of the local laws, VACATES the court's ruling as to the commissioners' terms, and REMANDS for further proceedings consistent with the opinion.

ENTERED this 22nd day of August, 2017.

/s/________________________
DEANNA M. OGO
Clerk of the Supreme Court