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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

**ANNETTE M. CRUZ, E.J. CALVO, CARLO BRANCH,
and GUAM GREYHOUND, INC.,**
Petitioners,

v.

THE GUAM ELECTION COMMISSION and GERALD TAITANO,
Respondents.

Supreme Court Case No. WRM07-006

OPINION

Cite as: 2007 Guam 14

Argued and submitted on November 14, 2007
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, JR., Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Petitioners Annette M. Cruz, E.J. Calvo, Carlo Branch, and Guam Greyhound, Inc. (collectively “Petitioners”) request that this court exercise original jurisdiction over this matter, and issue a Writ of Mandamus ordering Gerald Taitano and the Guam Election Commission (“GEC”) to place an initiative to permit slot machine gambling, known as Proposal A, the Better Jobs for Guam Act, on the upcoming special election ballot. Because GEC failed to comply with its statutory duty to place the initiative on the ballot, we grant the writ.

I.

[2] This court has discretion to exercise original jurisdiction over a petition for writ of mandamus. 48 U.S.C. § 1424-1(a)(1), (3) (Westlaw through P.L. 110-113, 2007); 7 GCA §§ 3107(b), 31202 (2005). The Organic Act of Guam provides that this court “shall . . . have . . . original jurisdiction as the laws of Guam may provide,” and “shall . . . have jurisdiction to issue all orders and writs in aid of its . . . original jurisdiction.” 48 U.S.C. § 1424-1(a)(1), (3). The laws of Guam provide that the Supreme Court’s authority “includes jurisdiction of original proceedings for mandamus,” 7 GCA § 3107(b), and that a writ of mandamus “may be issued by any court . . . to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station.” 7 GCA § 31202.

[3] Except in “very unusual” cases, this court will decline to exercise its original jurisdiction to issue a writ of mandamus where the lower court may grant the writ relief requested. *Underwood v. Guam Election Comm’n (Camacho)*, 2006 Guam 19 ¶ 14. One such “very

unusual” case in which the exercise of original jurisdiction may be warranted is found where “the issues are of great public importance and should be resolved promptly.” *Id.* ¶ 15 (quoting *Brosnahan v. Brown*, 651 P.2d 274, 276 (Cal. 1982)).

[4] The people of Guam were granted the right of initiative in the Organic Act. 48 U.S.C. § 1422a. The California Supreme Court has recognized the public importance of initiatives in exercising original jurisdiction over cases seeking a writ of mandate related to initiatives. *See, e.g., Farley v. Healey*, 431 P.2d 650, 653 (Cal. 1967) (issuing writ to order verification of signatures on initiative petition); *Perry v. Jordan*, 207 P.2d 47, 49, 51 (Cal. 1949) (issuing writ to place initiative on the ballot); *see also Hardie v. Eu*, 556 P.2d 301, 305 (Cal. 1976) (holding that a challenge to the time limit for circulating initiative petitions for signatures raised issues of “public importance”). As we stated in *Underwood*, 2006 Guam 19 ¶ 13, “California case law regarding the application of the writ standards and the exercise of writ jurisdiction is persuasive authority.” Because of imminent statutory deadlines, the relief requested by Petitioners would only be feasible if it were granted promptly. As such, we find the issues raised here “are of great public importance and should be resolved promptly,” *id.* ¶ 15, and find that original jurisdiction is appropriate.

II.

[5] In December 2006, initiative proponent Annette Cruz submitted to GEC a draft initiative that would permit slot machine gambling at any established parimutuel racing facility that meets certain criteria and conditions, including scholarship and contribution requirements. The measure would also impose a tax on slot machines and slot machine revenue, and would impose various other conditions and requirements. The initiative is designed in such a way that the only

facility on Guam that could qualify is Guam Greyhound Park, which is owned by Guam Greyhound, Inc.

[6] GEC's legal counsel certified that Proposal A does not embrace unrelated subjects, and submitted a short title and summary. The initiative proponents gathered over 14,000 signatures during December 2006 through February 2007. On March 21, 2007, the GEC certified that a sufficient number of signatures had been verified for placement of Proposal A on the next election ballot.

[7] In accordance with 3 GCA § 17105 and 6 GAR § 2109(c), GEC published a notice in the newspaper for three consecutive weeks in April, including in the notice the ballot title and the deadline for filing arguments for or against the measure. The notice stated that the initiative would be presented to the voters "in the next regularly schedule[d] general election to be held on Tuesday, November 04, 2008, or any duly called special election held prior."

[8] On October 18, 2007, Senator Antonio Upingco passed away, creating a vacancy in the Guam Legislature.

[9] Title 3 GCA § 13104 required GEC to call a special election to fill the vacancy "on a Saturday on or about sixty (60) days of the vacancy." 3 GCA § 13104 (2005). The GEC met on October 29, 2007, and scheduled a special election for Saturday, December 15, 2007, fifty-eight days after the vacancy occurred. Petitioners requested that Proposal A be placed on the special election ballot, but GEC did not act on that request during GEC's meetings on October 29 or at a subsequent meeting on October 31. On November 7, 2007 – twenty days after the vacancy occurred, and thirty-eight days prior to the scheduled election – the GEC Board voted against placing Proposal A on the special election ballot.

[10] Petitioners filed a Petition for Writ of Mandamus on October 31, 2007, which we dismissed as not yet ripe for adjudication. Petitioners filed another Petition for Writ of Mandamus on November 1, 2007, and this court issued an order requiring an expedited briefing schedule.

III.

[11] Guam's writ statute requires that a beneficially interested party must establish that he has no "plain, speedy, and adequate remedy [available] in the ordinary course of the law." 7 GCA § 31203. A "beneficially interested" party generally must have "some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." *People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 24 (quoting *Cartsen v. Psychology Examining Comm.*, 614 P.2d 276, 278 (Cal. 1980)).

[12] Petitioners Annette M. Cruz, Carlo Branch, and E.J. Calvo are taxpayers, registered voters of Guam, and proponents and supporters of Proposal A. E.J. Calvo is also the Director of Guam Greyhound Park, which establishment stands as the prospective gaming site at issue. Guam Greyhound, Inc., is the corporation which operates Guam Greyhound Park. We find that Petitioners in this case have sufficient interest not possessed by the citizens generally, and that they are therefore beneficially interested parties for purposes of writ relief. *See Sonoma County Nuclear Free Zone '86 v. Super. Ct.*, 234 Cal. Rptr. 357, 362 (Ct. App. 1987) (determining that pro-initiative petitioners seeking writ of mandate relative to a ballot initiative to create a nuclear-free zone had a special interest above the interest held by the public at large); *see also Bd. of Soc. Welfare v. L.A. County*, 162 P.2d 627, 628-29 (Cal. 1945) ("[W]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient

that he is interested as a citizen in having the laws executed and the duty in question enforced””) (quoting 35 Am. Jur. 73 § 320).

[13] We further find that with the impending election currently set for December 15, 2007, and pertinent deadlines relative to the placing of a qualified initiative on this election ballot having passed or soon to pass, that Petitioners are without a plain, speedy, and adequate remedy at law. *See* 7 GCA § 31203.

[14] A writ of mandamus may be issued to “compel the performance of an act which the law specially enjoins.” 7 CGA § 31202. A petitioner seeking mandamus relief must show that there is a “clear, present, and usually ministerial duty on the part of the respondent.” *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 13. The primary purpose of mandamus is the enforcement of a plain, nondiscretionary legal duty to act. *Guam Fed’n of Teachers ex rel. Rector v. Perez*, 2005 Guam 25 ¶ 28. The petitioner has the burden of showing that a writ should issue. *Sorensen Television Sys., Inc. v. Super. Ct. (Lina’la Sin Casino)*, 2006 Guam 21 ¶ 12.

[15] GEC contends that Petitioners’ writ of mandamus should be denied because: (a) Title 3 GCA § 17203 only requires GEC to include an initiative on the next special election ballot if the special election is called by the Legislature for the purpose of voting on the initiative; (b) GEC is protected by sovereign immunity; (c) GEC cannot place Proposal A on the ballot without an appropriation from the Legislature for Proposal A; (d) the Governor rather than GEC is required to place the measure on the ballot; and (e) inclusion of Proposal A on the ballot is impractical because statutory deadlines related to the processing of the initiative cannot be met.

A. Title 3 GCA § 17203 Applies to Any General Election

[16] Title 3 GCA § 17203 provides, *inter alia*, that GEC shall submit an initiative at the next general election held at least ninety days after it qualifies:

The Election Commission shall submit the initiative to the electors after certification at the next general election held at least ninety (90) days after it qualifies or at a territory-wide special election held at least ninety (90) days after certification, provided however that the Legislature may call a territory-wide special election for the purpose of having the electors vote on an initiative measure.

3 GCA § 17203 (2005) (emphasis added). “General election” is defined for purposes of Title 3 of the Guam Code as “an election held throughout the Territory.” 3 GCA § 1107 (2005); *see also Faulder v. Mendocino County Bd. of Supervisors*, 51 Cal. Rptr. 3d 251, 257 (Ct. App. 2006) (“The Legislature has power to prescribe legal definitions of its own language, and when an act passed by the Legislature embodies a defined term, its statutory definition is ordinarily binding on the courts.”). A “regular general election” is one type of “general election,” and is defined as “the election held throughout the Territory on the Tuesday next after the first Monday in November in each even numbered year.” 3 GCA § 1106 (2005). Section 17203 encompasses any “general election” held at least ninety days after certification of an initiative, and is not limited to a “regular general election.”¹

[17] Significantly, the Legislature knew how to require an initiative to be submitted at the next *regular* general election if it had wanted. In order to read section 17203 the way GEC wants, we would need to insert the word “regular” into the statute, and this is the flaw in GEC’s argument. Nor is there any basis for implying the word “regular” into section 17203. The most natural construction of the words “general election” would be a construction consistent with its statutory definition: “an election held throughout the Territory.” 3 GCA § 1107. Further, there is a good

¹ Section 21215(a) of Title 6 of the Guam Administrative Rules and Regulations is inconsistent with 3 GCA § 17203. Instead of applying to a “general election,” section 21115(a) limits application to a “regular general election.” 6 GAR § 21215(a) (“An initiative measure shall be submitted by the Commission to the voters: (a) At the next *regular* general election”) (emphasis added). An administrative agency “do[es] not have discretion to promulgate regulations that are inconsistent with the governing statute, or that alter or amend the statute or enlarge its scope.” *Slocum v. State Bd. of Equalization*, 36 Cal. Rptr. 3d 627, 631134 Cal. App. 4th 969, 973 (Ct. App. 2005).

reason to conclude that the Legislature actually wanted to do what it did, which is allow an initiative to be voted on in a “general election” and not just a “regular general election.” Because GEC will already be conducting a territory-wide election, the incremental costs of adding an initiative to the ballot will be minimal, especially compared to the cost of calling a special election solely for the purpose of voting on the initiative. In addition, the general election is a territory-wide election, and will always include at least one issue relevant to all voters on Guam in addition to the initiative measure, presumably generating a greater level of interest and higher quality of public debate.

[18] Pursuant to 3 GCA § 13104, GEC plans to hold an election on December 15, 2007 to fill a vacancy in the 29th Guam Legislature. Because legislators are elected on an island-wide basis, that election will not be limited to certain municipalities, divisions, or districts of Guam, but will be held “throughout the Territory.” The upcoming special election is therefore a “general election.” 3 GCA § 1107.² Proposal A qualified for the ballot on March 21, 2007, which was more than 90 days ago. Thus, 3 GCA § 17203 imposes upon GEC a nondiscretionary duty to submit Proposal A to the electors at the next general election – namely, the election to fill a vacancy in the 29th Guam Legislature currently scheduled for December 15, 2007.

B. Sovereign Immunity

[19] GEC contends that this suit is barred by sovereign immunity because Petitioners seek an order that would require the expenditure of public funds. Where a writ of mandate seeks to compel public officials to perform ministerial duties, sovereign immunity is not an obstacle to

² Nothing in the Guam Code prevents a “special election” from also being a “general election.” 3 GCA §§ 1107, 1110 (2005). Title 3 GCA § 5104 (2005), for example, makes clear that a special election can be a general election or a local election: “At least thirty (30) days before any special election, general or local, which shall be deemed to be any election other than a regular general or local election”

suit. *Limtiaco v. Guam Fire Dep't*, 2007 Guam 10 ¶ 32 (citing *Guam Fed'n of Teachers*, 2005 Guam 25 ¶ 26). This court has not yet addressed whether sovereign immunity applies to discretionary acts of public officials. *Id.* ¶ 32 & n.7. The acts at issue here were non-discretionary ministerial acts, and sovereign immunity does not apply. See *Limtiaco*, 2007 Guam 10 ¶ 32.

C. Funding for Special General Election

[20] GEC next argues that it lacks the authority to place Proposal A on the ballot for the upcoming election without a specific appropriation for expenses related to including Proposal A in the upcoming special election. Petitioners respond that GEC has received adequate appropriations to include Proposal A on the ballot, and that a lack of appropriations does not excuse the performance of a non-discretionary duty.

1. Appropriations received by GEC

[21] Two appropriations have been made to GEC that may permit it to conduct a special general election – Guam Public Laws 29-19 and 29-21. Public Law 29-21, which was signed into law on October 22, 2007, provides \$125,000 in funding for GEC to “conduct [an] election to fill the vacancy [in the Legislature] pursuant to Title 3 GCA § 13104.” Guam Pub. L. 29-21:3 (Oct. 22, 2007). Nothing in the plain language of section 13104 or of Public Law 29-21 prohibits the inclusion of additional measures on the ballot at the special election, or otherwise restricts how the special election should be conducted.

[22] Moreover, Guam Public Law 29-19 appropriated \$339,536 to the General Fund of the GEC for “Executive Branch operations, including personnel costs.” Guam Pub. L. 29-19:V:I:1(n) (Sept. 24, 2007). Any doubt whether these funds could be spent on the special election was eliminated by Public Law 29-21, which specified that GEC “is hereby authorized to

expend funds from its operation and personnel appropriation to conduct a special election to fill the vacancy in the *Liheslaturan Guåhan* pursuant to Title 3 GCA § 13104.” P.L. 29-21:3. GEC’s concerns about the adequacy of funding are more appropriately addressed to the Legislature.

[23] Thus, funds have been appropriated by Guam Public Laws 29-19 and 29-21 to fund the special election, which is also a general election.

2. Insufficient Funding Would Not Excuse GEC’s Mandatory Duty

[24] Even if there may not be sufficient funding, that is not an appropriate grounds on which an election commission can refuse to call an election. *Rizer v. People*, 69 P. 315, 317 (Colo. Ct. App. 1902); *Gibbs v. Bartlett*, 63 Cal. 117, 117-18 (Cal. 1883); 28 Cal. Jur. 3d Elections § 129 (Westlaw through Oct. 2007). “When, in any case, a mandatory duty rests on a board to call an election, it cannot refuse to perform it on the ground that there may not be sufficient funds in the treasury to defray the expenses of the election.” 28 Cal. Jur. 3d Elections § 129.

[25] There are strong policy reasons supporting this rule. As the Colorado Court of Appeals stated in *Rizer*:

[I]f lack of funds would excuse the calling of a special election, it would also relieve the council from the duty of holding a general election. There might be a failure to make an appropriation for the expenses of the general election, and, so being without funds to defray those expenses, the council might refuse to take the necessary steps for holding it. Thus the incumbents might hold fast to their offices for an indefinite period. The requirements of the law cannot be thus evaded.

69 P. at 317.

[26] We agree with these authorities, and find that the Legislature’s failure to specifically appropriate money to fund the addition of Proposal A to the special election ballot does not prevent us from granting the writ of mandamus.

D. Requirement of a Proclamation of the Governor

[27] According to GEC, the Petitioners' failure to include the Governor as a party precludes this court from granting effective relief. The Governor is required to call any special election by proclamation pursuant to 3 GCA § 13103 (2005), which provides that "[a]ll special elections shall be called by proclamation of the Governor of Guam." GEC asserts that the election scheduled by GEC for December 15 is not a "special election" and is therefore exempt from the proclamation requirement, but that the inclusion of Proposal A would require the Governor to call the election by proclamation.

[28] For purposes of Title 3 of the Guam Code, "special election" is defined by statute as "an election, the specific time for the holding of which is not prescribed in this Title nor in any other law." 3 GCA § 1110 (2005). The statute mandating an election to fill a legislative vacancy, 3 GCA § 13104, refers to the election as a "special election," and provides a general time frame for holding the election rather than a "specific time":

The Guam election Commission shall call for a special election on *a Saturday on or about sixty (60) days of the vacancy* to fill vacancies in the Guam Legislature whenever one (1) or more vacancies occur therein prior to eight (8) months before the date of the next general election of members of the Guam Legislature.

3 GCA § 13104 (2005) (emphasis added). Thus, the election to fill the vacancy in the 29th Guam Legislature is a "special election." 3 GCA § 1110.

[29] Several statutory provisions relate to the calling of special elections, some of which appear to be contradictory. Title 3 GCA § 13103 (2005) requires that "[a]ll special elections shall be called by proclamation of the Governor of Guam," but other provisions permit or require other entities to call special elections. 3 GCA §§ 17203, 17303, 13104, 17212; 1 GCA § 1902. Title 3 GCA § 17203 explicitly authorizes the Legislature to call a territory-wide special election

for the purpose of voting on an initiative, as follows: “The Election Commission shall submit the initiative . . . at the next general election . . . or at a territory-wide special election held at least ninety (90) days after certification, provided however that *the Legislature may call a territory-wide special election for the purpose of having the electors vote on an initiative measure.*” Title 3 GCA § 17303 contains an identical provision for the Legislature to call a special election for a referendum. Title 3 GCA § 13104, meanwhile, requires *GEC* to call a special election to fill a legislative vacancy. 3 GCA § 13104 (“The Guam Election Commission shall call for a special election on a Saturday on or about sixty (60) days of the vacancy to fill vacancies in the Guam Legislature whenever one (1) or more vacancies occur therein prior to eight (8) months before the date of the next general election . . .”). In addition, 3 GCA § 17212 provides that, “[f]or the purpose of submitting an initiative measure . . . the Commission may, pursuant to a call by the *Governor or Legislature*, conduct a Special Election dealing only with such measure[] . . . during which election a single polling place shall be designated by the Commission.” 3 GCA § 17212 (emphasis added). Section 17212 further provides that “[o]nly the Legislature or the Governor may call such an election for the purpose of having the electors vote on an initiative measure.” *Id.* Finally, 1 GCA § 1902 (2005) provides that GEC shall conduct a special election under certain conditions, but does not specify which entity, if any, is responsible for calling the election, as follows: “Whenever a vacancy shall occur in the Office of Public Auditor, and when there is more than six (6) months remaining in the term of the Public Auditor at the time the vacancy shall occur, the Guam Election Commission shall conduct a special election no more than ninety (90) days after such vacancy has occurred.”³

³ The Organic Act does not specify the procedures for calling a special election. Section 1421g(d)(2)(B) of the Organic Act requires a special election if the position of Attorney General of Guam becomes vacant more than 6 months before a general election, but does not provide guidance on how the special election would be conducted. 48

[30] There seems to be a conflict between the requirement that the Governor shall call all special elections by proclamation, and the provisions permitting the Legislature or GEC to call a special election.⁴ A special election is normally valid only if it is called by the party authorized by statute to call the election.⁵ “When two provisions of the code conflict, if reconciliation is possible, effect should be given to both sections.” 1A Norman Singer, *Statutes & Statutory Construction* § 2812 at 661 (6th ed. 2000).

[31] An interpretation that reconciles the apparent contradictions is to interpret the proclamation requirement as merely a ministerial duty announcing an upcoming election for which separate statutory authority to call such elections is already provided. In other words, once another authorized entity, such as the GEC, initiates the holding of a special election, the Governor would then have the duty to issue a proclamation of the time of election, the office or offices to be filled, and whether it is a general or local election.⁶ This interpretation is supported

U.S.C. § 1421g. Likewise, Section 1714 of the Organic Act permits Guam to designate its own procedures for calling a special election to fill a vacancy in its representative to the House. 48 U.S.C. § 1714.

⁴ In analyzing apparent contradictions in Guam’s election laws, the Guam District Court aptly observed in 1963 that:

The Guam election law is so comprehensive and detailed that some irregularities are almost inevitable. In some respects the law is contradictory and obscure. While we might wish that the Guam Legislature had enacted legislation better adapted for this community, we must take the law as we find it and hope that a better law will result.

DeLeon v. Bamba, 1 Guam Reports 144, 146 (D. Guam App. Div. 1963).

⁵ See 29 C.J.S. *Elections* §132 (2007) (“Where, however, the election is only to be called, and the time and place fixed, by some authority named in the statute, after the happening of some condition precedent, it is essential to the validity of the election that it be called or ordered by the very agency designated by law, and none other.”); 26 Am. Jur. 2d *Elections* § 269 at 90 (“In the case of a special election, . . . the election must be ordered or called by the persons or functionaries designated by law. If not called by the proper officers, such an election is without authority of law and is void.”).

⁶ Alternatively, the law could be interpreted to still require the Governor to call any and all special elections authorized by law, including those special elections that other entities were also authorized to call. This interpretation, however, appears to ignore the separate statutory authorization of other entities to call special elections. See 3 GCA § 13103.

In addition, such an interpretation would contradict the policy requirement of providing adequate notice to voters of upcoming special elections, as special elections called by GEC would not be accompanied by proclamation

by 3 GCA § 5104 (2005), which implies that the Governor has a non-discretionary duty to issue the proclamation after it is determined that a special election will be held, stating that “[a]t least thirty (30) days before any special election . . . the Governor shall publish an election proclamation. . . .”⁷

[32] Similar statutory language can be found in California Election Code § 10700, which provides that “[t]he Governor shall call all statewide special elections by issuing a proclamation,” and in California Election Code § 12000, which provides that “[f]or each statewide election, the Governor shall issue a proclamation calling the election. The proclamation shall be issued by the Governor . . . no later than the 148th day prior to the election. . . .” A statute from which these two California provisions were derived was addressed in

or other notice to voters. Unlike the Governor, the GEC is not required to issue a proclamation when it calls an election, and if the proclamation requirement applied only to elections initiated by the Governor, then GEC-called elections would lack notice.

⁷ The legislative history of the election code reveals that there have been changes over time in the conditions precedent to calling a special election, as well as the entity authorized to call the special election. The authority to call a special election has gradually shifted away from the Governor. In 1952, the Government Code of Guam provided in section 2652 that “[a]ll special elections shall be called by proclamation of the Governor of Guam,” and it also authorized the Governor to call special elections in two specific instances – when there were legislative vacancies, or when there were municipal vacancies. Guam Govt. Code § 2653 (1952) (“The Governor of Guam shall call a special election to fill vacancies in the Guam Legislature whenever three or more vacancies occur therein prior to six months before the date of the next general election of members of the Legislature.”); GGC § 2654 (1952) (“The Governor of Guam may call a special election at any time prior to three months before the date of the next ensuing regularly scheduled election to fill a vacancy in any municipality.”). These provisions demonstrate that, where the Legislature intended to authorize the Governor to initiate a special election, it explicitly stated the circumstances where he could do so, and stated that authorization separate and apart from the proclamation requirement.

In 1977, the Legislature enacted Public Law 14-23, GGC §§ 2690.8, 2690.19, now codified at 3 GCA §§ 17203, 17303, which provided that “the *Legislature* may call a territory-wide special election for the purpose of having electors vote on an initiative measure” or “on a referendum measure.” (emphasis added). Similarly, in 1987, Public Law 18-48, codified at 3 GCA § 13104, amended what was previously Government Code § 2653 to provide that the *GEC* – not the Governor – shall call for a special election to fill vacancies in the Guam Legislature. In 2001, Public Law 26-76, codified at 12 GCA § 79105, stated that a permanent vacancy in the Office of Commissioner of Utilities “shall result in a Special Election to fill that vacancy, to be held on the date of the next General Election . . . or at a Special Election called by *I Liheslaturan Guåhan*.”

The only remaining provision that authorizes the Governor to call a special election for a specific type of special election is 3 GCA § 17212, the single-site election provision, which was enacted in 1996. Guam Pub. L. 23-102.

Veterans' Fin. Comm. of 1943 v. Betts, 359 P.2d 471 (Cal. 1961) (en banc). That provision stated that “at least 70 days before a special state-wide election . . . the Governor shall issue an election proclamation. . . .”⁸ *Id.* at 473 (quoting former Cal. Elec. Code § 1001). In *Veterans' Finance Committee*, the Legislature called a special election, but the Governor failed to issue a proclamation. *Id.* at 472-73. The California Supreme Court indicated that the requirement of a proclamation was intended to “inform the electors” of the offices to be filled and the measures to be voted upon. *Id.* at 473-74. The court held that because the time, place, and measures to be voted upon in the special election were prescribed by law, and the electors are presumed to know the law, the proclamation was not necessary to the validity of the election. *Id.* at 474. In other words, a special election can be initiated by an authorized party other than the Governor, and the requirement that the Governor shall issue a proclamation of the special election is a notice provision, and not necessarily a prerequisite to a valid special election.⁹

[33] Interpreting the Guam statutes consistent with *Veterans' Finance Committee*, we are able to reconcile the seemingly contradictory statutory provisions requiring the Governor to call all special elections by proclamation with other statutory provisions permitting the Legislature or GEC to call special elections. Under this interpretation, any entity authorized by law can call a special election, after which the Governor has a duty to issue the proclamation.¹⁰

⁸ Both section 10700 and 12000 of the California Elections Code were derived from this provision. *See* Cal. Election Code §§ 10700, 12000, notes.

⁹ If the special election were initiated by the Governor himself, or if GEC asked the Governor to initiate a special election that GEC was not statutorily authorized to call on its own, then the proclamation requirement might be considered more than a ministerial duty, but might rather be required to trigger the special election. Because we are not faced with that situation here, we do not decide the issue.

¹⁰ 29 C.J.S. *Elections* § 139 (2007) (“[S]tatutes governing the giving of such notice [of a special election the time and place of which is not specified by law] are generally mandatory[, and] failure to give notice or issue proclamation of the election, in such instance, will render it a nullity”); Am. Jur. 2d *Elections* § 275 (“[S]trict compliance with notice requirements for a special election normally is required, although some jurisdictions only require substantial compliance.”).

[34] Because an election to fill a legislative vacancy is not conducted on a date certain, but within “about sixty [] days of the vacancy,” 3 GCA § 13104, the Governor is required to issue a proclamation of the upcoming special election, regardless of whether Proposal A is added to the ballot. *See* 3 GCA § 13103. In order to provide effective relief to Petitioners, we are not required to order the Governor to place Proposal A on the ballot. While the Governor has a duty to issue a proclamation announcing the election as a general election, the election may be valid even if he does not issue such a proclamation.¹¹

E. Effect of Statutory Deadlines

[35] The GEC argues that mandamus relief should be denied as impractical because there is insufficient time for the election to comply with relevant statutory deadlines. Guam voters are permitted to submit arguments for or against an initiative measure not less than 45 days prior to the election. 3 GCA § 17504; *see also* 6 GAR § 2110. For a December 15, 2007 election, that deadline was on October 31, 2007.

[36] Petitioners assert that voters already received adequate notice of the deadline for submitting arguments, and that opponents of the initiative simply missed that opportunity. GEC published notice in the newspaper of the deadline for submitting arguments for or against the initiative once a week for three weeks. The notice stated that the arguments must be submitted “no less than forty-five (45) days prior to the election at which the measure is to be presented to voters.” Petition, Exs. A-C (Nov. 1, 2007). It further stated that the initiative would be presented to voters at “the next regularly schedule[d] general election to be held on Tuesday, November 04, 2008, or any duly called special election held prior.” Petition, Exs. A-C (Nov. 1,

¹¹ *See Veterans’ Fin. Comm.*, 359 P.2d at 474. Moreover, we have no reason to assume that the Governor will fail to comply with his statutory duty to issue a proclamation at least 30 days prior to the upcoming special election. *See* 3 GCA §§ 5104, 13103.

2007). This notice is flawed in two respects. First, 3 GCA § 17203 does not limit the submission of an initiative to a *regularly scheduled* general election, but includes *any* general election. Second, 3 GCA § 17203 does not allow submission of an initiative at *any* duly called special election, but limits it to a *territory-wide* special election as described by 3 GCA § 17203. Considering the flawed notice, and considering that GEC did not decide whether the initiative would be included on the upcoming election ballot until after the deadline for submission of arguments, we find that voters did not receive adequate notice of the deadline.

[37] Alternatively, Petitioners have suggested that the date of the election be pushed back. GEC responds that this Court should recognize the inflexibility of election deadlines, just as the United States Supreme Court did in *Bush v. Gore*, 531 U.S. 98 (2000). In *Bush v. Gore*, the Court found that there was a fixed statutory deadline (December 12, 2000) by which certain mandates had to be met. *Id.* at 110. In this case, we are not faced with an inflexible statutory deadline. Rather, the statute requires the election to be held on a Saturday “on or about” 60 days after the vacancy. 3 GCA § 13104. “On or about” is not a fixed time, but means “approximately,” or “at or around the time specified.” Black’s Law Dictionary (7th ed. 1999); *see also US Fidelity & Guaranty Co. v. Robert Grace Contracting Co.*, 263 F. 283, 293 (3d Cir. 1920) (interpreting “on or about” to mean “within a reasonable time after”); *DeMarion Janitorial Servs., Inc. v. Universal Dev. Corp.*, 625 F. Supp. 1353, 1357 (N.D. Miss. 1985) (interpreting “on or about” to mean “approximately” or “within a reasonable time from”). In *Walton v. Denhart*, the court held that the defendants had substantially performed on a contract that called for construction of a house “on or about” May 15, where they substantially completed the house on or before June 30. 359 P.2d 890, 893 (Or. 1961).

[38] To provide voters at least forty-five days prior to the election in which to submit arguments for or against the initiative measure, the election would need to be set for no earlier than Saturday, January 5, 2008, which is seventy-nine days from when the vacancy occurred. We find that seventy-nine days is “approximately,” “within a reasonable time from,” or “on or about” sixty days after the vacancy, and that January 5, 2008 is therefore an appropriate date to hold the election.¹² The date forty-five days prior to the January 5 election date is Wednesday, November 21, and voters shall have until that date to submit arguments either for or against Proposal A.

[39] In sum, GEC has failed to perform a nondiscretionary legal duty, and its performance is not excused by sovereign immunity, lack of funds, the lack of a proclamation of the Governor, or the statutory deadlines.

IV.

[40] A Writ of Mandate shall issue commanding the Guam Election Commission and its Board members, individually, and Director Gerald Taitano to reschedule the election to January 5, 2008, and to place Proposal A, the Better Jobs for Guam Act, on the ballot for this election.¹³

Richard H. Benson

RICHARD H. BENSON
Justice Pro Tempore

F. Philip Carbullido

F. PHILIP CARBULLIDO
Chief Justice

¹² We recognize that this decision will delay filling the vacancy in the legislature, and will require GEC to adjust deadlines related to filling the vacancy, but find that this minor disruption is warranted, given the people’s Organic Act right of initiative, 48 U.S.C. § 1422a, along with relevant Guam statutes governing the right of initiative, 43 GCA §§ 17201-17212

¹³ In addition, we remind the Guam Election Commission and Gerald Taitano of their duty to comply with 3 GCA §§ 13103, 17504, 17511, and all other applicable statutes and regulations governing the processing of Proposal A.

TORRES, A.J., concurring:

[41] I fully join in the Opinion of the court, but write separately to address issues related to 3 GCA § 17203 that are not addressed in that opinion.

[42] In addition to providing that an initiative measure shall be submitted at the next general election, 3 GCA § 17203 provides in the alternative that it shall be submitted at a territory-wide special election:

The Election Commission shall submit the initiative to the electors after certification at the next general election held at least ninety (90) days after it qualifies *or at a territory-wide special election* held at least ninety (90) days after certification, provided however that the Legislature may call a territory-wide special election for the purpose of having the electors vote on an initiative measure.

3 GCA § 17203 (emphasis added).¹⁴ Based on my reading of the Guam Code, the “territory-wide special election” referred to in section 17203 refers only to territory-wide special elections called by the Governor, or called by the Legislature for the purpose of having the electors vote on an initiative. This is consistent with 3 GCA § 13103, which requires that “[a]ll special elections shall be called by proclamation of the Governor of Guam.” Section 17203 makes clear that, in addition to other “territory-wide special elections,” which under section 13103 must be called by the Governor, section 17203 also applies to special elections called by the Legislature for the specific purpose of voting on an initiative. 3 GCA § 17203 (requiring submission of an initiative at a territory-wide special election “*provided however* that the Legislature may call a territory-wide special election for the purpose of having the electors vote on an initiative measure”) (emphasis added). This interpretation is also in harmony with 3 GCA § 17212, which

provides that “[o]nly the Legislature or Governor may call such a[] [special] election [under section 17212] for the purpose of having the electors vote on an initiative measure.”¹⁵ Moreover, limiting special elections to those called by the Legislature or Governor restricts the inclusion of an initiative to a special election ballot that is deemed significant enough by the Legislature or the Governor that they have called the election, thus ensuring that the initiative is not placed on a special election ballot that does not contain any significant issues for the voters and which may draw a lower voter turnout and increases the potential for the electorate to not adequately be informed.¹⁶

[43] The first prong of section 17203 applies to general elections – those elections held “throughout the Territory.” The second prong applies to “territory-wide special elections.” Statutes should be interpreted, if possible, to avoid rendering any portion superfluous. *Bank of Guam v. Del Priore*, 2007 Guam 7 ¶¶ 27, 33. The Legislature could not have intended the second prong to apply to *all* territory-wide special elections, as that would render the second prong superfluous. A better reading of the statute limits the second prong to territory-wide special elections that are called by the Legislature or Governor.¹⁷

¹⁴ GEC contends that the statute only requires an initiative to be placed on a special election ballot if it is called by the Legislature for that purpose (though GEC concedes that the statute is ambiguous). Because I find that GEC’s interpretation is “contrary to clear congressional intent,” I do not defer to GEC’s interpretation of the statute. *Ada v. Guam Tel. Auth.*, 1999 Guam 10 ¶ 10.

¹⁵ The title of Public Law 23-102 further supports this interpretation. It refers to the law as “An Act to Add a New § 17212 . . . and to Require That Special Elections Be Called Only by the Governor or Legislature and Not Within Ninety (90) Days of a General Election.” Guam Pub. L. 23-102 (June 24, 1996).

¹⁶ Currently, only the Governor or Legislature is statutorily authorized to “call” a territory-wide special election.

¹⁷ Petitioners contend that the Legislature intentionally included superfluous language to avoid ambiguity. The statutory language at issue has been subject to much consternation and debate, and is inconsistent with an attempt to avoid ambiguity. If the Legislature had intended for the second or third prongs to be an example or subdivision of the first prong, it could have easily said so.

[44] The special election at issue here was called pursuant to 3 GCA § 13104. A special election called pursuant to section 13104 alone is not sufficient.¹⁸ An election called under section 13104 is called by GEC – not by the Legislature or Governor.¹⁹ The Legislature clearly intended that an initiative submitted at a special election and not at the next general election was subjected to a special hurdle – namely that it be a territory-wide election called by the Governor or the Legislature expressly for the purpose of voting on an initiative measure. *See* 6 GAR § 2115(c). Thus, the initiative does not qualify for the upcoming election ballot under the special election prongs of section 17203.

Robert J. Torres

ROBERT J. TORRES, JR.
Associate Justice

¹⁸ For example, if the Legislature were comprised of districts, then an election to fill a vacancy in the Legislature pursuant to section 13104 would be a local election, not a general election.

¹⁹ A special election to fill a vacancy in the Guam Legislature is not a territory-wide special election requiring the call of the Governor pursuant to 3 GCA § 13103, as the Legislature has specifically delegated this authority to GEC. Under 3 GCA § 5104, however, the Governor is required to publish an election proclamation containing a statement of the time of the election, the office to be filled, and whether it is a general or local election. The Governor's proclamation, which is merely ministerial, that the election is a general election, triggers the general election prong of section 17203.