

**William NABORS, Esteven King
and David Cing**

vs.

**Herman MANGLONA, Manuel P.
Villagomez, Howard Macaranas,
Ignacio Quichocho**

**Appellate No. 86-9005
District Court NMI
Appellate Division**

Decided March 11, 1986

Board has a duty to count those ballots. 1
CMC §6415.

1. Elections - Voting - Ballots

The right to cast a secret ballot is not a right held by citizens in general but an individual right guaranteed to each individual voter, which right can be waived by the voter. 1 C.M.C. §6411.

**2. Elections - Contests -
Standing**

Unsuccessful candidates do not have standing to challenge the waiver by a voter of his right to cast a secret ballot. 1 CMC §6423.

3. Elections - Voting - Ballots

The Commonwealth election statutes do not prohibit distinguishing marks on ballots and therefore ballots containing such marks are not invalid.

4. Elections - Voting - Ballots

Alleged voting scheme where before the election voters agreed to place coded marks on their ballots for later identification by party officials does not violate right to a secret ballot under Commonwealth law. 1 CMC §6411.

5. Elections - Voting - Ballots

Where the Commonwealth election laws do not prohibit voters from identifying themselves on their ballot, the Election

FILED
Clerk
District Court

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN MARIANA ISLANDS

MAR 11 1986

For The Northern Mariana Islands

4 APPELLATE DIVISION

5 WILLIAM NABORS, ESTEVEN KING,)
6 DAVID CING,)

DCA NO. 86-9005

7 Plaintiffs/Appellants.)

8 vs.)

OPINION

9 HERMAN MANGLONA, MANUEL P.)
10 VILLAGOMEZ, HOWARD MACARANAS,)
11 IGNACIO QUICHOCHO,)

12 Defendants/Appellees.)

13 Attorney for Appellants:

James S. Sirok
3rd Floor, Nauru Building
Saipan, CM 96950

14 Attorney for Appellees:

Robert J. O'Connor
P. O. Box 690
Saipan, CM 96950

15
16 BEFORE: LAURETA and DUENAS, District Judges and MUNSON*, Chief
17 Justice

18 Per Curiam:

19 Plaintiffs-appellants, William Nabors, Esteven King,
20 and David Cing, appeal from a decision of the Commonwealth Trial
21 Court dismissing their complaint for failing to state a cause of
22 action cognizable under 1 C.M.C. §6421. We agree with the trial
23 court that appellants have failed to state a cause of action for
24 which relief can be granted and accordingly, we affirm.

25
26 *Trust Territory High Court Chief Justice sitting pursuant to 48
U.S.C. §1694b.

1 On November 3, 1985, the Commonwealth held a general
2 election to elect, among others, the Mayor of Tinian and members
3 of the Senate and the House of Representatives. The plaintiffs-
4 appellants, William Nabors, Esteven King, and David Cing, are
5 Democrats and were candidates for these offices. The defendants-
6 appellees, Herman Manglona, Manuel P. Villagomez, Howard
7 Macaranas, and Ignacio Quichocho are Republicans and were
8 determined by the Board of Elections (Board) to be the winners of
9 the election. The appellants allege that there was a scheme
10 instituted for the election on Tinian in which voters placed
11 distinguishing marks on their ballots for the purpose of being
12 later identified by party officials who could verify their
13 loyalty.

14 Appellants filed an election contest with the Board on
15 November 8, 1985, pursuant to 1 C.M.C. §6423. This contest was
16 based on appellants' assertions that appellees unlawfully caused
17 illegal votes to be cast by coercing voters on Tinian to vote for
18 them in violation of 1 C.M.C. §6411 and contrary to the
19 protection guaranteeing voting by secret ballot embodied in the
20 United States and Commonwealth constitutions. They further
21 alleged that the appellees had instituted a system whereby they
22 could verify the fact that the coerced voters had voted as they
23 were told and that appellants would have prevailed in the
24 November 3, 1985, election had this system not been employed.
25 Appellants also argued that the Board was aware of the scheme
26 used by the Republican Party and that the Board's failure to

1 prevent this practice was a further violation of the Commonwealth
2 Code.

3 The Board dismissed appellants' contest on December 20,
4 1985, concluding that they had not met their burden of proof.
5 Appellants then filed an Election Complaint in the Commonwealth
6 Trial Court pursuant to 1 C.M.C. §6430 which allows contestants
7 to file an identical complaint in that Court if they are not
8 satisfied with the Board's determination. This complaint was
9 similar to the one filed with the Board except that the
10 allegations of coercion on the part of the appellees in the
11 alleged scheme to monitor the election were eliminated. In this
12 complaint, appellants specifically alleged that the voters
13 violated 1 C.M.C. §6411 by identifying themselves on their
14 ballots by the use of code names; that the Board was aware of and
15 participated in this violation by allowing Senator Dela Cruz to
16 monitor the vote tabulation; and that the ballots, as marked, are
17 void under 1 C.M.C. §6415(b) (Ballot Irregularities) and 1 C.M.C.
18 §6411 (Secret Ballots) and should not have been counted.

19 The Commonwealth Trial Court dismissed the complaint on
20 February 5, 1986, concluding that it lacked jurisdiction to hear
21 the case since a voter's voluntary self-identification by placing
22 a distinguishing mark on his or her ballot is not a violation of
23 the election act. Therefore, these votes were legal. The court
24 also found that voluntary participation in a scheme to insert
25 code names on the ballots did not violate the provisions of the
26 Code regarding secrecy of the ballot, §6411(a), marks contrary to

1 the provisions of the law, §6415(b), or illegal votes, §6421(c).
2 It also found that this practice was not proscribed by §6421(d)
3 regarding the Board's conduct in tabulating the votes.

4 The issue before the court is whether a ballot
5 containing distinguishing marks voluntarily placed there by a
6 voter for the purpose of subsequent identification is valid and
7 should be counted.

8 1 C.M.C. §§401-6432 sets up a comprehensive system of
9 statutory law which governs elections in the Commonwealth of the
10 Northern Mariana Islands. Section 6411 guarantees qualified
11 voters "the right to cast a secret ballot in private." Section
12 6415 governs ballot irregularities. Subsection (b) of §6415
13 states that "any ballot which is not marked as provided by law
14 shall be void ..." Subsection (d) states that "a ballot may not
15 be rejected for any error which does not render it impossible to
16 determine the voter's choice even though the ballot has been
17 severely soiled or defaced." And subsection (e) states that "if
18 for any reason it is impossible to determine the voter's choice
19 for any office, the ballot may not be counted for that office.
20 The rest of the ballot, if properly marked, shall be counted."

21 Section 6421 allows any voter to contest an election
22 for any of the following reasons:

23 (a) The person declared the winner of that
24 office will not be eligible for that office
at the beginning of its term;

25 (b) The candidate has given to an election
26 official a bribe or reward, or has offered a
bribe or reward for the purpose of procuring

1 his election, or has committed any offense
2 against this Act;

3 (c) Illegal votes were cast; or

4 (d) The Board in the conduct of election or
5 tabulation of votes made errors sufficient to
6 change the result of the election as to any
7 person who has been declared elected.

8 Appellants do not argue that the alleged scheme
9 violated §6421(a). They also do not allege that the candidates
10 themselves violated any of the rules therefore, §6421(b) does not
11 come into play. Section 6421(c) deals with illegal votes.
12 Though there is no definition of illegal votes in the Code,
13 appellants argue that the votes with distinguishing marks are
14 void which they equate with illegal, and therefore, they should
15 not be counted.

16 Appellants first argument in support of this is that
17 under 1 C.M.C. §6411 a voter has a right to cast a secret ballot
18 in private. They contend that not only must voters be provided
19 with a private place to vote but they must also cast a secret
20 ballot. According to appellants, the purpose of this system is
21 to insure secret voting and that allowing oneself to be
22 identified is contrary to this purpose and any ballot which
23 allows for such identification should not be counted.

24 [1,2] Appellants' argument must fail. They misinterpret
25 §6411. This section provides that "[e]ach qualified voter has
26 the right to cast a secret ballot..." 1 C.M.C. §6411. This is
not a right held by citizens in general; it is an individual
right guaranteed to each individual voter. This right can be

1 waived by the voter. Jones v. Glidewell, 53 Ark. 161, 13 S.W.
2 723 (1890). The voters voluntarily chose to waive this right
3 when they used code names on their ballots and the unsuccessful
4 candidates do not have standing to challenge this waiver.

5 [3] Appellants cite numerous authorities to support the
6 proposition that identifying marks placed on a ballot by a voter
7 for any reason render the ballot void. See, Fair v. Hernandez,
8 172 Cal.Rptr. 379, 116 Cal.App.3d 868 (4th Dist. 1981); Campbell
9 v. Little, et al., 351 Ky. 312, 66 S.W.2d 67 (1933); Howard v.
10 Rowland, 261 S.W.2d 280 (Kentucky 1983); La Farge, supra. These
11 decisions, however, are all based on statutes which expressly
12 prohibit these marks and specifically state that ballots with
13 such marks are void. The Commonwealth does not have a similar
14 statute so these cases are not instructive. Evans v. Reiser, 2
15 P.2d 615 (Utah, 1931), also cited by appellants, is a case with
16 no such statutory prohibition. In that case the court
17 invalidated ballots containing distinguishing marks pursuant to a
18 statute which provided that any ballot marked by a voter in any
19 other manner than as authorized shall be rejected. However,
20 unlike in the case at bar, a provision in that statute required
21 the preparation and posting of notices informing the voters that
22 identification markings on a ballot rendered it invalid. Id. at
23 623. Again, that is not the situation here. The Commonwealth
24 Election statutes do not prohibit distinguishing marks on ballots
25 and this Court will not now do what the legislature has chosen
26 not to do.

1 Appellants next contend that the ballots containing
2 distinguishing marks are contrary to the law and therefore should
3 not be counted. They support this argument on several grounds.
4 First they cite Evans, supra, wherein that court held that
5 identifying marks on a ballot fall within the definition of
6 unauthorized marks rendering a ballot void. The statute in Evans
7 stated that "any ballot marked by a voter in any other manner
8 than as authorized . . . shall be rejected." Evans, 2 P.2d at
9 623. Section 6415(b) of the Commonwealth Code states that "any
10 ballot which is not marked as provided by law shall be void..."
11 But, as pointed out above, a provision in the statute in Evans
12 specifically required that notices be placed in the polling
13 places informing voters that identification marks on a ballot
14 rendered the ballot invalid.

15 [4] The court determined that that section was specifically
16 intended to preclude identification marks on the ballots. This
17 is not the case before the Court today. There is no indication
18 that the Commonwealth Legislature intended this result; in fact,
19 the election statutes are to the contrary. Section 6415(d)
20 states that a ballot may not be rejected for any error unless it
21 is impossible to determine the voter's choice. Subsection (e) of
22 this same section provides that where it is impossible to deter-
23 mine the voter's choice for one office the ballot shall not be
24 counted for that office but the rest of the ballot should be
25 given effect provided it is properly marked. So under the
26 Commonwealth statutory scheme these ballots were valid and should
have been counted.

1 Appellants also argue that the voluntary identification
2 of the voters violates the constitutional and statutory
3 provisions regarding secret ballots under §6415(b) because the
4 ballots are not marked as provided by law. This argument must
5 fail. The right to a secret ballot is the voter's right, not the
6 candidate's (except in their role as voters). This right can be
7 waived by these voters and the candidates do not have standing to
8 challenge this waiver.

9 [5] Appellants argue that the Board was aware of the
10 alleged scheme and that their failure to act to prevent it was in
11 derogation of their duties. Section 6415 mandates that the Board
12 tabulate all votes that are cast unless they fall within the
13 exceptions contained therein. Voluntary identification by a
14 voter is not one of the exceptions; the Board had a duty to count
15 those votes. The voluntary identification of a ballot by a voter
16 does not run afoul to the code and therefore there is no basis
17 for appellants' complaint under §6421.


18 This opinion should not be read to imply that this
19 Court condones the scheme instituted on Tinian. We find it
20 extremely disturbing that in this day and age the democratic
21 process can be attacked as it was on Tinian leaving the
22 unsuccessful candidates with no recourse in the courts. But the
23 court is bound by the laws as enacted by the Commonwealth
24 Legislature and until it acts to change this apparent loophole,
25 the parties will be left to the judgment of the voters who must
26 decide how they can best exercise their right to freely elect

1 their government leaders.

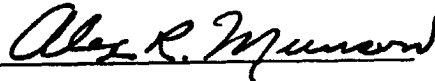
2 For the foregoing reasons, we affirm the decision of
3 the Commonwealth Trial Court.

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8 JUDGE ALFRED LAURETA

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13 JUDGE CRISTOBAL C. DUENAS

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18 JUDGE ALEX R. MUNSON

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