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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

RONALD L. MCNINCH, Petitioner, vs. GUAM ELECTION COMMISSION, Respondent.	**Special Proceedings Case No. SP0155-26** **DECISION AND ORDER**

Petitioner Ronald L. McNinch seeks a Writ of Mandate to compel Respondent Guam Election Commission to keep its meetings open to the public, even during recesses. The Court determines that based on the GEC's agreement to allow the public access to its meetings and to notify the public when meetings resume after a recess, such concessions are enforceable here. Moreover, the Court determines that the ballot replication process need not occur during a GEC meeting.

I. FACTUAL DISCUSSION

In the late evening of August 1, 2026, McNinch attempted to attend a GEC meeting, held during the primary election vote tabulation process. Various media outlets invited him for interviews, but he did not have a press badge. Open Gov't Law Compl. at 3 (Sept. 17, 2026).

The GEC posted a public notice that the meeting would begin at 9 p.m. at the University of Guam Calvo Fieldhouse. Decl. Maria Pangelinan, Ex. H (Oct. 14, 2026). Agenda items included "Public Comment." *Id.* GEC staff gathered at the Fieldhouse, the entirety of which is secured, to tabulate votes collected during the primary election. *Id.* ¶ 12.

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Entry into the Fieldhouse is "controlled through approved badges, subject to public access during . . . Commission meeting sessions." *Id.* ¶ 12.

According to its minutes, the GEC commenced the meeting around 9:43 p.m. *Id.*, Ex. A. The parties agree that at some point in the evening, McNinch was directed to leave the premises. According to McNinch, at around 9:20 p.m.—before the meeting began—a police officer informed McNinch that he had to leave the premises, and escorted him outside of the secured area. Open Gov't Law Compl. at 3. According to the GEC, however, McNinch was directed to leave once the GEC recessed its meeting to conduct tabulations. Decl. Maria Pangelinan ¶ 13. In any event, the incident embarrassed McNinch. The GEC broadcasted a livestream of the meeting.

The meeting then went into a recess. *Id.*, Ex. A. During the recess, the livestream showed a blacked-out screen while GEC staff tabulated and resolved ballots rejected by the tabulator. According to the GEC Election Manual, if a ballot cannot be read by a tabulator machine, a three-person committee makes a final determination, the issue is logged, and the ballot is locked in a separate ballot box. V. Mem. P. & A. OGL Questions, Ex. E (Oct. 26, 2026). Pangelinan confirmed that during this replication process, "a Republican Commissioner and a Democratic Commissioner together with legal counsel . . . reproduced selections that were clear on the original ballots onto replacement ballots that the tabulators could read. They did not resolve disputed voter intent or determine ballot validity or voter eligibility during those recesses." Decl. Maria Pangelinan ¶ 27.

The meeting and livestream then recommenced when tabulations completed. *Id.*, Ex. A. No one informed McNinch; he remained outside and was not informed he could re-enter.

Media with press passes and GEC guests (election officials from other jurisdictions) were able to observe the GEC meeting in person inside the secured area.

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On August 15, McNinch attended the next GEC meeting. He left the meeting to attend to other business and was informed by another attendee that the attendee had been excluded from the meeting. McNinch felt "chilled" by his prior experience of being escorted out of a meeting before it began, and opted not to return to the meeting.

McNinch then filed this action seeking a Writ of Mandate to compel the GEC to comply with the Open Government Law. He does not seek to void any actions taken during the two meetings in question. Pl.'s Reply to Answer at 1 (Oct. 21, 2026).

On September 23, 2026, the Court issued the GEC an Order to Show Cause relative to whether McNinch had been improperly excluded during the August 1 and 15 meetings. The GEC and McNinch have both submitted sworn statements as to what occurred on August 1 and 15, but the Court has not taken evidence under oath to resolve factual disputes. Nonetheless, at the Order to Show Cause hearing, the GEC made two important concessions.

First, the GEC conceded that the Open Government Law allows members of the public, including McNinch, to attend meetings even when held in secured areas, and that their exclusion violates the law. The GEC represented that "anyone can be there" during the meeting, and that the public is excluded only "during the recess." Hr'g at 1:54-56 p.m. (Oct. 23, 2026). GEC's Counsel acknowledged that the GEC does "not prohibit anyone" from attending, that the OGL permits anyone to "attend the open proceedings," and that excluding McNinch "prior to the meeting . . . would be a violation." Hr'g at 1:55-56 p.m. The GEC reiterated that it had no "intent to remove him or any member of the public during the open proceedings." Hr'g at 2:25 p.m..

Second, the GEC conceded that when the Board resumes after recess, it should inform excluded members of the public that the meeting has recommenced, stating that it does "not disagree with having to call the public back." Hr'g at 2:30 p.m.

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The Court issues this Decision and Order holding the GEC to its concessions and ruling on the issues of resolving rejected ballots during recesses.

II. LEGAL DISCUSSION

The Open Government Law's policy statement declares that public decisions "shall not be conducted in secret." 5 GCA § 8102. "The people insist on remaining informed so that they may retain control over the instruments they have created." *Id.* To achieve those purposes, the law requires public agency meetings to be "open and public," where "any person shall be permitted to attend any public agency meeting" with some exceptions. 5 GCA § 8103(a). No person shall be required, "as a condition to attendance at a meeting of a public agency, to register his name and other information, to complete a questionnaire or otherwise to fulfill any condition precedent to his attendance." *Id.* At the same time, an agency "retains the right to reserve areas for the public, and to exclude the public from any area necessary for the orderly conduct of its business." 5 GCA § 8103(b).

The law also requires meetings to be broadcast via video live streaming applications except during executive session and other meetings "expressly authorized by law to be closed." 5 GCA § 8103(d).

A. Public Attendance at GEC Meetings

Given the proximity of the upcoming election, and based on the limited factual record, the Court addresses what issues are resolved through the GEC's concessions at the Order to Show Cause hearing. The GEC agrees that it must allow the public access to its Board meetings. It represents that it took measures to allow public access during GEC meetings; furthermore, notably, the GEC included an agenda item for public comment. Decl. Maria Pangelinan ¶ 12; Ex. A. Regardless of whether McNinch was excluded from the meeting at the GEC's direction, there appears to be no dispute that the Open Government Law requires the GEC to allow the public access to its meetings.

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The GEC also agrees that when it takes a recess, it must make more efforts to inform the public that the meeting will recommence. Regardless of how the disputed facts concerning McNinch's exclusion are ultimately resolved, the Court accepts the GEC's concession that the public is to be informed when meetings recommence.

Because the GEC's concessions are binding admissions as to the legal requirements of the Open Government Law, the Court enters the following directives pending a full evidentiary hearing on the merits, if needed. **With respect to any GEC meetings conducted in connection with the upcoming election, the GEC shall: (1) allow members of the public to attend GEC meetings, even when held within secured areas; and (2) when opting to limit public access during recesses, take reasonable measures to inform the excluded public that the meeting will recommence.** Such measures include announcing it over the livestream and outside of the secured areas. The Court also recognizes the GEC may "exclude the public from any area necessary for the orderly conduct of its business," 5 GCA § 8103(b); however, such measures shall not interfere with the public's general access to the meetings, consistent with GEC's own concession.

This Order is preliminary. Given the proximity of the general election, the Court finds it necessary to act now to ensure the GEC complies with the Open Government Law for the remainder of the election season. The relief ordered here rests solely on the GEC's own concessions at the OSC hearing; the Court has received no live testimony and made no credibility determinations. The Court therefore does not resolve the disputed factual questions of when and why McNinch was excluded on August 1 and August 15, nor does it constitute a final judgment on McNinch's petition. Should the parties' concerns remain unresolved after the election, the Court will convene an evidentiary hearing to take testimony and resolve those disputed facts.

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B. Recesses & the Commission Resolution Committee

Next, the Court addresses the dispute regarding meeting recesses. The Guam Administrative Rules and Regulations anticipate that tabulator machines may reject ballots that are not clearly marked. 6 GAR § 1604. The Rules and Regulations allow the GEC to compile possible ways voters might mark a ballot, and for the Commission Resolution Committee to make a final determination, with reference to the predetermined list of marking variances. This process mirrors the procedures in the GEC Election Manual. V. Mem. P. & A. OGL Questions, Ex. E.

McNinch argues that because a "Commission Resolution *Committee*" resolves these issues, they cannot be done in recesses but must be discussed at a formal meeting. *Id.* ¶ 11. This issue is presented on the heels of another recent case, *Pauluhn v. Guam Elec. Comm'n*, SP0151-26 (Dec. & Order Re: V. Pet. & Req. OSC (Oct. 14, 2026)). In *Pauluhn*, the court considered the effect of the recess during the same August 15 GEC meeting at issue here. After analyzing the Open Government Law and the discussion of "recess" in *Pangelinan v. Gutierrez*, 2000 Guam 11, and other authorities, the court concluded that when the GEC took a recess on August 15, the recess was not part of the meeting. Instead, it was "a period apart from the meeting," meaning that "the open meeting requirement did not continue through the recess period. *Id.* at 22. However, the court also noted that if "GEC members made or deliberated on any decision during the recess, then the recess was itself a 'meeting' to which the OGL applies." *Id.* at 22. Based on the record before it—which did not involve a question over the Commission Resolution Committee's conduct—the court concluded that vote tabulation during a recess is a ministerial act that does not require a meeting, and that the petitioner presented no evidence to the contrary. *Id.* at 23.

Pauluhn's distinction between a meeting and a recess is consistent with the Open Government Law, which permits a public agency to manage its proceedings by taking

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recesses. Section 8106 directs agencies to establish rules governing the conduct of their business. That procedural authority reasonably includes temporarily interrupting proceedings without concluding all pending business or finally adjourning the meeting. Section 8103(a) requires meetings to be open and public, but does not require uninterrupted proceedings. Read together, these provisions permit recesses, provided they are not used to conduct in private any decision-making or deliberations subject to the law. *See* 5 GCA §§ 8104(c), 8105. The Court therefore adopts *Pauluhn*'s reasoning to the extent that a genuine recess, during which no activity constituting a meeting occurs, is a period apart from the meeting.

The question then is whether the ballot replication described in the record constitutes decision-making or deliberation requiring a public meeting. As discussed in the Election Manual and in the Rules and Regulations, a replication may occur when a rejected ballot is marked in a way consistent with the predetermined list of acceptable ballot markings. Pangelinan's declaration describes the Committee's work as reproducing clear selections onto replacement ballots, without resolving disputed voter intent, ballot validity, or voter eligibility. Decl. Maria Pangelinan ¶ 27. As described, that process is ministerial because officials implement previously established standards rather than make a new determination.

As commented by a federal court in the Virgin Islands, "when a ballot is sufficiently plain to gather part of a voter's intention therefrom, the duty of election officials is to count such part. A failure to do so is not a mistake of judgment, which should not be set aside by a court, but a mistake of law." *Democratic Party of Virgin Islands v. Bd. Of Elections, St. Thomas-St. John*, 649 F. Supp. 1549, 1553 (D.V.I. 1986). In other words, election officials have a duty to adhere to a voter's intent; such duty does not involve discretion.

For these reasons, the Court finds that the Commission Resolution Committee's reproduction of clear ballot selections by reference to previously established examples of acceptable markings, without resolving disputed voter intent, is a ministerial act. As no

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discretion is being exercised by GEC Commissioners, a public meeting is not required, and the matters may be addressed through a recess.

III. CONCLUSION AND ORDER

The Court finds that the GEC has admitted that its meetings, even when held in secured areas, must be accessible to members of the public, and that the public must be notified when meetings recommence. The Court accepts these concessions, ORDERS the GEC to comply with them, and requires a Status Report on such compliance by **December 3, 2026**. Furthermore, because of these concessions, in the interests of judicial efficiency, the Court finds it is not necessary at this point to resolve other issues raised, including whether the GEC can limit admission to its meetings to members of the press (it admits the public must have access), whether GEC meetings may occur within a secured space (it admits to setting aside an area for the public to attend), whether a livestream must be maintained during a recess, whether the GEC can take recesses at all, whether the GEC meetings must start on time, or any of the factual disputes.

The Court further finds that when resolving rejected ballots and replicating them, the Commission Resolution Committee need not conduct their replication decisions in a duly-noticed public meeting.

The Court issues these decisions in advance of the general election, which is just days away, so that the GEC may conform its conduct to the law during the remainder of the election period based on its own concessions. No evidence has been taken in open court, and this Decision does not purport to resolve the parties' factual disputes. Following the election and the submission of the GEC's Status Report, the Court will set this matter for a Status Hearing. If the Status Report or the parties' further filings indicate that the concerns underlying this petition remain unresolved, the Court will set an evidentiary hearing to take testimony and resolve the disputed facts.

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SO ORDERED this 30 October 2026.

HON. ELYZE M. IRIARTE
Judge, Superior Court of Guam

Appearing Parties:
Ronald L. McNinch, Self-Represented Petitioner
Vincent C. Camacho, Esq., Camacho Calvo Law Group LLC, for Respondent

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