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SUPERIOR COURT
OF GUAM

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IN THE SUPERIOR COURT OF GUAM

ALFREDO M. BORLAS
CLERK OF COURT

JOSEPH F. ADA and
FELIX P. CAMACHO, and
FRED CASTRO,

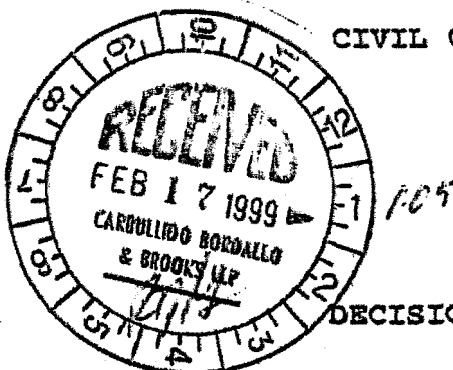
CIVIL CASE NO. CV2765-98

Plaintiffs

vs.

CARL T.C. GUTIERREZ and
MADELEINE Z. BORDALLO,

Defendants.



DECISION AND ORDER

This matter came before the Court on January 8, 11, 12, 13, 14, 15, 20, 25, 26, 27, 28, 29, 1999, and February 2, 3, 4, 5, and 8 in a trial to the bench on a Complaint for Cancellation of an election. Plaintiffs were represented by Curtis Van De Veld, Esq., and Defendants were represented by F. Philip Carbullido, Esq., and F. Randall Cunliffe, Esq.. The matter was tried before the Honorable Joaquin V. E. Manibusan, Jr., who, upon the close of the evidence, took this matter under advisement and now issues this Decision and Order.

DISCUSSION

Plaintiffs initiated the above captioned matter by filing their Complaint of Contest of the 1998 Gubernatorial Election on December 1, 1998. Plaintiffs filed this matter pursuant to 3 G.C.A. Section 12105. Plaintiffs are seeking in their contest complaint to set aside the results of the 1998 gubernatorial election based upon the allegations that fraud and illegal voting

which occurred during this election. Plaintiffs have also asked the court to order a run-off election in the gubernatorial race for the reason that the defendants failed to get a majority of the votes cast in the said election as required by the Organic Act of Guam.

Plaintiffs, after setting forth their allegations with regard to this election, set forth a prayer seeking this Court to issue the following relief: a declaratory judgment stating that violations of the election laws occurred which were sufficient to effect the results of the election; a declaratory judgment stating that the Defendants were not elected by a majority of the votes cast; a declaration that Plaintiffs are the winners of the election due to the Defendants' participation in voter fraud; a writ of mandamus requiring that a new election be held; a writ of mandamus requiring that a run off election be held; a writ of mandamus to the Guam Election Commission to produce for review ballots and other election materials; order and hold evidentiary hearings with respect to the alleged election irregularities; and grant Plaintiffs their costs and fees in bringing this action.

SUMMARY OF THE TESTIMONY PRESENTED

(Day 1, Friday, January 8, 1998)

On January 8, 1999, the trial began in this matter. Plaintiffs called as their first witness, Carolyn R. Garrido, the Registrar of the Office of Vital Statistics, Department of Public Health and Social Services. Ms. Garrido, appeared with her attorney, Monte May, Assistant Attorney General. She brought

with her several documents subpoenaed by Plaintiffs. These were exhibits identified as Exhibits P8 and encompassed documents 1 through 44. These exhibits included certified certificates of death and monthly death listings from December, 1995 to the present. Ms. Garrido testified as to the information contained in the certificates of death, where the information included in the death certificate would come from, and efforts on the part of Public Health and Social Services to correct mistakes on the certificates.

Next, the Plaintiffs called Ms. Elizabeth Blas, the Deputy Director of the Election Commission, who is also the Acting Executive Director, as a result of the leave status of Henry Torres. Ms. Blas testified on January 8, 11, 12, 13 and 14. She described the procedures by which a voter registers to vote, the forms for registration (Affidavits of Registration), and the requirements to furnish proof of citizenship and residency under the Commission's manuals and policy. She testified that the staff members of the Guam Election Commission (GEC) generally take registrants on the word of their sworn affidavit, without the need at times to provide documentation required under the Commission's policy. She testified that for registrants born outside the United States they generally had to provide a passport, naturalization papers or other proof of citizenship. She stated that registration could be accomplished by district clerks and volunteer registrars in addition to the staff of the election commission.

Ms. Blas also recounted the processing of ballots, their delivery to the precinct officials, the responsibilities of the said officials to tally signatures on the roster and reconcile those numbers with the total number of votes cast. She detailed the procedures involved in reconciling these matters once the officials arrive at Election Central. In this regard she stated that upon their arrival, the ballots are made to sit in air conditioning to remove moisture from the ballots in order to allow for better counting. If there are discrepancies in the count in the voting rosters and the ballots cast, the officials are told to go to station two to reconcile them. After that, the ballots move to the counting room.

Ms. Blas also testified that there was a power "glitch" during the counting which affected the counting. She stated that this error was noticed and then corrected. She also testified regarding the audit performed by the GEC staff for the GEC Board to address discrepancies in ballots cast and the voting rosters in the various precincts. She stated that approximately 151 ballots were found, which were not tabulated, and were subsequently counted and included in the overall votes of the respective candidates. Some of these ballots included absentee ballots in the Agana precinct which were cast but not counted. These ballots were found in the ballot box in an envelope. In Precinct 8 in Inarajan, 100 ballots were found in an envelope which was marked "Used Ballots" and taped together with "Unused Ballot Envelopes". These ballots were also subsequently counted

and included in the overall totals of the respective candidates.

She additionally explained that Precinct 5A contained 49 ballots that actually belonged to Precinct 6 in Umatac. There were other instances where ballots from one precinct were counted in the totals of another precinct. Ms. Blas testified that a number of the discrepancies were due to the fact that precinct officials had miscounted the "Voter Signature Roster". She testified that the Election Commission staff performed an audit of the Ballot Count Discrepancies and reported the discrepancies to the Board in a memorandum dated November 12, 1998, from its Executive Director. She stated the Board was generally satisfied with the explanations of the audit. Ms. Blas was questioned at length by plaintiff's counsel regarding the discrepancies between the total number of votes cast in the various precincts and the computer totals within the said precincts.

Part of Ms. Blas's testimony explained the various exhibits marked by the court. She testified that Exhibit P1, parts 1 and 2 contained an alphabetical listing of all the people who voted in the 1998 General election. This was described as the "purged listing". Included in this listing were individuals who voted by absentee, whose ballots were postmarked before the date of the election, but whose ballots were received after the close of the election. These absentee voters numbered approximately 53 voters. Ms. Blas was released from the witness stand on the morning of January 14, subject to recall and cross examination.

Plaintiffs next called Mr. Henry Torres, the Election

Commission's Executive Director. Mr. Torres testified regarding the discrepancies reflected in the staff's audit report to the Board. He further testified that some of the discrepancies may have been explained by errors which occurred in the tabulation such as, ballots from certain precincts which were counted in another precincts' totals, while being counted on the overall candidates' total were not re-computed on the precincts or the village total summaries.

Mr. Torres was also asked to review numerous affidavits of registration, to see whether persons who indicated that they had been born outside the United States, had provided information on their affidavits of registration (AOR) which showed compliance with Commission policy of providing documents to show citizenship. Mr. Torres also explained the absentee ballot application process. He stated that a registrant who last voted in an election elsewhere other than Guam, had to sign a cancellation of registration and forward it to the place where the person last voted. The AORs fail to provide however, whether said cancellation forms were filled out.

Regarding the absentee ballot applications, Mr. Torres stated that they were dealt with on a case by case basis, and thus approval of such forms depended upon the individual applicants' circumstances. For example, whether or not a student's application was verified or whether the student was a full time student was not a matter the commission inquired into, as Guam law provides no definition of a student and there is no

requirement that applicants provide proof of current credits being taken. Similarly, for off-island residents who are voting absentee based upon medical needs off-island Mr. Torres stated he takes people's sworn affidavit to show their intent to make Guam their residence. After the morning break on the 15th, the parties advised the court that an agreement was made between the parties to re-categorize the documents and provide indexing keys. It was agreed to recess and resume trial on the 19th.

(Day 7- Wednesday January 20, 1999)

Following a three day weekend and Counsel's illness, the trial resumed on January 20th. Henry Torres was again called to the stand and he testified for the rest of the morning, at which time he was excused subject to re-call.

During the afternoon proceedings, the Plaintiffs called Ms. Norma Sablan to the stand. This witness testified that she was employed at the Election Commission from August 20, 1998 to December 31, 1998. She testified that she was a Clerk 1 and further testified regarding her involvement in the election. She stated she was involved in registering "citizens", assisting the staff in taking absentee applications and handing them out; and that she was a tabulation clerk during the night of the election count. She further testified that she was involved in taking ballots outside of the commission to one person at the Naval Hospital and to four persons at Guam Memorial Hospital. She testified that she would explain the ballot to the person voting, that she would leave the person to vote in private and then place

the ballot in an envelope, at which point she would then come back in to collect the ballot. She stated she would then take the ballot and turn it in to the election commission.

She testified that on the day she went to deliver ballots to the hospital, she was wearing blue jeans, a pink blouse and regular shoes. She stated she had an Election Commission staff badge on as well. She further stated she visited the third floor of GMH and possibly the second. Of the four people she gave absentee ballots to at GMH, three were female and one was a male person. She stated she was instructed by Liz Blas to go to the hospitals. She also testified that she did not attempt to see hospital staff or cause or encourage anyone to vote.

Following her release, Mr. Henry Torres was again called back to the witness stand. During his testimony several exhibits were admitted into evidence. Exhibit P1, parts 1 and 2 were admitted into evidence. These exhibits contain a listing of all the voters who voted in the 1998 General Election, including absentee voters whose ballots were postmarked before the election but whose ballots were received after the election. Exhibit P3, with all its various subparts, was admitted into evidence. Exhibit P3 contained the signature roster of all the people who voted in the 1998 General Election. Additionally, Exhibit P7 was admitted into evidence; Exhibit P7 contained the Absentee Ballot Listing. Also admitted by the court were Exhibits P20, P22, P25, P29, P32, P33 and the organizational Report on P23. Over defense counsel's objection, the court admitted Exhibit P4 into evidence,

ruling that there was information contained within the reports which was probative of the issues presented to the court and its admission would go to the weight to be placed on the exhibits by the court. The Court noted that its legal significance would be determined after the conclusion of the trial. Exhibit P4 contained a voluminous number of affidavits of registration of alleged illegal voters. Exhibit P27 was denied admission.

Mr. Torres was shown Exhibit P20 and he explained that it contained a listing of the volunteer registrars. These volunteers were either those working under the Chamber of Commerce or those working under a designated political party. In some instances, a registrar was designated as non-partisan. Torres explained that volunteer registrars are given a packet of affidavits of registration which are then noted as assigned to a particular registrar. The registrars are required to turn in the affidavits every 15 days, however he said many don't follow instructions to so turn these affidavits in.

He also explained that if a voter comes in to a precinct to vote in a general election and that voter's name is not on the list of registered voters, the precinct officials are told to contact the Election Commission or have the voter go to the Commission. He also stated the person would be permitted to vote upon furnishing a copy of his or her application of registration, a yellow copy, and upon confirmation with the Commission that the voter in fact registered prior to the election. The precinct officials are told to retain the yellow copy. Such an instance

would confirm that a registrar had failed to turn in the original affidavit of registration of that person, but that the voter had actually registered to vote. Mr. Torres stated that a dummy affidavit of registration for that person would then be prepared after the election.

Plaintiffs' counsel then commenced questioning regarding Exhibit 6, the applications for absentee ballots. At that time, the court interrupted the proceedings and inquired of Counsel whether a similar procedure could be used with regards to Exhibit 6 as was done with Exhibit 4. Counsel advised the court that he could perhaps develop a key code similar to that used with Exhibit 4 but advised the court that he would need at least two days to categorize the information. The request for a continuance to undertake the categorization was not opposed by defendants' counsel. The court then recessed until Monday the 25th at 10:00 a.m.

(Day 8 Thursday, January 25, 1999)

Henry Torres took the stand again on January 25th. He was questioned at length with regards to the absentee ballot applications. Questions ranged as to the basis for approving such requests when the applicant had homes outside of Guam, to where a student was not shown to be enrolled in an institution, to where military personnel would be applying to vote after a lengthy absence from Guam. The responses by Mr. Torres to most of these questions was that the application was made under oath, thus evidencing the individual's intent to return to Guam as shown in

the Guam permanent address stated in the application. He testified that some of these applications were approved even when submitted by fax, even when not signed by the applicants. Plaintiffs also questioned Mr. Torres with regard to specific affidavits of registration.

(Day 9 Friday, January 26, 1999)

Henry Torres took the stand on his final day of testimony for the Plaintiffs. During his cross examination, he testified that he believed there was no fraud in the election and that all ballots were accounted for. He was released in the morning, as the parties had concluded questioning this witness.

The plaintiffs then called Rosanna San Miguel. She testified that she was the Mayor of Ordot-Chalan Pago. She testified as to her involvement in the Gutierrez-Bordallo gubernatorial team. When asked whether she had encouraged two individuals who were not citizens to vote, she said that she encouraged all people she met to register to vote and that if she knew they were not citizens, she would not do so.

Plaintiffs then called Mr. Joseph Mesa to the stand. Mr. Mesa testified that he worked as Chief of Staff for Senator Alberto Lamorena and he was previously the Executive Director for the Guam Election Commission and had also worked at the Commission since 1974. He further stated that he was now the Chairman of the Guam Election Commission Board.

Mr. Mesa stated that there was a power glitch during the tabulation of the votes during the election count which affected

the overall count of the candidates. He said after the power glitch, he and other commission members noticed that certain precincts which had already been counted registered a zero count and certain precincts were counted twice or had double totals. He stated that the matter was referred to their technician who explained to them that there was a problem with the tape from the accumulator. He corrected the problem and the commissioners were satisfied with the explanation. Mr. Mesa testified that new tapes are used in each election, and that these tapes are fed to the scanning machines and results from the scanning machines are fed to the accumulator to count the vote totals. Mr. Mesa said the scanners are zeroed out as part of the process in starting the election.

With regard to absentee ballot applications and affidavits of registration, he stated that applications which were incomplete should not have been processed and should be sent back to the applicants for further information. He also testified that in processing individual absentee applications, they presented a difficult question as to whether the applicants met residency requirements. He also stated that for applicants in the Armed Services, it was a practice of the Commission to approve their absentee ballots even if there was a considerable length of time during which the applicant was away, and he did not consider this unusual. He further explained that the difficulty in determining an applicant's residency from the questionnaire is that certain armed forces members may find it

easier and more economical or more financially feasible to buy homes for investments than paying outright rent. He also testified that certain individuals may buy homes outside Guam where their children go to schools; and these scenarios make determining residency difficult.

Mr. Mesa testified that it was his opinion that not all votes were accounted for in the November 3 election and that an audit of the entire count would have settled all unanswered questions in that regard. When questioned regarding the audit report, he testified that in precinct one in Hagatna, the absentee listing only showed 33 absentee ballots sent out and Plaintiff's counsel pointed out that the audit report showed 35 absentee ballots were found in the box. He also commented regarding the unusual number of over counts and under counts when a comparison is made between machine counts and the ballots cast as tallied by precinct officials. He completed his testimony late in the afternoon.

(Day 10 Wednesday, January 27, 1999)

Plaintiffs called as their eighth witness Mr. Anthony Sgro. Mr. Sgro testified as to his involvement in the 98 Gubernatorial team. He testified that he was the treasurer and that he became treasurer during the tail end of the campaign, approximately a year and a half ago. He was questioned with regard to specific expenditures made by the 98 Campaign, however as to many of such expenditures, he either did not remember what the expense represented or had no knowledge of the expense.

Maria C. Flores was then called to testify. She testified that she was a representative of the Department of Revenue and Taxation (DRT) and that she had brought with her names of individuals listed in a subpoena served upon the DRT by the Plaintiffs. The list showed the names of the individuals, when their application for a driver's license was processed, the length of the period the license was issued for, and in some instances, the citizenship of the applicant. Ms. Flores stated that the listing of a person's citizenship was optional under the form. She testified that as renewals are made, the information contained in their data banks are modified to show changes made in the renewal application, however if the applicant does not indicate that changes have occurred, the information will not be updated by the Department of Revenue and Taxation.

Next, the Plaintiffs called Douglas Moylan to testify. He testified that he was the legal counsel for the 25th Guam Legislature and that he had been a member of the Election Commission for the past two years. When asked if there were any events which occurred during the November 3, 1998 General election which caused him concern, Mr. Moylan stated that there were several such events. He testified that there was a power "glitch" which occurred for approximately 3 to 5 seconds, and that there was an actual power failure. This testimony differs from that offered by other witnesses regarding the power glitch in that all other witnesses stated that the "glitch" merely last for about one second and that there was no actual power outage.

Mr. Moylan also stated that after this "glitch", the numbers which had already been tabulated from several precincts were incorrect. He also stated that there were stray ballots from precincts included in other precinct's counts, and finally he stated that one of the scanners failed and was shut down during the tabulation of ballots before the first report was issued. Mr. Moylan stated that all of these events were unusual and that all of them caused him concern as to the validity of the election results.

Plaintiffs' Counsel also questioned Mr. Moylan at length regarding "his numbers". Mr. Moylan stated that he took notes while the original results were being run, and that the numbers he has in his notes do not comport with the official results which were eventually released. In this regard, he stated that not many precincts had more than 600 to 800 votes cast, however the overall numbers from the last twenty-one precincts demonstrated discrepancies in this regard. He stated that the total of the last twenty-one precincts indicated a number that included 4,128 votes that Mr. Moylan stated were unaccounted for. He stated he did not know where these votes came from. Moreover, he stated that he verified "his" numbers with those contained in the KUAM news report, and that on this basis, his numbers are correct.

Mr. Moylan also testified that he became concerned on election night that the results may not be accurate, and that he made a request to the Commission in the early morning on November

4 that there be a recount. He stated that he mentioned this to both Henry Torres and Joe Mesa, however he did not address this issue during the Commission's Board meeting, rather he addressed this issue outside of the meeting. Mr. Moylan also stated that he requested the Executive Director, Henry Torres, to issue subpoenas to the precinct officials in order to have them come in and explain any discrepancies and problems with the election results from their precincts. He informed the Court that this was not undertaken as there were insufficient witness fees to pay witnesses.

Mr. Moylan also stated that there was an attempt to have a meeting on November 12, 1998, in order to address problems with the election, however this meeting was never held. Thus, Mr. Moylan stated that he brought up election discrepancies during a Commission Board meeting, however the motions to address these problems did not pass with the Board, and thus these issues were not addressed.

Mr. Moylan further testified to the fact that he undertook mathematical calculations with regard to the election results, and that based upon his calculation, neither party received the required majority of the votes. This was his opinion based upon his interpretation of Guam's Organic Act. He also testified to the fact that he prepared an affidavit setting forth his concerns with the election in furtherance of this litigation, and in his opinion, the election results are not accurate.

After the parties finished their questioning of Mr. Moylan,

Ms. Liz Blas was again called to the stand to testify. She was questioned regarding two manuals for the tabulation machinery used by the Election Commission. She was questioned regarding the timing tracks that are used on the ballots and said that while she was familiar with these markings, she was not familiar with any other markings on the ballots. Finally, Ms. Blas was shown a list of the volunteer registrars and briefly questioned in this regard. Defendants did not have any cross examination questions for her, and the trial was concluded for the day.

At this time, Plaintiffs once again addressed the issue of a recount and asked the Court whether another motion should be made by Plaintiffs in this regard, or whether the Court, if it found that a recount was proper, would address this issue sua sponte. The Court informed the parties that if it found that a recount was appropriate based upon the evidence which was presented, that the Court would bring the issue up sua sponte. After lengthy arguments by the parties, the Court recessed for the day.

(Day 11 Thursday, January 28, 1999)

The first witness to be called on the eleventh day of trial was Mr. Vicente Manglona. Plaintiffs called this individual to testify regarding the CNMI voters list. Mr. Manglona was asked if he was able to verify this list and whether it was a true and accurate copy of the original list of registered voters for the CNMI, and he was unable to do so. He testified that he had asked another person for assistance in obtaining this information, and he was not really sure how this list was compiled. The

Defendants objected to the admission of the CNMI voters list due to the fact that the witness could not certify it as a true and accurate copy. Thus, the witness was released and was instructed to return the following week, thus giving him time to obtain a certified copy of this listing.

Mr. Eloy Hara, the Executive Director of the Civil Service Commission, was the next witness to be called to testify for Plaintiffs. Mr. Hara was questioned regarding his brother, Carlos V.P. Hara, who currently lives in California. He testified that his brother, who is a postal employee, has lived in California for approximately twenty years and that he comes to visit Guam every one to two years. Furthermore, he stated that the last time his brother came to visit, he stayed for approximately a few weeks.

The Plaintiffs asked Mr. Hara if he had knowledge as to whether his brother cast a ballot in the November 3, 1998, election, and he informed them that he did not know.

On cross examination, Mr. Hara stated that his brother was in the United States military prior to being employed by the United States Postal Service.

The next witness to be called by Plaintiffs was Mr. Ben Degayo, who testified that he is employed as a sales manager for Viking Air-conditioning. He also stated that he had acted as a volunteer registrar for both the primary and general elections. He stated that he volunteered for this position on his own and was not contacted by anyone from the democratic party in this

regard. He further stated that after he volunteered that he did have a conversation with Manny Villava regarding the registration of voters. He testified that this was the only conversation he had with democratic party leaders regarding his registration of voters.

Mr. Degayo also stated that he attended one training seminar with regard to his registration of voters, however he did not remember when this session was given, nor who gave the seminar.

When asked how many persons he thought he registered for the November 3 election, Mr. Degayo stated that he could not remember an exact number, but that he thought it was approximately fifteen persons.

A list of persons Mr. Degayo was stated to have registered was presented to him and Counsel proceeded to question him regarding each and every name on the list. There were approximately 45 names on this list, and the witness was questioned regarding each name. In most cases, Mr. Degayo stated that he did not remember registering the person listed nor did he personally know that person, but there were several names that he did remember registering.

Mr. Degayo was also asked what his understanding was with regard to registering voters, and he stated that he was required to check to see if the person was a United States citizen, and that a passport or naturalization papers were necessary to prove this fact. At this point, noting that it was approaching the lunch hour, the Court recessed this matter until after lunch.

After lunch, Plaintiffs' Counsel resumed questioning Mr. Degayo. He was questioned regarding his original statement that he registered about fifteen voters, and in response he stated that over the lunch break he had gone home and gotten the list he kept in regards to the voters he registered and that he actually registered 53 voters. He also stated that he did not tell the voters he registered who to vote for, and he further stated that he asked every person that he registered for proof of their citizenship. Plaintiffs' Counsel went on to make reference to several specific affidavits of registration, and then concluded his questioning of the witness.

On cross examination, Mr. Degayo was again asked about certain affidavits of registration for specific individuals, and he testified that he did, in fact, ask those persons for proof of their citizenship. He went on to state that he kept his own list of voters he registered and that there were only two on the whole list from whom he did not get passport numbers. However, he stated that he later went back and got this information from these people, and he provided the two persons names along with their passport numbers.

On redirect, Mr. Degayo was questioned regarding this list that he kept, and after a discussion regarding Plaintiffs' entitlement to a copy of this list, the Court ordered that Plaintiffs be provided only with a copy of those two names that Mr. Degayo made reference to. Mr. Degayo also stated that he did not make notes regarding persons born in the United States as

their citizenship would not be questioned. He was then excused from the witness stand.

Plaintiffs' next witness was Jacqueline Cassi who testified that she was a junior nursing student. She testified regarding what her home address was, and denied having a mailing address which was the subject of Counsel's questioning. She was then shown two affidavits of registration. The first of which she stated she did not recognize, and that it was not her signature contained on the document. It was noted that the name on that affidavit of registration was the very same name as hers.

She was next given another affidavit of registration, and she testified that it contained her signature and that it was her affidavit. She further testified that she was born in the Phillippines and that upon registering to vote, she was required to show her passport. She stated that she is a naturalized citizen as of March of 1996, that her birthday is February 20, 1970, and that she has lived on Guam for seven years.

On cross examination, Counsel for the Defendants asked Ms. Cassi if Cassi was her married name or her maiden name, to which she replied that it was her married name. She was also asked if she knew whether or not there was another Jacqueline Cassi on island. She stated that there was, that her husband's first cousin had the same name as she did. The witness was then excused from the stand.

Plaintiffs' next witness was Mr. Frank Acfalle, who testified that he works for the Department of Parks and

Recreation. He also stated that he was a volunteer registrar for the 1998 primary and general elections. He further testified that he has acted as a volunteer registrar since approximately 1970. He also stated that he is not a party affiliated registrar, but rather he is an independent registered clerk and that he will register anyone who qualifies, regardless of their party affiliation.

Mr. Acfalle was then given a list marked exhibit P39, which he stated appeared to be a list of the individuals that he registered to vote. While he stated he did not remember all of the names on the list, he stated that if they were on the list, then he must have registered these individuals.

Mr. Acfalle also stated that he attended a workshop in order to receive training on how to register voters. In this regard he stated that he was instructed to ask for identification from the applicant and if the person seeking to be registered is born outside of the United States, he is also required to ask for proof of citizenship. He testified that he uses these procedures for each person he registers.

Plaintiffs' Counsel then proceeded to question this witness about several individuals whom he registered to vote. Mr. Acfalle did not remember all of the individuals, however he testified that if the person informed him that they were born on Guam, he would likely not ask for proof of citizenship, as such would not be necessary.

Defendants had no cross examination for this witness.

Plaintiffs' next witness was Vicente Sanchez, who testified that he is a part-time farmer. He stated that he was involved in the Defendants' campaign as a volunteer. He stated that he became involved in the campaign with regards to the village organization and that his role therein was to rally support for the Defendants.

Mr. Sanchez also stated that he volunteered to assist with absentee voting. He stated that he wanted to help organize those voters both here and abroad who were eligible to vote, and he stated that he was aware of the factors and limitations upon what individuals were eligible to vote.

Mr. Sanchez also stated that he obtained materials to distribute to individuals in California who were eligible to vote. He testified that he met with Mike Wickly on two occasions to discuss his trip to California. He stated that he thought he was the chairman of this particular activity, but he later found out that someone else had taken over this role.

When Plaintiffs' Counsel asked Mr. Sanchez what activities he undertook to get absentee voters registered, he stated that he "practically did nothing." He testified that he went to California and that he attended a gathering of Defendants' supporters. Mr. Sanchez was very frank with Counsel as to his reason for attending this gathering, stating it was for the Defendants' campaign. He also stated that he asked his son and other family members to assist him in distributing absentee applications, however they were all too busy with their own lives

to assist him. Mr. Sanchez stated that he did nothing other than attend this meeting while he was in California with regard to the registration of absentee voters.

Mr. Sanchez also stated that upon returning to Guam, he was informed that someone else had taken over the job with regard to absentee voters, so he stated that he packed up and left the campaign. Finally, Mr. Sanchez stated that he was not part of a registration group and that he never solicited any voters nor did he solicit anyone to register to vote.

The Defendants had no cross examination for Mr. Sanchez.

Plaintiffs' next witness was Rita Tainatongo Ms.

Tainatongo testified that she works at the Meritzo Mayor's office and that she was a volunteer registrar for both the primary and general elections for 1998, and that she has been a volunteer registrar since 1985, when she began working at the Mayor's office. She further stated that she did not undertake this activity on behalf of any certain political party. Ms. Tainatongo also testified that sometimes she would register people there at the Mayor's office and other times she would personally visit the homes of individuals who wanted to be registered.

Ms. Tainatongo was then shown exhibit P39, which she stated contained a list of the persons she registered to vote. She stated that she did not remember when she registered them, nor did she know what the dates on this list reflected.

Ms. Tainatongo also stated that she attended registration

seminars both for the primary and general election. She was shown Plaintiffs' exhibit P10 which is a manual for the volunteer registrars, and she testified that she had seen and reviewed the booklet before. Finally, Ms. Tainatongo stated that she was aware of the requirements for persons to be registered to vote, and she stated that she complies with these requirements by requesting the persons she registers for proof of citizenship.

The Defendants had no cross examination for this witness.

(Day 12 Friday, January 29, 1999)

Plaintiff commenced testimony on the twelfth day of the trial by calling Rose Tainatongo to the stand. She stated that she works for the Department of Revenue and Taxation as the funds administrator. She stated that she was a volunteer registrar for the 1998 election from the primary election up through the general election. She also testified that she thinks she registered only about ten people for this election. Ms. Tainatongo stated that she did attend a registration seminar and that she did not act as a registrar on behalf of any particular political party.

Ms. Tainatongo was then given exhibit P39 to review and she stated that it contained a list of the persons she registered to vote, however she stated that there were two other people who she registered to vote who were not included on that list.

Ms. Tainatongo was then asked about the procedures for registering someone to vote, and she stated that the first thing she does is ask the person for their proof of citizenship if they

indicate that they are born outside of the United States. She stated after that issue is addressed, she goes through the rest of the form with the person and then turns it in to the Guam Election Commission once it is completed. She also stated that she was familiar with exhibit P9 which is an affidavit for the cancellation of voter registration in another jurisdiction, however she stated that none of the persons she registered filled one of these forms out. The Plaintiffs' Counsel went on to question her with regard to the procedure for filling out the cancellation of registration card, and she testified as to what that procedure was. She again stated that she did not register anyone who was born outside of Guam or the United States, however if she had, she would have asked for their proof of citizenship.

The Defendants did not cross examine this witness.

Plaintiffs next called Urlinda Aguilar to the stand. She stated that she registered to vote in October of 1998 at the Dededo Mayor's office, and that she has lived in Guam since 1969. She also stated that she travels a lot, especially now that she has retired. In this regard Ms. Aguilar stated that she goes to Saipan frequently to visit her grandchildren and that she also goes to Hawaii occasionally to see her brother.

Plaintiffs' Counsel then proceeded to question this witness regarding her travel habits and she stated that when she goes to Saipan, she usually stays for a week, and then returns to Guam for the weekend. She stated that she goes to Saipan so frequently in order to babysit her grandchildren, but that she

owns a home here in Guam. Ms. Aguilar was also asked whether she registered to vote in Saipan and she stated that she did, however she never voted there. She further stated that she did not remember filling out a cancellation of registration form.

Ms. Aguilar was also asked if she were a United States citizen, and she stated that she was, however she did not bring her passport with her to Court. She also stated that when she registered to vote, no one asked her if she was registered to vote somewhere else. Furthermore, she stated that she registered to vote in Saipan because she thought she would be spending more time there, however her son got transferred to Guam for work. Finally, she stated that she did not consider herself to be a resident of Saipan, and that when the school year is over, her grandchildren and kids will move to Guam.

On cross examination, Ms. Aguilar stated that she is a naturalized citizen and that she obtained this status in 1972. She additionally stated that the reason she travels to Saipan so often is to babysit her grandchildren.

The next witness to be called by the Plaintiffs was former Senator Angel Santos. He testified that he attended several Guam Election Commission meetings in November of 1998 in order to look into allegations of election fraud. He went on to testify that on November 16, 1998, he attempted to attend a Commission meeting in order to present a letter in opposition to the certification of the election results. He also stated that he believed that this meeting constituted an illegal executive session.

Mr. Santos stated that upon arriving at the GCIC building, he was denied entry into the building, and thus precluded from attending the Commission meeting. Furthermore, he testified that he was arrested after attempting to enter the building and that after his arrest he was taken to a conference room within the Commission offices, and held there until after the meeting had concluded.

Mr. Santos went on to state that he performed some research on the Open Government law, and that based upon his research, he filed civil complaints against both the Guam Police Department and the Guam Election Commission. Questions were then asked of Mr. Santos regarding his pending civil matter, by Plaintiffs and Defendants asked a few questions in this regard on cross examination.

The next witness Plaintiffs called to the stand was Henna Arurang, who testified that she is a registered voter on Guam, however she does not remember when she registered to vote. She also stated that she is Palauan.

This witness further stated that she did not recognize exhibit nine which is the voter registration cancellation card, and that she did vote in Palau in 1996. This witness was then asked who she cast a ballot for in the November third election with regard to the office of Governor, and the Defendants posed an objection to this question. The parties then argued whether this witness could be compelled to testify as to whom she voted for, and the Court took a brief recess in order to make a

determination on this issue. The Court concluded that if this voter was registered to vote in another jurisdiction and also registered to vote on Guam, and no action had ever been taken to cancel the registration from the other jurisdiction, that the voter's vote is illegal, and thus on this basis, the secrecy of that person's ballot no longer applies.

After the Court ruled on this objection, the witness was directed to answer the question and she stated that she voted for Defendants. She also stated that she was registered in the Defendants campaign headquarters office, and in response to Plaintiffs' questioning she stated she believes Frank Acfalle registered her.

On cross examination, the witness stated that she registered to vote at a private residence, that of Julie Borja. After a brief redirect by the Plaintiffs, this witness was excused.

Plaintiffs next called Lilian Duenas to the stand. She stated that she was a student, who lives in Umatac. She testified that she went to the polls to vote on November 3, 1998, and that she was informed that someone had already signed in next to her name in the voter roster. She also stated that she remained at the polls for approximately three hours, as she was barbequing with her grandfather.

On cross examination, this witness stated that she did not really look at the name that was signed in her slot, nor did she read nor recognize it.

Aini Mendiola was the next witness to be called by the

Plaintiffs. She testified that she is a housewife, and that on November 3, 1998, she was at GMH delivery for approximately twelve hours. She further stated that she gave birth on that day and after she delivered she asked the nursing staff if she would be able to vote if she was not discharged in time. However, she stated that no one got back to her regarding her request to vote. She also testified that she did not see anyone from the Guam Election Commission that day. She then stated that she was, however, able to vote late in the evening, after her discharge from the hospital.

On cross examination, this witness again stated that while she asked the nursing staff about voting, they never got back to her regarding this request. This witness was then excused.

Mr. Ichiro Blailes was next called to the stand by the Plaintiffs. He stated that he graduated from GW highschool in 1954. Mr. Blailes was shown his affidavit of registration and he indicated that it had his signature on it. Mr. Blailes also stated that he is a United States citizen and has been a citizen since 1956 when he was in the United States Army.

Mr. Blailes stated that he registered to vote on Guam in 1974, and he further stated he believes he voted in Palau in the 1996 election, however he is not sure whether he had ever registered to vote in Palau. In this regard he stated that his mind is not as clear as it used to be and that he did not believe he registered to vote in Palau. He further stated that while he did not recognize exhibit P9, the cancellation of registration

card, he could not be sure whether or not he had ever filled one out.

Mr. Blailes also stated that there were no political signs in his yard, nor were there any stickers on his car.

The Plaintiffs next called Haan Blailes to the stand to testify. He stated that he lives with his father who had just testified prior to him and that there are no political signs in their yard. He also stated that he registered to vote in Guam in 1987 when he turned 18 years old, and that he also registered to vote in Palau after he had registered in Guam. He stated that he did not recall filling out exhibit P9, the registration cancellation card, and on this basis, Plaintiffs asked this witness who he cast a ballot for in the November 3 election with regard to the office of Governor. In response to this question, and over Defendants' objection, this witness stated that he cast his ballot for the Ada/Camacho team.

The Defendants had no cross examination for this witness.

Gina Marie Muna was then called to the stand by the Plaintiffs. She testified that she lived in Rota prior to moving to Guam in March of 1998, and that she did register to vote in Rota. Ms. Muna also stated that she did vote in the November 3 election. Additionally, she stated that she did not recognize exhibit P9 and that when she registered to vote, no one asked her if she was registered to vote elsewhere.

She was then asked on this basis, for whom she cast her ballot in the November 3 election, and over Defendants'

objection, the Court directed the witness to answer the question. In response, Ms. Muna stated that she voted for Joseph Ada. Plaintiffs then questioned her as to whether she has campaign stickers on her car and signs in her yard. The witness responded that she does not have a car and that there are no such signs in her yard.

Plaintiffs next called Oliver Wood to the stand. He stated that he is employed as an assistant for Mr. Van de Veld. Mr. Wood was questioned regarding exhibit P-5, which is the voter list from Palau. He stated that he picked up an envelop from the airport, and that he was present when Plaintiffs' Counsel opened it and that it contained a list of registered voters for Palau. Plaintiffs then moved to admit this exhibit, and Defendants objected on the basis that it had not been properly authenticated. The Court admitted this document as being presumptively authentic.

Mr. Wood also testified that he has a United States passport and that it contained a nine digit passport number which began with the number one. He also stated that his old passport had only six digits and it began with the letter J.

The Defendants had no cross examination for this witness.

Plaintiffs next called Kenneth Indalecio who testified he works at K-mart as a night replenisher. Mr. Indalecio stated that he is registered to vote on Guam. He was shown his affidavit of registration and stated that the registrar filled it out for him, and that he only filled out the portion containing

the oath. He also stated that he registered as a democrat.

Mr. Indalecio stated that prior to living on Guam, he lived in Saipan. This witness was then shown exhibit 9, the cancellation of registration form, and he stated that while he had never filled out that particular form, that he had filled out another form which canceled his Saipan registration. He informed the Court and the parties that he gave a copy of this form to the person who registered him, and that it was his understanding that this effectively canceled his voter registration in Saipan.

Plaintiffs' Counsel then asked him whether he had spoken with Counsel for the Defendants prior to testifying, and Mr. Indalecio informed him that he had not. The Defendants had no cross examination for this witness.

(Day 13 February 2, 1999)

Ramona Perez was the first witness to be called to the stand by the Plaintiffs on the thirteenth day of trial. She testified that she was the Public Information Manager for the Guam Mass Transit Authority. She stated that since she is a government official her participation in any election campaign is very restricted.

Ms. Perez also testified that she was the election inspector for precinct 13(b) and that in this capacity she reviewed absentee ballots. She stated that on the morning of the election, that precinct received 21 absentee ballots, the names of 20 of which were on the voting roster, however one name was not on the roster. She stated that she called the Commission

with regard to the one absentee name which was not on the roster and she was directed to put that name on the last page of the roster.

Ms. Perez also stated that after the election she spoke with Liz Blas from the Guam Election Commission because she wanted to see a master listing of registered voters in order to determine whether that name was on the master list. Ms. Perez testified that she did not find this name on that master voting list. She also stated that aside from this incident, there were no other irregularities which occurred with regard to the November 3, 1998, election.

The Defendants had no cross examination for this witness.

The Plaintiffs next re-called Mr. Vincent Manglona to the stand. Mr. Manglona is the CNMI liaison officer for Guam, and he is the individual whom Plaintiffs contacted with regard to obtaining a list of registered voters for the CNMI. He stated that he had talked to the director in the CNMI and he was informed that the copy of the voters list that he had could not be certified, however another copy could be certified upon payment of a fee. He also testified that he spoke to Mr. Blas Majinerus regarding this list, as he was the person tasked with obtaining a copy of the voters list.

Plaintiffs next called Mr. Blas Majinerus to the stand to testify regarding the CNMI voters list. He stated that he is the Rota liaison for medical referral and that he is employed by the CNMI government. He testified that Mr. Manglona asked him to

obtain a copy of the CNMI voters list. He was given exhibit P2 to review and he stated that it appeared to be the list he received from the Saipan Election Commission. He stated that while he did not personally make the copies of the list, he made notations on the first page of it, and those notations were reflected on this copied list.

Defendants then objected to this list and voir dired the witness regarding the accuracy of this list. He stated that he had no personal knowledge as to the contents of the list and further that he did not assist in preparing this list. Defendants made an objection that the list was not self authenticating. In response to this objection, the Court asked questions of the witness and was satisfied that there was an indicia of reliability with regard to the list, and thus the Court admitted this exhibit over Defendants' objections.

Neither party had any further questions for this witness and he was excused from the stand.

Jesse Ngiratreked was the next witness to be called by the Plaintiffs. He stated that he is registered to vote in Guam and that he so registered on November 3, 1998, and that he was registered while he was at his cousin's house. He further stated that he could not remember the name of the person who registered him.

This witness also stated that he was not asked any questions prior to his registering to vote and that he was not asked if he was registered to vote elsewhere. He further stated that no one

told him that they wanted to register him in order to support a certain candidate. The witness also stated, in response to Plaintiffs' questioning, that he believed the person who registered him to vote was Frank Acfalle.

Mr. Ngiratreked stated that he was not registered to vote in Palau and that he had never voted in any elections in Palau. Plaintiffs then showed the witness exhibit P5 which is the voter registration list for Palau, and the witness acknowledged that his name was on this list. The witness stated that in 1996 he was in Palau and he attended a meeting where he filled out some papers. He stated that these papers may have been voter registration papers for Palau, but that he was not sure. He also stated that there are no campaign signs in his yard or on his car.

The Plaintiffs then asked him who he voted for, and Defendants objected arguing that there was no showing made by Plaintiffs that this witness was, in fact, still registered to vote in Palau. The Court ruled that because the witness testified that he had taken no action to remove his name from the Palau voter registration list, that he was still registered there, and thus on this basis his vote was illegal and therefore the witness was directed to answer the question. In response, Mr. Ngiratreked stated that he voted for the Ada/Camacho team.

On cross examination, the witness informed the Defendants that he was born on Guam and has lived here his whole life and that when he went to Palau in 1996, it was simply to visit his

family.

The next witness called by the Plaintiffs was Margarita Mendiola. She stated that she is registered to vote in Guam and that while she is not sure exactly when she registered to vote, it was sometime in 1998. She further stated that she is not sure who registered her, but that she went to the Commission's office in the GCIC building to fill out the voter registration form.

She went on to testify to the fact that she had lived in Rota for approximately three years prior to moving to Guam, and that she moved to Guam in February of 1998. She also stated that she registered to vote in Rota in 1997 and that she did not recognize exhibit P9, the cancellation of registration card. She also testified that she did vote in Rota in 1997.

Ms. Mendiola also stated that when she registered to vote she was just told to sign her name, and that she did not fill out the portion of the form that requested information about jurisdictions she previously voted in. She also stated that she has taken no action to cancel her Rota voter registration. Plaintiffs' Counsel then asked her if she has spoken to anyone from the democratic party or to either of Defense Counsel. She stated that she had not.

Plaintiffs then asked her who she voted for in the November 3, 1998, election, and over Defendants' objection, she stated that she voted for the Gutierrez/Bordallo team.

The Defendants had no cross examination for this witness.

Plaintiffs' next witness was Joanne Cruz. She testified

that she was a volunteer for the Plaintiffs and had begun this volunteering on November 6, 1998. She stated that with regard to Plaintiffs' case, she clipped out obituaries and notices of rosaries for deceased persons. She stated that she was assisted by other volunteers and that no one was really responsible for supervising them. She further testified that after clipping these notices from the Pacific Daily News, she would put them into alphabetical order and precinct order. She also stated that she spoke with some family members of deceased persons.

Plaintiffs' Counsel then proceeded to question this witness with regard to several of the newspaper clippings. The name of the first person who was addressed by Plaintiffs came from a PDN clipping. Plaintiffs contended that this person was deceased at the time of the election, however the voting records demonstrated that he voted at the November 3 election. Upon seeking admission of this clipping, the Defendants objected and the Court denied the admission of such. Both the Defendants and the Court noted that Plaintiffs had the wrong person and that the person who actually cast a vote in the election is a different person from the deceased person in the newspaper clipping and he is still alive.

Plaintiffs went on to address other newspaper clippings with regard to alleged deceased voters, and after the lunch break, the parties stipulated to exhibits 46, 51 and 52 being admitted into evidence. The Defendants argued that the other clippings were for persons who did not vote and there were also individuals on

Plaintiffs' list who died after the election.

Plaintiffs then proceeded to go through several other exhibits in this regard, and it appeared that while some of the names from the clippings were the same as those names of persons voting, that social security numbers and dates of birth were different. Plaintiffs then moved all of these clippings into evidence and over the Defendants' objections, the Court granted the admission of such for whatever value they may hold.

Ms. Cruz also testified that certain persons alleged to have voted illegally are associated with the Defendants' campaign. She stated that she used to be a strong 98 supporter and thus she knows that these people are Defendants' supporters. Plaintiffs' then sought to admit exhibits P64 and P65, which were publications from the Defendants' inaugural ceremony from 1994, and they were admitted by the Court.

Defendants then cross examined this witness, and she admitted that when she clipped out these death listings, she generally did not compare them to death notices nor to the persons listed on the voters list. In this regard she stated that she was just a volunteer. She was also asked about the publication "Sons and Daughters of Guam", and she stated that she gave a copy of it to Plaintiffs' counsel. Further, Ms. Cruz stated that she assisted in preparing a list of alleged non-resident voters for Plaintiffs' case.

The next witness called by Plaintiffs was Charleen Aputang who testified that she works at Blockbuster Video. She stated

that she was registered to vote in Guam and that when she registered to vote, she was not told to read the form and she was only told to fill out the top portion of that form.

Ms. Aputang also stated that she used to live in Rota prior to moving to Guam and that she was registered to voter there. She further stated that she was not familiar with exhibit P9, the cancellation of registration card, and that she had not taken any action to cancel her voter registration in Rota. Further she stated that she did not vote in Rota. After all of this questioning, Plaintiffs asked this witness who she cast her ballot for, and over the Defendants' objection, and based upon the Court's prior ruling in this regard, the witness was directed to answer the question. She stated that she voted for the Defendants, Gutierrez/Bordallo.

Defendants had no cross examination for this witness.

Mr. Manny Villava was the next witness to be called by the Plaintiffs. He testified that he was a consultant to the Governor in the area of Filipino affairs. He also stated that he was a volunteer registrar for the November 3, 1998, election, and further that he also acted in this capacity for the 1984 and the 1994 elections. He stated that he was a registrar for the democratic party, however he stated he was not really involved in the 98 campaign.

Plaintiffs then proceeded to question this witness about exhibit P29 which contained a list of expenditures from the 98 campaign. Mr. Villava was asked about a check which was issued

to him in August of 1995 for \$1,500.00. The witness at first stated he could not recall what this check was issued for, however he later stated that it could have been issued to him for the rental of one of his apartments which was rented by the 98 campaign. The Plaintiffs also questioned Mr. Villava about other expenditures from the 98 campaign to him, and he stated that he could not recall what these checks were for.

Plaintiffs then questioned Mr. Villava about his volunteer registrar activities, and in particular, he was questioned in detail about the list of persons he registered to vote for the November 3, 1998 election. Mr. Villava stated that he did follow the correct procedures with each person he registered and that he would review the person's passport, if applicable, and write the number of that passport down. Plaintiffs asked this witness about specific persons he registered where the place for the passport number or naturalization number was left blank, and in one instance the witness said he could bring the passport with him to Court. At this time, as it was the end of the day, the Court broke for recess until the following morning.

(Day 14, Wednesday, February 3, 1999)

Plaintiffs continued questioning Mr. Manny Villava on this day. Plaintiff continued to go through various affidavits of registration wherein Mr. Villava had registered the person, but where certain information was not included on the forms. He stated that he kept of list of persons whose passport numbers were missing from their AORs and that he then called the Guam

Election Commission to give them the information regarding these person's passports. He stated he does not remember who at the GEC he spoke do in this regard, but that he believes there were about seven persons for whom he did not fill in the passport number on their AOR.

Plaintiffs then went back to question this witness about the payments made to him by the 98 campaign again. He was again questioned regarding the \$1,500.00 payment, and the witness indicated that he did not know what this report Plaintiffs were questioning him on represented. He also stated that he only rented one of his apartments to the 98 campaign once and he did not know what other payments to him listed in the report, were for.

Plaintiffs then questioned Mr. Villava as to his work for the Governor. He stated that he was involved in the Filipinos for 98 organization, and that he acted as a liaison between the Filipino community in Guam and the 98 campaign. He stated that he would invite Filipinos to the 98 meetings. Plaintiffs also questioned Mr. Villava as to whether he would go to these meetings in order to register voters there. Mr. Villava stated that this was not his purpose in attending these meetings.

As a final question, Plaintiffs asked Mr. Villava whether it was true that the majority of persons that he registered did not provide proof of citizenship, and the witness stated that this was not a true statement.

On cross examination, Mr. Villava stated that he has lived

in Guam for over 33 years, and that the large Filipino community on Guam is divided according to the region they come from in the Philippines. He also stated that there are often misunderstandings amongst the groups and that he works trying to unite these groups. He further testified that he tried to get Filipinos to come out and vote and he did want them to vote for the Defendants.

This witness was also asked whether or not he had brought the passport of one of the individuals he registered who was addressed the previous day during direct examination. He stated that he had brought the passport, and a copy was made of it for the Court.

After a brief re-direct by the Plaintiffs, this witness was excused.

The next witness called by the Plaintiffs was Mr. Hubert Recheungel who stated that he is a registered voter in Guam and that he was born in Palau. He stated that he became a United States citizen on May 1, 1973. He further stated that while he did not register to vote in Palau, he is aware that his name is on the list of registered voters in Palau. In this regard he stated that he never filled out any forms while in Palau that could have been voter registration forms. However the witness did state that he was made aware that his name was on the list of registered voters for Palau. He also stated that he has voted in several Palau elections absentee, while living here in Guam.

Mr. Recheungel was then asked who he voted for, for the

office of Governor in the November 3, 1998 election, and over the Defendants' objection, and pursuant to the Court's prior ruling on this issue, he stated that he voted for Gutierrez/Bordallo.

The Defendants had no cross examination for this witness.

The next witness called to testify in Plaintiffs' case was Helene Torres. She stated that she works at Guam Memorial Hospital in the Guest Relations Department and that she has held this position since January of 1998. She stated that she has an educational background in psychology and that she also worked at UCSF for fifteen years in the capacity she is presently working in at GMH.

Ms. Torres was asked if she was working on the day of the election, November 3, 1998, and she stated that she was not at the hospital at all that day. She stated that she was at home all day and that she did not pass out any ballots at the hospital that day. She further stated that she did not solicit any ballots from patients of the hospital.

The Defendants had no cross examination for this witness.

The next witness called to the stand by Plaintiffs was Martin Barcinas. He stated that he works at the Department of Public Works. When questioned about being a volunteer registrar by the Plaintiffs, he stated that he had not been a volunteer registrar for the Guam Election Commission nor had he ever acted as a registrar for any campaign. He further stated when shown a portion of exhibit P4, part 3, page 404, that it was not his signature at the bottom of the affidavit of registration, and

that he was not sure if there is another Martin Barcinas on Guam, but he did recall that he had a friend with the same name in high school. The Plaintiffs had no further questions for this witness, nor did Defendants have any cross examination. Thus, he was then excused.

Ms. Minola Reklai was then called to testify for Plaintiffs. She stated that her birthday was December 17, 1978, and that she was twenty years old. She also stated that she was registered to vote in Guam and that she did not recall who registered her, but that it was by an individual who came to her house. She further stated that there was no campaign activity at her house at the time she was registered.

Ms. Reklai further stated that she has been to Palau and that she is registered to vote there, and that she voted in the 1996 election in Palau. Ms. Reklai also stated that she had never seen exhibit P9 before nor had she ever filled out such a form. She was then asked who she voted for in the November 3, 1998 election, and over Defendant's objection and based upon the Court's prior ruling on this issue, she was directed to answer the question. She stated that she voted for Gutierrez/Bordallo.

On cross examination, Ms. Reklai was asked about her birth date as it was shown on the form, and she stated that it was incorrect. As it was listed on the form, it showed Ms. Reklai to be significantly younger than she is.

Mr. Carlos Cruz was then called to testify by the Plaintiffs. He stated that he was a surveyor. He was asked

about his neighbors the Borjas and he stated that there would occasionally be campaign meetings for the 98 campaign meeting held there.

The Defendants had no cross examination for this witness.

Ms. Faye Zabala was next called to testify for the Plaintiffs. She stated that she works as an administrative assistant at the Governor's office. She further stated that she has worked there since 1995. She was then asked about her volunteer registrar duties and she stated that she had been a volunteer registrar for both the primary and general elections and that she had also been a volunteer registrar for over four years. She further testified that she worked for Governor Gutierrez as a legislative aide when he was a senator. She stated that she was not a registrar for any particular party, although she is a democrat.

Ms. Zabala stated that she did not know how many people she registered for the 1998 general election, however she guessed it was more than 100 persons. She stated that she would usually register people at their homes.

Plaintiffs' Counsel then proceeded to go through a lengthy list of persons whom Ms. Zabala registered to vote for the November 3, 1998 election. Ms. Zabala was also questioned regarding where she registered voters. She stated that she would get calls mostly at her home from people wanting to be registered and that her name would just be passed by word of mouth from friends and family to others as a deputized registrar. She

stated that she could not say how many people came to her house to get registered, however there were a lot.

Plaintiffs then asked this witness if she went to political functions and if so how many she attended in each month for the year of 1998. The witness stated that while she did attend political functions, she could not remember specifically how many she attended in a given month.

Plaintiffs again went back to the list of persons Ms. Zabala registered to vote and again asked about the times of locations when and where she registered voters. The witness again informed Plaintiffs' Counsel that with the number of persons that she registered to vote, she could not remember where and when each person on the list was registered. Moreover, she stated that she was not the person who prepared the listing Counsel was questioning her from, thus she did not know the answers to many of his questions.

Plaintiffs then went through the procedures for the registration of a voter and Ms. Zabala stated that she would ask for identification, ask whether or not the person is a citizen, where that person is born, and then she would proceed to fill out the form for the voter. She stated that she always filled out the registration form.

Finally, Plaintiffs asked Ms. Zabala if she ever registered persons at fund raising activities and she answered that she did.

On cross examination, Ms. Zabala was asked about the dates set forth on the listing of persons she registered which

Plaintiffs had spent much time questioning her on. She was given an affidavit of registration for a person whom she registered and was asked to compare the date on that form to that set forth on the listing of persons she registered. She stated that the dates did not match.

She also stated in response to Defendants' question that she does ask a voter if he or she is registered elsewhere prior to registering them to vote.

On redirect, Plaintiffs again asked the witness about registration procedures and questioned her as to why she hadn't stated anything about asking a voter about whether they are registered elsewhere when she was explaining the registration process. She stated that she simply forgot and that she does ask voters if they are registered to vote elsewhere. She stated that she could not recall how many cancellation of registration cards were filled out by persons she registered to vote.

This witness was then excused.

Plaintiffs then informed the Court that they were finished with their case with the exception of one witness. Plaintiffs stated that a witness they wished to have testify was currently off island either seeking medical care or accompanying his father who was seeking medical care off island. Plaintiffs further informed the Court that they did not know when this witness would be returning to Guam and that they had no information in this regard. Finally, Plaintiffs indicated that this witness had never been served with a subpoena. Plaintiffs then asked the

Court for a continuance of this trial until this witness returned to Guam, and the Court denied this request. The Court found that there was no information regarding when or if this witness would be returning to Guam and further this witness had never been served with a subpoena. Thus, the Court found it would not be proper to continue this trial indefinitely. In light of the Court's ruling in this regard, the Plaintiffs then rested their case.

Subsequent to Plaintiffs resting their case, the Defendants made an oral motion for a directed verdict/non-suit. The Defendants made a lengthy argument regarding the burdens upon the Plaintiff and Defendants addressed the evidence, or lack thereof, with regard to Plaintiffs' case. Defendants argued that Plaintiffs had not proven that there had been over 2,000 illegal votes, nor had Plaintiffs proven, assuming there were illegal votes, who those illegal voters voted for. Defendants also argued that Plaintiffs had failed to prove that there was widespread ballot fraud on the part of the precinct officials and the Guam Election Commission, and finally Defendants argued that Plaintiffs had shown no evidence indicating that the Defendants conspired to procure improper absentee ballots.

Plaintiffs then responded to Defendants' motion and argued that the evidence was to be viewed in a light most favorable to the Plaintiffs. Plaintiff then went on to discuss the issues of what constitutes a majority of votes, and argued that this Court must follow the dictate of the Federal District Court. Plaintiff

further went on to cite to several cases which Plaintiff argued applied to the present case with regard to the majority issue as well as with regard to how to apportion the alleged illegal votes.

Plaintiffs also addressed the evidence which was presented and what it, in their opinion, demonstrated about the November 3, 1998 election. Plaintiffs recounted witness testimony and exhibits in support of their contention that Defendants' motion for a directed verdict should not be granted. Plaintiffs then indicated that in order to properly defend against this motion, it would be necessary for them to go through individual exhibits, however the Court directed the Plaintiffs to instead summarize their positions.

The Defendants then replied to Plaintiffs' opposition.

The Court then, having heard the arguments of the parties, rendered an oral ruling from the bench. The Court stated that it was its philosophy that matters before the Court should be heard and determined on their merits after the presentation of all evidence. The Court further held that based upon all of the evidence which had been introduced thus far in the trial, that the Court would need to review all of it prior to rendering any decision with regard to the merits of the case. Thus, for these reasons, this Court denied the Defendants' motion for a directed verdict/non-suit.

At this time, due to the lateness of the hour, the Court recessed for the day.

(Day 15, Thursday, February 4, 1999)

This was the first day of the Defendants case in chief. The parties initially addressed the issue of exhibits B and C to the Court. The Defendants informed the Court that the parties had stipulated to the admission of these documents, and on this basis, they were admitted. Exhibits B and C are certificates of death and the official death listing from the Department of Public Health and Human Services. Based upon this stipulation, testimony from a representative of the Department of Public Health and Social Services was not necessary.

Defendants then called to the stand Ms. Elisa A. Garrido. She testified that she is a registered voter on Guam. Ms. Garrido was then shown exhibit P1 part one, page 367. She stated that it contained her correct birth date, however she stated that it had an incorrect social security number for her. She stated that her social security number was listed incorrectly on this form.

Plaintiffs had no cross examination for this witness.

Defendants next called Vicki Borja to the stand. She testified that she is a sales manager for Radio Com. She stated that she is a registered voter and that she did vote in the November 3 election.

Ms. Borja further testified that she had received a communication from the Guam Election Commission regarding her status as a registered voter. She was asked to show her proof of citizenship at the Commission. She stated that she was very busy

at that time, and that she did not have time to go over to the Commission in person. She stated that the Commission agreed that she could fax a copy of her passport to their offices. Ms. Borja also testified that she became busy and kept forgetting to bring her passport to her office with her, which was where her fax machine is. She stated that she meant to provide this information to the Commission, however she never did. Ms. Borja also stated that she is a United States citizen, and she brought her passport with her to Court to prove this fact.

On cross examination, Plaintiffs asked Ms. Borja who registered her to vote, however she could not remember the name of that person. She also stated that she was registered in 1994 and that someone who was out campaigning arranged for someone to come to her office to register her. She stated she recalled voting in the 1994 election. Ms. Borja also testified that she called the Guam Election Commission prior to the end of the registration deadline to see if her name was still on the list of registered voters since she never provided her passport number to them. She was informed that she was on the list of voters. She also stated that she voted in the 1998 election.

The next witness called to the stand by the Defendants was Mr. Henry Torres from the Guam Election Commission. He stated that he is familiar with the "alpha" register of voters and how it is prepared. He was asked about the birth dates of persons listed on this list, and he stated that there is a problem with the computer at the computer center. He stated that for certain

years, the computer requires you to type in the full year, for example 1930, rather than just type in the 30, however for most years, you need only type in the last two digits. He stated that in certain instances when the full year is not typed in, the computer would then indicate that the date of birth was in the year 2000. He stated that the Commission has attempted to correct this problem.

Mr. Torres was also asked about absentee ballots and the procedures in sending them out. In this regard he stated that if there was not sufficient information on an absentee application, or if further information was necessary, inquiries would be sent out by the Commission to the people applying. Plaintiffs then introduced exhibits D, E, F, G, and I, and Mr. Torres provided testimony regarding these exhibits. They were communications sent out by the Commission to persons applying for absentee ballots, informing those applicants that more information was needed to be provided to the Commission in order for their applications to be approved.

Mr. Torres was then questioned about "media reports" or reports of the election results which are generated during the election. He stated that in his experience, a report which indicated, for example, 51 of 72 precincts reporting, would not reflect all of the votes cast in those 51 precincts. Rather, he stated that there is no way of knowing how many votes have been cast in each individual precinct. In this regard he testified that there would also be ballots rejected by the machine which

would have to go to the resolution room. Mr. Torres also stated that a media report does not produce precinct by precinct results, rather it shows a cumulative total.

Mr. Torres was also asked about the ballots which go to the resolution room, and he stated that quite a lot of ballots must go to the resolution room; his estimate in this regard was approximately 5,000 ballots. This witness was then referred to the numbers testified to by Mr. Douglas Moylan. He was asked if there was any way of extracting numbers from the final result from looking at the media report or if there was any way to know how votes were tabulated simply from viewing this information. Mr. Torres stated that there was not, and that one would have to look at individual precinct by precinct totals to do so.

Mr. Torres was also asked about write in votes and he stated that there were approximately 1,000 ballots where the oval for the write-in was shaded, however there was no name written in next to it.

On cross examination, Mr. Torres stated that while he had turned in his resignation, it had not yet been accepted by the Guam Election Commission. Mr. Torres was then asked about exhibits D, E, F, G, and I. Plaintiffs established that exhibit I had been sent to the Commission via facsimile, and it indicated that the applicant held employment in Hawaii. The witness was questioned about the appropriateness of allowing someone who was apparently employed in Hawaii to vote via absentee ballot in Guam.

Mr. Torres was also questioned regarding exhibit G.

Plaintiffs questioned him in this regard again seeking to find out why someone who is employed in Hawaii would be allowed to register to vote and to vote in Guam. Mr. Torres stated that this person was accidentally approved prior to the Commission receiving additional information, and further that the Commission accepted faxes as "other means" of sending an application. Mr. Torres also indicated that he did not know whether the persons on these applications were related to the Governor.

Mr. Torres was also questioned regarding exhibits D and E and he indicated that these were not complete forms and that the back pages appeared to be missing. Mr. Torres also indicated that if an applicant indicates that they hold overseas employment, that is sufficient to qualify that person to vote absentee in Guam.

Finally with regard to the absentee ballots, Mr. Torres stated that even if the applicants' applications are accepted and approved, their ballots can still be rejected prior to them being cast, and that simply because the applications are approved, this is not the final say in this regard.

Mr. Torres was also questioned regarding the computer problems he previously testified to as far as birthdays. He stated that not all errors are a result of this computer problem.

Mr. Torres was also asked about rejected ballots and he stated that the number of ballots rejected by the tabulation machine would easily be more than 3,216 votes. He stated that

the Commission usually begins to go through the rejected ballots midway through the tabulation of the votes, at approximately 10:00 to 11:00 p.m. on election night. He also stated that the media report is usually generated after midnight and that the Commission would have worked on the reconciliation, however it would certainly not be finished at that point in the night. Plaintiffs questioned Mr. Torres as to a few other issues with regard to the tabulation of votes.

Defendants then conducted a redirect of this witness and he was questioned again with regard to various exhibits and Defendants also followed up on several issues brought up by the Plaintiffs. Defendants then finished with this witness and the Plaintiffs had not re-cross for Mr. Torres. The Court then recessed for the afternoon lunch break.

The Defendants resumed the presentation of evidence by calling Mr. Joseph T. Duenas to the stand. He stated that he is the Vice Chairman of the Guam Election Commission, and that he participated in the meetings held by the Commission subsequent to the November 3 election. Mr. Duenas testified that with regard to the November 16 meeting, the Board did not pass any resolution to keep Angel Santos from attending the meeting. He also stated that the media was there, that GPD was there, and that there were also firemen present. He stated that this meeting was very crowded.

Mr. Duenas also testified that after the election he reviewed the audit report and questioned Henry Torres with regard

to the results. He was informed that all ballots were accounted for and he was satisfied with the answers he received from Mr. Torres.

Mr. Duenas was then shown exhibit K, the media report previously referred to by other witnesses. The witness was questioned regarding the results of the 51 of 72 precincts which were reflected in this report. He stated he compared the final election results with those set forth in the media report and stated that none of the precincts final totals were the same as what had been shown in the media report.

On cross examination, Mr. Duenas was again questioned regarding the results set forth in the media report and the findings set forth in the audit report. He stated that at the November 16, 1998 meeting, he spoke with legal counsel for the Guam Election Commission regarding discrepancies in the election, and he stated that he was informed that these discrepancies did not need to be reconciled as they were minimal. He was informed that any missed precinct ballots shown in the audit report are diminimus and did not affect the outcome of the election.

Plaintiffs also asked Mr. Duenas about his support for the Defendants. He acknowledged that he is a democrat and that he is a supporter of the 98 team. However he stated that his opinion that the election results were valid and thus were properly certified was not based upon the fact that he liked the election results, but rather he stated that he had been satisfied that all the ballots had been accounted for.

The final witness to be called by the Defendants in this matter was Evan Montvel-Cohen. He stated that he is a market researcher who has his own market research firm here in Guam. He further stated that he was hired by the Defendants in order to verify data provided by the Plaintiffs in this litigation. Specifically, Mr. Montvel-Cohen stated that he was provided with the lists of alleged illegal voters prepared by the Plaintiffs pursuant to this Court's order, and that he and his employees went through these lists attempting to verify if the information with regard to the alleged illegal voters was, in fact, correct.

The witness was given exhibits N and O which he stated represented the first and second lists Plaintiffs put together with regard to the alleged illegal votes. He stated that he and his staff tried to contact as many people as possible in order to verify that they were citizens, residents, of legal age to vote, or whatever the alleged deficiency with each particular voter was. He stated that they set up an office at the Compadres Mall, and asked persons who wished to clarify their status as voters, to come to the office and fill out affidavits.

He stated that through their work they discovered that over 1,000 names that were placed on the list came directly from the "Sons and Daughters of Guam" publication. He also stated that summaries from each list were prepared and that these summaries indicated what he and his staff uncovered through their research. For example, he stated that they had not been able to find one person from Plaintiffs' list who was a minor who voted.

At this point, Plaintiffs posed an objection to this testimony, arguing that this witness's findings were based upon hearsay and thus his testimony should not be allowed. The Court overruled the objection, as the questions did not call for the witness to testify as to hearsay.

With regard to the persons alleged to be non-residents, Mr. Montvel-Cohen stated that there were lots of duplicates and that some names were difficult to identify due to the fact that there were either several persons with the same name, or insufficient information was provided so that they could not determine which person Plaintiffs were alleging to be an illegal voter.

This witness stated that he and his staff also contacted people in order to determine whether or not persons on the list were United States Citizens or not. He stated that he saw approximately 893 documents regarding citizenship of alleged illegal voters. He also testified that he did not see any documents which indicated that the bearer was not a citizen. At this time, the Court recessed for the day.

(Day 16, Friday, February 5, 1999)

The Court resumed proceedings at approximately 9:30 a.m., and at this time, Plaintiffs informed the Court that they had not had sufficient time to go through Defendants' proposed exhibits, and they requested that the Court recess for the weekend and that the matter resume on Monday. In this regard, Plaintiffs argued that Defendants should have provided Plaintiffs with this evidence earlier and that they felt they were being ambushed by

this documentation.

In response to this request, the Defendants stated that this evidence was rebuttal evidence, intended to rebut Plaintiffs' contention with regard to the alleged illegal voters. Defendants stated that they were under no duty to provide Plaintiffs with advance copies of their rebuttal evidence and they objected to a continuance of this matter.

The Court then recessed this matter until 2:00 p.m..

Defendants resumed testimony with Mr. Montvel-Cohen, and Defendants introduced exhibits T, U, and V. Exhibit T contained affidavits and documents regarding the age of alleged illegal voters; exhibit U contained affidavits and documentation of alleged non-resident voters; and exhibit V contained affidavits and documentation of alleged non-citizens. Mr. Montvel-Cohen stated that exhibit T contained 15 affidavits, exhibit U contained about 260 affidavits, and exhibit V contained over 500 affidavits. Defendants also elicited testimony regarding exhibits Q, R, and S at this time.

Defendants then moved these documents into evidence and Plaintiffs objected on the basis that these documents were based upon hearsay and thus they were not admissible. In response, the Defendants stated that the documents were offered to gauge how the witness performed his tasks in this regard, and that the Court had already heard testimony regarding these exhibits. Thus Defendants argued that these exhibits should be admitted and the Court should give what, if any, weight to them that it deems

appropriate.

This Court concluded that the exhibits are relevant and that they may be helpful to the Court in reaching a decision on certain issues involved in this case. The Court also held that based upon the documents attached to the affidavits such as passports, that this information held an indicia of reliability. Thus the Court admitted these exhibits into evidence.

The Plaintiffs then commenced cross examination of this witness. Mr. Montvel-Cohen was asked to state what his understanding of what residency was for the purpose of the Guam Election Code, and he stated that he was not familiar with the specifics. He also stated that while he personally reviewed a large portion of the affidavits and documents, he did not personally review each document.

This witness was then questioned regarding the procedures he and his staff went through in obtaining the affidavits and the supporting documentation. Plaintiffs then asked the witness about various specific affidavits, such as one which was accompanied by a copy of a cable bill. The witness stated that this one should not have been included.

Plaintiffs also questioned this witness regarding the various names included in their documentation and through questioning established that in some instances, the person who provided documentation to the witness and his staff were not the persons contained in Plaintiffs' lists. Plaintiffs also pointed out two documents to the witness where the person at issue did

not personally sign the affidavit. The witness stated that in certain instances, persons believing they were on the list, and family members of persons on the lists were adamant about filing affidavits and the witness stated that they did not stop people from doing so.

Mr. Montvel-Cohen was also questioned regarding the compensation he would receive from this project, and he stated that he did not know how many hours were spent on the project or what the total billable hours would be once he submitted an invoice.

The Court then recessed for the day instructing the parties to return Monday at 8:00 a.m..

(Day 17, Monday, February 8, 1998)

Plaintiffs continued their cross examination of Mr. Montvel-Cohen, and Plaintiffs continued to go through several individual affidavits contained in the exhibits prepared by the witness. Plaintiffs questioned the witness about deficiencies contained therein. Again, the witness stated that in some circumstances, the affidavits were accepted on their face, as some people were very adamant about wanting to file an affidavit.

The Defendants then conducted brief redirect of this witness and elicited testimony from this witness to rebut some points made by the Plaintiffs. Mr. Montvel-Cohen stated that no affidavits were obtained outside of Guam and that he did not receive any via mail either.

Plaintiffs briefly conducted re-cross of this witness, and

Mr. Montvel-Cohen stated that the task of attempting to verify the information contained in Plaintiffs' lists was very difficult due to the fact that they were trying to obtain several different types of information and that the first list contained only names, and no other information regarding the identity of the persons contained within that list.

The Defendants then rested and Plaintiffs proceeded to present rebuttal evidence. Plaintiffs had intended to call Liz Blas from the GEC to the stand, however the purpose in calling her to testify was merely to admit the absentee voter listings from 1994 and 1996. The Court informed the Plaintiffs that it would admit these records without Plaintiffs calling this witness to the stand, and the Defendants indicated that they would not question the authenticity of the documents. Therefore, these exhibits were accepted by the Court and there was no further evidence or testimony presented by either party. The Court then took a break and later resumed with the parties' closing arguments. Both parties presented lengthy arguments, and at approximately 6:30 p.m., the parties had concluded arguments and the Court took this matter under advisement.

The Court, mindful of the requirement set forth in 3 G.C.A. Section 12115 Which requires that a decision in an election contest matter be rendered within ten days of the close of the evidence, has reviewed the testimony and evidence which was presented during this five week long trial as thoroughly as possible. The Court has reviewed witness testimony and has also

gone through the vast amount of exhibits which were presented in this matter. The Court has also carefully considered the law which is applicable to the various issues involved herein. After having done so, the Court has reached the conclusion that the Plaintiffs' have not met their burden of proof with regard to the claims set forth in their Complaint, nor have Plaintiffs met the requirements for setting aside or nullifying the results of an election as provided for in the Guam Election Code. Thus, based upon the Court's findings which are set forth at length below, the Court must deny the relief sought by Plaintiffs herein. The following discussion sets forth the Court's findings of fact and conclusions of law which support this conclusion.

FINDINGS AND CONCLUSIONS

WHAT CONSTITUTES A MAJORITY UNDER GUAM'S ORGANIC ACT

The Court finds that the first issue it must address in this election contest matter is the issue of what constitutes a "majority of the votes cast" as set forth in Guam's Organic Act with regard to the election of a Governor and Lieutenant Governor. Plaintiffs have brought into question whether or not the Defendants in this matter won the November 3, 1998 General election by a majority of the votes as provided for in the Organic Act, 42 U.S.C. §1422. Plaintiffs contend that the Defendants did not receive a majority of the votes cast, and thus they should not have been deemed the winners of the November 3, 1998 Gubernatorial election.

The Plaintiffs have also argued that this Court is bound by the decision rendered by Judge John Unpingco of the District Court of Guam with regard to the majority issue. Plaintiffs filed a Petition for Writ in District Court on December 1, 1998, seeking a ruling from the District Court that the Defendants in the above captioned matter were not elected by a "majority of votes cast" as is required by 48 U.S.C. §1422.

On December 9, 1998, the District Court issued its Order and Writ of Mandamus holding that the Defendants did not receive a majority of the votes as provided for by the Organic Act of Guam. In reaching this conclusion, the District Court concluded that blank ballots, as well as "over votes" should be included in the total vote count and thus should be taken into consideration when determining what a majority of the votes is. The District Court based its decision upon California case law, and it rejected the holding of Todman v. Boschulte, 694 F.2d 939 (3rd Cir. 1982), a case out of the Virgin Islands which construed language identical to that contained in Guam's Organic Act.

The Defendants in the above captioned matter, Carl T. C. Gutierrez and Madeleine Z. Bordallo, appealed the ruling of the District Court, and on December 15, 1998, the District Court of Appeals for the Ninth Circuit (hereinafter the Ninth Circuit), issued an Order whereby it stayed "the district court's December 9, 1998 order." Based upon the order of the Ninth Circuit staying the District Court's Order, as well as upon the Plaintiffs' request that this Court address the issue of what

constitutes a majority under Guam's Organic Act, this Court finds it proper to address this issue.

The Court is mindful of the decision rendered by the District Court of Guam with regard to the majority issue, however, as has been previously stated, that decision has been stayed by the Ninth Circuit, and thus the Court finds that it is not bound to follow the dictate of the District Court with regard to this issue. The language employed by the Ninth Circuit with regard to the stay is that the "Appellants' motion to stay the district court's December 9, 1998 order is granted." The Ninth Circuit then goes on to cite to Todman v. Boschulte, 694 F.2d 939 (3rd Cir. 1982), the case out of the Virgin Islands which Defendants relied upon in arguing that blank ballots are not to be included in the total number of votes.

Clearly, the District Court's ruling with regard to what constitutes a majority is included in its December 9, 1998 Order & Writ of Mandamus. The Ninth Circuit did not state that only the run off election which was mandated by the District court is stayed, rather it held that the Court's "order" is stayed. This Court finds that this is an important distinction to draw here. The District Court's Order in mandating that a run off election be held was based upon that Court's conclusion with regard to the majority issue. Thus, this Court is of the opinion that by staying the District Court's Order, the Ninth Circuit in effect, stayed the decision rendered by the District Court with regard to the majority issue. Wherefore, the Court finds that it is not

overstepping any boundaries by addressing this issue, and it further finds that, with all due respect to the District Court, it is not bound by its determination on this issue.

In addition to the fact that this matter has been stayed, the Court also finds that it is appropriate for it to address the issue of what constitutes a majority of the votes cast because local law applies with regard to determining what the "base" number of votes cast is. This Court finds that its familiarity with local law is appropriately applied in this matter. Guam's Election Code is clearly made up and comprised of local statutes. These local statutes must be applied in order to determine what votes are properly cast in an election, what voters are entitled to vote in an election, and how the votes are to be counted in an election. All of these factors contribute to the ultimate conclusion, the total number of "votes" cast in an election. Once this "base" number is arrived at, then the Organic Act of Guam must be viewed in order to determine how a majority of these votes is determined. Thus, local laws must necessarily be applied before the issue of what constitutes a majority may be determined. Therefore, on this basis, this Court finds that it is proper for it to address the majority issue.

Finally, prior to addressing the merits of the majority issue, the Court also finds it important to note that it does, in fact, have proper jurisdiction to address the majority issue. As was previously set forth, the issue with regard to what constitutes a "majority of votes cast" for the office of

Governor/Lieutenant Governor, necessary implicate local law.

While the majority requirement is encompassed in §1422 of Guam's Organic Act, a federal statute, an interpretation of this statute necessarily requires the Court to first look to the local elections statutes, and extract the rules as to what constitutes a "vote" from these laws. It is not until these local laws are interpreted and understood that the Organic Act provisions may then be construed. The provisions contained in 48 U.S.C. §1422 cannot be viewed in a vacuum, nor can they be construed and interpreted without first looking to the local election laws and the effect such laws have on the issue of a majority.

Thus, this Court finds that it properly has jurisdiction to address the issue with regard to what constitutes "a majority of the votes cast" pursuant to 7 G.C.A. §3105 and 3 G.C.A. §12105. Moreover, as has been previously set forth, due to the fact that the order of the District Court of Guam has been stayed, the Court finds that it is free to address this issue, and further free to reach a conclusion with regard to this issue that differs from that reached by the District Court of Guam.

Having found that this Court may properly address the issue of what constitutes a "majority of votes cast" as set forth in Guam's Organic Act, this Court also finds it is necessary to address this issue, as the issue of what constitutes a majority may, indeed, affect the election results herein, if, in fact, Plaintiffs prove that there has been wide spread voter fraud, and illegal voting. If Plaintiffs do prove their allegations in this

regard, any votes which are proven to be illegal, and further which Plaintiffs can prove should be attributed to the Defendants, will be subtracted from the total votes received by the Defendants, and thus the outcome of the election may be altered.

Thus, having set forth the foregoing preliminary matters, the Court must now address what is actually meant by the language "majority of votes cast by the people who are qualified to vote for the members of the Legislature of Guam." The Court finds that in order to reach a determination on this issue, a look must first be taken to Guam's Election Code and the provisions and requirements contained therein.

The Court finds that 3 G.C.A. §§11111 and 11114 are both relevant to the issue of what constitutes a majority and the language of both sections must be considered in determining what votes are counted with regard to the total votes cast. Section 11111 states as follows:

§11111. Imperfectly Marked Ballots Void. At any election, any ballot which is not marked as provided by law shall be void; but the ballot shall be preserved. Two (2) or more markings in one (1) voting square or a mark made partly within and partly without a voting square or space does not make a ballot void.

This language clearly indicates that a ballot that is not properly marked shall be void. Similarly, Section 11114 provides:

§11114. Only Invalid Portions Rejected. If a voter indicates either:
(a) By placing his marks in the voting squares

adjacent to the names of any candidate, or
(b) By writing the names of persons for an office
in the blank spaces, or
(c) By a combination of both,

the choice of more than there are candidates to be
elected or certified for any office, or if for any
reason it is impossible to determine his choice for any
office, his ballot shall not be counted for that
office, but the rest of his ballot, if properly marked,
shall be counted.

Again, it is clear from the foregoing language that if a
voter improperly marks his or her ballot for a certain office,
that ballot shall not be counted for that particular office.
These provisions indicate that if a ballot is improperly marked
it shall be void and that part of the ballot shall not be
counted. It is this Court's opinion that such language sheds
light on the issue of what votes are to be counted towards to
total votes cast in an election. The language clear evidences
the Legislature's intent to void only that portion of the ballot
that is improperly marked; the entire ballot not being voided.

Additionally, the Court finds informative on this issue
certain instructions given to voters which are set forth at 3
G.C.A. §§7108 and 7114. Section 7108 provides that a space shall
be placed "immediately adjacent to the name of each nominee or
adjacent to the word incumbent." It further provides that a
"clear and distinct mark within the square adjacent to the name
of the nominee shall be counted as a vote for that nominee."
Thus, in concert with the provisions set forth in Sections 11111
and 11114, Section 7108 provides for how the ballot shall be
marked, and if it is not marked in this manner, pursuant to

Section 11111 and 11114, that ballot shall be void and shall not count in the total votes cast.

Similarly, Section 7114 provides that the instructions as to how to mark the ballots and as to the number of nominees to vote for shall be placed at the top of the ballot. This again indicates that voters are informed as to how to mark their ballots.

Thus, in reviewing the foregoing statutes, the Court finds that contrary to the position taken by the Plaintiffs in the above captioned matter, every ballot that is cast in an election is not counted toward the total votes cast. This language clearly indicates that there are instances when ballots are not counted for an office and instances when ballots are void due to the manner in which they are marked. Thus ballots that aren't counted for an office, and ballots that are void, are not counted in the total number of votes cast.

Therefore, the Court disagrees with Plaintiffs' position that all ballots cast in an election, even blank ballots, over votes and under votes, are counted in the total votes cast, and the Court further disagrees that all such ballots are to be figured in to the total in order to determine what a majority of the votes cast is. See also §9135 which provides "In voting, the voter shall place the appropriate mark in the voting square adjacent to the name of any nominee for whom he intends to vote...", and §1118 which provides "a mark or marking ... with respect to indicating the voter's choice on a ballot shall

include ... or otherwise marking of a ballot."

In addition to the foregoing rationale, the Court also finds informative on the issue of what votes to count towards the total in order to determine what a majority of votes cast is, the language contained in Guam's Organic Act with regard to what constitutes a majority. Section 1422 of the Organic Act sets forth how the Governor and Lieutenant Governor for Guam are to be elected. In this regard, this section states:

The Governor of Guam, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of Guam.

(Emphasis added).

The Court notes that this language states that the nominees for this office shall be elected by a majority of the "votes", not a majority of the ballots. In other words, the actual votes which are cast for that office are counted towards the total, and a majority taken from that total determines the winner of that office.

The Court is mindful of the fact that when a voters goes to the polls to cast his or her ballot on election day, that voter is given one ballot for all of the offices that are being voted for in that particular election. Thus, that voter has the opportunity to cast votes on that ballot for each and every office her or she wishes to vote for, or that person may choose to only cast a vote for one particular office or one particular candidate. The Court finds this distinction important in the

present case due to the fact that while a voter may cast a ballot in the election, that voter may choose to abstain from voting for a particular office, and in that case, a "vote" is not cast for that office. This is further evident from that previously mentioned statutes which provide that an improperly marked ballot is void and that such shall not be counted for that office. These statutes do not indicate that a failure to properly mark a ballot will void the entire ballot, rather the ballot shall be void only as to the office for which the ballot was not properly marked. Thus it is indeed possible for a voter to improperly mark his or her ballot as to one office, but not as to others. In this scenario, only the improperly marked portion of that ballot will be void; the remaining votes cast on that ballot will not be voided and will be counted towards the total votes cast for that office.

In furtherance of this conclusion, this Court points to the definitions of the words "ballot" and "vote". Ballot is defined as:

Derived from ballotta, a round bullet, used for casting a vote. Process or means of voting, usually in secret, by written or printed tickets or slips of paper, or voting machine. Piece of paper or levers on voting machine which the voter gives expression to his choice. (Citations omitted). A means or instrumentality, by which a voter secretly indicates his will or choice so that it may be recorded as being in favor of certain candidate or for or against a certain proposition or measure. (Citations omitted).

Blacks' Law Dictionary, Sixth ed., page 143 (1990). Whereas the word vote is defined as:

Suffrage; the expression of one's will, preference or choice, formally manifested by a member of a legislative or deliberative body, or of a constituency or a body of qualified electors, in regard to the decision to be made by the body as a whole upon any proposed measure or proceeding or in passing law, rules or regulations, or the selection of an officer or representative. The aggregate of the expressions of will or choice, as manifested by individuals, is called the "vote of the body." (Citations omitted).

Black's Law Dictionary, sixth ed., page 1576 (1990).

Therefore it is notable that the two words are not synonymous nor interchangeable.

Thus, the Court finds that the language "majority of the votes cast" means just that, the majority of the votes cast. The Court finds that the total number of ballots cast in an election is not akin to the total number of votes cast for an office, as a ballot may be void as to one particular office but not as to others. Therefore, this Court finds that the language contained within the Organic Act with regard to what constitutes a majority, further supports this Court's position on this issue, and that an inclusion of blank ballots and ballots casting votes for both candidates in the total number of votes cast for the office of the Governor, would be contrary to the language of the statute.

The Court also finds that there is case law on this issue which supports this Court's position with regard to the majority issue. In County of Cass v. Johnston, 95 U.S. 360 (1904), the United States Supreme Court issued a decision wherein the general proposition that those who do not vote assent to the voters who

do so, was set forth. Specifically, the high Court held:

This we understand to be the established rule as to the effect of elections, in the absence of any statutory regulation to the contrary. All qualified voters who absent themselves from an election duly called are presumed to assent to the expressed will of the majority of those voting, unless the law providing for the election otherwise declares.

Johnston, 95 U.S. at 369.

Thus, this early holding from the Supreme Court set forth the general principle that person who does not chose to cast a vote with regard to a candidate or an office, has instead chosen to assent to those voters who do cast a vote for that candidate or office. The Court finds that this rationale clearly indicates that a voter who does not mark his or her ballot with regard to a certain office, that voter has not denoted his or her choice in that regard, but rather has indicated that he or she has not chosen. Thus, in this Court's opinion, the voter in that scenario has not voted for that particular office, even though that voter has cast a ballot in the election.

In addition to the rationale set forth by the Johnston Court, this Court also finds the case of Todman v. Boschulte, 694 F.2d 939 (3rd Cir. 1982), applicable in the present case, as the holding by the Third Circuit Court therein, is directly on point.

In Todman, the Third Circuit Court was called upon to interpret the Organic Act of the Virgin Islands in order to determine whether blank ballots should be counted in determining whether candidates in the gubernatorial race had obtained a majority of the votes cast. The Court finds it is important to

note and consider the fact that the language of the Organic Act of the Virgin Islands is identical to the language contained in Guam's Organic Act with regard to the votes necessary for a Governor and Lieutenant Governor to be elected. See 48 U.S.C. §1591 which provides in part: "The Governor of the Virgin Islands, together with the Lieutenant Governor, shall be elected by a majority of the votes cast by the people who are qualified to vote for the members of the Legislature of the Virgin Islands...."

Moreover, in the Todman case, the Court was called upon to make a determination as to what constitutes a majority due to the fact that the District Court of the Virgin Islands issued a final order requiring that a run-off election for the offices of Governor and Lieutenant Governor be held. Moreover, in the Todman case, the Court stated that there were 922 entirely spoiled ballots, 571 of which were spoiled as to the office of Governor and Lieutenant Governor. The Court found that there were also 134 ballots which were entirely blank and 500 ballots which were blank as to the offices of Governor and Lieutenant Governor. Todman 694 F.2d at 940. Thus, the Court was tasked with determining whether these spoiled and blank ballots should have been counted in determining whether the candidates for that office received the required majority of votes cast. *Id.*

The Todman Court concluded that neither ballots which were entirely blank nor ballots which were blank as to the office of Governor and Lieutenant Governor should be counted in computing

the majority of votes cast. Id. The Court went on to state by excluding these blank ballots from the total votes cast in the election, that one slate for the office of Governor/Lieutenant Governor won by a majority of the votes cast, therefore it was not necessary to address the issue of whether or not spoiled ballots should count in this computation. However, the Court's holding with regard to blank ballots was clear; blank ballots whether they were entirely blank or only blank as to the office of Governor and Lieutenant Governor, were not to be counted in the total votes cast, as is required in their Organic Act which contains identical language to that of Guam's Organic Act.

This Court finds that the language of both the County of Cass v. Johnston case and the Todman v. Boschulte case are determinative of the issue presently before this Court. Moreover, the Court finds that the rationale from these cases, coupled with the provisions set forth in Guam's election code, make it abundantly clear that blank ballots, whether they are completely blank or whether they are blank as to the office of Governor/Lieutenant Governor, are not to be counted in the total votes cast for that office. Similarly, the Court finds that write in ballots which had a marking in the write in oval, but which did not have a name written in the space provided for the write in vote should also not count in the total votes cast for this office, as such ballots are essentially blank with regard to this office, as no choice was made for a candidate, and thus no vote was cast. More importantly, Guam's election laws require

the voter to write-in the name of the candidate in the space for write-ins, and at the same time to mark the square next to that candidate's name. The failure to write the name and mark the square makes the ballot void.

The court also finds that in determining the "base" number of votes cast for the gubernatorial office, the so called "over-votes" should not be included in the number of votes cast. These ballots are those where the voter voted for both candidates. While the Court in Todman found that it was not necessary for it to reach a determination with regard to the "spoiled" ballots, this Court finds that this is also an important issue which must be addressed.

The ballot instruction requires the voter to vote for not more than one gubernatorial team. The 1998 election ballot read: "Vote for no more than one (1) Gubernatorial team..Make this mark in the oval...If you mark more than one (1) Gubernatorial team, your vote for that office will not be counted." The voter's failure to follow instructions makes these ballots void under §11111. Wherefore, the Court finds that "spoiled" or void ballots must also be excluded from the total votes cast with regard to this office. As is provided for in 3 G.C.A. §§11111 and 11114, ballots which are not properly marked are void and are not to be considered in the total votes cast for that office.

Thus, in reaching the above conclusions, the court finds that the total votes, "the base", for computing all votes cast for the office for Governor/Lt.Governor under Guam law is as

follows:

48,666	Total Ballots tabulated
-1,313	Total Blank votes
-1,019	Total Write-in Ballots with no names
<u>- 609</u>	Total Over-vote Ballots (Both candidates marked)
45,725	Total Votes in the Gubernatorial Race

In determining whether a majority of the votes cast refers to this base count (45,725) or to another figure (48,666), the Court also must look at the congressional intent in requiring a run-off election. Congress' intent may perhaps be seen in the language that follows reference to a majority of the votes cast. In it, Congress says that the run-off election "shall be held between the candidates for Governor and Lieutenant Governor receiving the highest and second highest number of votes." It appears from this language that Congress envisioned a situation where: (1) there are more than two candidates running for Governor on the ballot or (2) where a write-in candidate has received a sufficient number of write-in votes, so that in both scenarios, the leading candidate has not received a majority of all of the votes received by all of the candidates running for that office. That this is perhaps Congress' intent can be seen in Guam's own 1974 elections.

In his book, "Guam; The History of our Island", Pedro C. Sanchez, recounted the 1974 elections. In the Republican primary were Governor Carlos Camacho and Lt. Governor Kurt Moylan facing Senator Paul M. Calvo and Senator Antonio M. Palomo. In the Democratic primary were four gubernatorial teams. They were (1)

Ricardo Bordallo, the party's 1970 Democratic challenger to Camacho-Moylan, teaming with Rudolpho P. Sablan, a former Executive to Governor Manuel Guerrero; (2) former Governor Manuel Guerrero running with David D.L. Flores, a past Agriculture director, in his former cabinet; (3) Pedro C. Sanchez, retired University of Guam president teaming with Esteban U. Torres, a retired Navy commander who was working at the Legislature; and (4) Joaquin C. Arriola, former Speaker of the Legislature teaming with Ted Nelson. In the primary, "Bordallo-Sablan picked 4,459 votes, barely missing a majority of the 8,986 Democratic votes cast"...and to "most everyone's surprise, Sanchez-Torres...came in second, followed by Guerrero-Flores and Arriola-Nelson. On the Republican side, Calvo-Palomo came close to winning the nomination against Camacho-Moylan. "Only 261 votes separated the two GOP teams- 5,636 for Camacho-Moylan and 5,375 for Calvo-Palomo. Sanchez described what followed:

What was left of the Democratic Party following the divisiveness 1970 primary rallied behind Bordallo-Sablan. Unlike, the 1970 election, Bordallo's opposition in the 1974 primary, led by Sanchez, campaigned heavily for the Bordallo-team. Following the Sanchez-Torres lead, supporters of Guerrero-Flores and Arriola-Nelson came around to supporting Bordallo-Sablan by the time of the general election in November.

The GOP race between Camacho-Moylan and Calvo-Palomo went into the general election in November. Calvo-Palomo mounted a well-organized and well-financed write-in campaign, battling the odds against Camacho-Moylan and a unified Democratic Party behind Bordallo-Sablan. Calvo-Palomo came in a strong third in the three-team race, denying the majority to front-runner Bordallo-Sablan.

The Organic Act required that a gubernatorial team must receive a majority of votes cast to win the election.

Lacking majority votes, a runoff election was set between Camacho-Moylan and Bordallo-Sablan. Both Senator Bordallo and Governor Camacho made efforts to obtain the support of Senator Calvo and his supporters. The Senator took his time announcing his decision. By the time Senator Calvo gave his endorsement to the Republican team of Camacho-Moylan, however, most of his key campaigners and rank and file supporters had gone to the Democratic team.

In the run-off election held November 19, 1974, Bordallo-Sablan received 11,441 votes, or 51.3 percent of the votes cast, against Camacho-Moylan's 10,814 or 48.5 percent of the votes.

"Guam: The History of Our Island", page 376.

In determining Congress' intent with regard to the majority issue, the Court must ask the very purpose and nature for which a run-off election is held. In the 1974 elections, it was clear that when all the votes of the candidates were added in the general election, the leading candidate did not have the majority of all the votes cast for all the candidates running for the office of Governor. The very purpose of the run-off was to allow voters who had cast a vote for the candidate who did not finish first or second, to try to make up their minds and decide which of the two remaining candidates they would vote for in the run-off. The run-off presents the opportunity for these voters, who indeed have voted for a losing candidate, to cast their votes and choose from the remaining two.

In an election such as the 1998 election, where there were only two candidates running for that office, the Court questions whether we should again ask the 1,313 voters who had clearly been given the opportunity of choosing either one of the candidates, but instead chose to leave their ballots blank, additional leave

to again make up their mind as to their vote.

The Court also questions whether the Organic Act mandates that a Governor receive the majority of all the ballots cast in an election to succeed to that office. If the Court were to order a run-off and the election results were similarly the same, i.e. the same number of blank voters again re-iterated their positions that neither candidate is deserving of their votes, is another run-off required? Plaintiffs respond to this question in the negative and state that in a run-off election, a plurality of the votes is sufficient to declare the candidate with the most votes the winner.

It does not seem reasonable and logical to this Court to require a gubernatorial candidate to receive a majority of all the ballots cast in the general election but require only a plurality of those ballots in the run-off election. It also does not seem logical to this Court to allow voters who have already expressed no desire to vote for either one of the candidates on the ballot a second opportunity to decide which candidate to choose.

This Court is also troubled in requiring that all ballots be counted for the purposes of determining the majority of all of the votes cast. Over-votes represented 609 ballots in the 1998 general election. These are ballots where voters have marked the voting squares of both the Ada-Camacho and Gutierrez-Bordallo team. Guam's law states that these ballots are not counted in the totals for determining the total votes cast for governor.

The rationale behind this is that only one candidate can be allocated a vote for that office, because this is a contest and a choice that must be made for one only and not the other. When a person votes for both candidates, this ballot is not allocated to any candidate at all, yet in determining the majority, Plaintiffs argue we are required to allocate this vote to the gubernatorial race. The Court is asked to count this vote in the overall votes necessary to capture a majority, but yet no candidate is allocated this vote.

Furthermore, it does not seem logical and "fair" to include these ballots in the total count when no candidate is apportioned the vote. On the other hand, if the intent is that all ballots must be counted, then we should at a minimum, apportion these ballots to the candidates and allocate 304 and one-half vote to each. After all, when the sports writers decide on who the most valuable player is in the National Baseball League, they could allocate a half vote each to Mark McGuire and Sammy Sosa, thus adding up to one full vote. But election tabulations are not done this way and a split vote is a void vote. Thus, the inclusion of these votes in the total number of votes necessary to determine a majority lacks meritorious consideration.

Thus, in reaching the conclusions above, the Court finds that of the 48,666 total votes cast for the office of Governor/Lieutenant Governor in the November 3, 1998 election, 1,313 blank ballots must be subtracted from the total, as must be the 1,019 votes which indicated the voter was voting for a write

in candidate, however no name was written in this portion of the ballot, as well as the 609 over-votes. In subtracting these ballots from the total number of votes cast for this office, it is clear that the 24,250 votes received by the Defendants is, indeed, a majority of the votes cast for this office. Wherefore, based upon the majority issue alone, the Court finds that the Defendants Carl T. C. Gutierrez and Madeleine Z. Bordallo, were elected to the office of Governor/Lieutenant Governor by a majority of votes cast for this office.

One additional reference the Court finds relevant to this discussion is the 1982 gubernatorial election on Guam. In 1982, the same situation occurred in the gubernatorial race, as it was alleged that the winner of that election, Ricardo Bordallo and Eddie Reyes, did not receive a majority of the votes cast. However, the Court notes that the team of Paul Calvo and Peter Perez agreed with the interpretation of the majority issue as reached by the Guam Election Commission, and on that basis, they respectfully bowed out of the race, thus not requesting that a run-off election be held. Thus the newly elected Governor/Lieutenant Governor of that race was Bordallo/Reyes. The Calvo/Perez team did not challenge the election results based upon the majority issue.

The Court again states that it is mindful of the decision reached on this issue by the District Court of Guam, and it acknowledges the fact that this Court has reached a conclusion which is not consistent with that reached by the District Court.

However, as has been previously stated, the Court finds that this issue is one which deals with local law and that Guam's election code must be interpreted in order to reach a determination with regard to the majority issue. The Court finds that it is clearly in a position to interpret and apply local law and local statutes. Moreover, the Court finds that because the decision of the District Court has been stayed, that this Court has properly undertaken to do so.

Finally, the Court notes that it was Plaintiffs who invited this Court to address the issue of what constitutes a majority of the votes cast for the office of Governor/Lieutenant Governor. Plaintiffs specifically called this issue to the attention of this Court in their contest papers, and Plaintiffs specifically asked this Court to render a decision on this issue. While Plaintiffs also argued that this Court is bound by the determination reached on this issue by the District Court, the Plaintiffs themselves made this an issue in this trial. Thus, the Court finds that it has not exceeded its jurisdiction in addressing this issue, nor has it overstepped the boundaries of the controversies involved in the above captioned matter. This Court has respectfully disagreed with the determination reached by the District Court on the majority issue, and with regard to the above captioned matter, such determination shall be applied to the issues involved herein.

Having reached this conclusion, the Court must now go on to address the specific claims made by Plaintiffs with regard to

fraud and alleged illegal votes, the elements necessary to prove such claims, and Plaintiffs' burden of proof in this regard.

PLAINTIFFS' BURDEN OF PROOF

Before the Court can discuss the evidence and testimony which were presented at the trial in this matter, the Court must first make a determination with regard to what Plaintiffs' burden of proof is in this matter, and further it must set forth the elements which are involved in an election contest. Defendants contend that Plaintiffs must prove the allegations contained in their complaint herein by clear and convincing proof, while Plaintiffs contend that they need only prove their allegations by a preponderance of the evidence. After having reviewed this issue, this Court is in agreement with the Defendants, and therefor the Court finds that Plaintiffs' burden herein is to prove their allegations by clear and convincing evidence.

It is a well settled principle that there is a strong presumption in favor of the validity of an election. See 3 G.C.A. §§12114, 12103, 12104, and Dansereau v. Ulmer, 903 P.2d 555 (Alaska 1995) and De Leon v. Bamba, Guam Reports 144 (Dist. Ct. App. Div. 1963). There are many procedural protections in place for the purpose of protecting the integrity of an election, as well as statutory rules with regard to the requirements of setting aside the results of an election.

In reviewing Guam's Election Code, it is evident that in order for the proponent of an election contest to prevail, that party must show that any irregularity or improper conduct alleged

to have occurred in the election affected the outcome of the election; that the party must set forth specifically the particular ground of the election; and that party must show that any illegal votes were given to the prevailing party and that without such votes, that party would not have won the election. See 3 G.C.A. §§12103, 12104, 12105, and 12107. It is clear from a review of these statutes that a party contesting an election may not simply generally plead that there were improprieties which occurred in an election, rather that party must plead with specificity, the grounds for the election contest. Similarly, a party contesting an election must also show that alleged improper or illegal votes were cast for the prevailing party, and that without such votes, that party would not have won the election. These are indeed high standards to meet and it is clear that the purpose for imposing such high standards is to protect the integrity of the election process on Guam.

In addition to Guam's Election statutes, guidance as to the Plaintiffs' burden of proof is also offered in cases from other jurisdictions. In the case of Concerned Citizens for Better Education, Inc. v. Woodley, 623 S.W.2d 488 (Tex.App. 1981), the Court held that "an election contest is a statutory proceeding in which all requirements must be strictly met." Woodley, 623 S.W.2d at 491. (Citations omitted). This Court went on to hold that the "burden is on the contestant to prove that irregularities in the conduct of an election occurred which affected the outcome of the election. (Citations omitted). As a

policy, declared election results should be upheld unless there is convincing evidence of an erroneous result." (Citations omitted). Id.

Similarly, the Court in Dansereau v. Ulmer, 903 P.2d 555 (1995) held:

[b]ecause the public has an important interest in the stability and finality of election results, (citations omitted), we have held that "every reasonable presumption will be indulged in favor of the validity of an election." (Citations omitted)..... Contestants have the "dual burden" of showing that there was both a significant deviation from statutory directive, and that the deviation was of a magnitude sufficient to change the result of the election.

Id at 559. See also Cannales v. City of Al Bizo, 474 P.2d 417 (1970) (wherein the Court held that there is a policy in favor of upholding elections.)

This same rationale is discussed in 26 Am Jur 2d §438 wherein it is stated:

[t]he burden of proof in an election contest rests on the contester. It has been held that the contester has the burden of proving the defect in the election by clear and convincing evidence.

Thus, based upon the foregoing discussion, the case law which addresses this issue, as well as the provisions of Guam's Election Code, this Court finds that it is reasonable to place a heavy burden upon the proponent of an election contest. It is evident that the validity of an election is presumed and that this presumption shall only be rebutted by convincing evidence. This fact, coupled with the language set forth in Guam's Election Code lead this Court to the conclusion that there is, indeed, a

higher burden of proof with regard to an election contest case than there is in other types of civil actions. The reason for this is clear and the Court finds that imposing a higher burden of proof upon the Plaintiffs herein is reasonable. The integrity of the entire election process must be protected from unwarranted challenges, and the Court finds that by imposing a higher burden on proof upon the proponent of an election contest, this will further this protection.

Wherefore, this Court is of the opinion that Plaintiffs must prove the allegations contained in their contest papers by clear and convincing evidence. With this standard in mind, the Court must now set forth the elements which are required to be met in an election contest.

NECESSARY ELEMENTS OF AN ELECTION CONTEST

The Court finds of further import, the elements involved in an election contest case. This Court has already addressed what votes are to be counted with regard to reaching the total number of votes cast for a particular office, and it has also addressed the burden of proof that must be met by the Plaintiffs with regard to the allegations set forth in their contest papers. Thus, the Court finds that prior to moving on and discussing the merits of this case, a discussion of the elements of an election contest should first be set out.

Pursuant to Guam law, a party seeking to contest an election must set forth the grounds for that contest with particularity

and specificity. See §12102. In the present case, the Plaintiffs have alleged that there were irregularities in the November 3, 1998 election including ballot count discrepancies, illegal votes cast by non-residents, non-citizens, by minors, and by persons who allegedly had passed away prior to the time of the election. Plaintiffs have also alleged that the precinct officials and the members of the Guam Election Commission participated in wrongful conduct with regard to this election, and finally, they have alleged that the Defendants were personally involved in procuring and attempting to procure fraudulent absentee votes for this election.

With regard to any irregularity or impropriety which is alleged to have occurred in the November 3, 1998, election, Plaintiffs must demonstrate that "such irregularity or misconduct resulted in the defendant being declared either elected or tied for election." 3 G.C.A. §12103. With regard to the alleged illegal votes which were cast in this election, Plaintiffs must prove that "such number of illegal votes has been given to the person whose right to the office is contested or who has been certified as having tied for first place, which, if taken from him, would reduce the number of his legal votes below the number of votes given to some other person for the same office." 3 G.C.A. §12104.

Additionally, with regard to the issue of the Defendants' personally participating in election fraud, the Plaintiffs' must prove that absentee votes were procured illegally at the behest

of the Defendants and with their knowledge. In this regard the Plaintiffs must prove that the Defendants were personally aware of the fact that voters who did not qualify pursuant to 3 G.C.A. §10101(a) through (g), cast votes in the General election. Plaintiffs must also prove that these votes were cast in favor of the Defendants.

Thus, with the statutory requirements set forth, and Plaintiffs' allegations with regard to the November 3, 1998, election in mind, the court finds that Plaintiffs must, in general terms, demonstrate (1) that illegal votes were cast in such a number as to affect the outcome of the November 3 General Election; (2) that such votes were cast in favor of the Defendants; (3) that such illegal votes were cast by non-citizens, non-residents, and minors; (4) that persons who were deceased prior to the November 3 General election cast votes at that election; (5) that illegal absentee ballots were cast; (6) that such absentee ballots were cast in favor of the Defendants; (7) that the Defendants had knowledge that such illegal absentee ballots were cast and that such ballots were cast at the behest of the Defendants; (8) that the Guam Election Commission abandoned its duties and improperly included illegal ballots and ballots which were tampered with in the calculation of the total votes cast; (9) and that all of the foregoing activities affected the outcome of the election.

Additionally, as has been previously set forth, not only must the Plaintiff prove these allegations, they must so prove

these allegations by clear and convincing evidence.

After a careful, thorough review of all of the testimony and the evidence which were presented over the course of this five week long trial, this Court has reached the conclusion that Plaintiffs have failed in proving these elements¹, and Plaintiffs have further failed in proving them by clear and convincing evidence.

The Court will now move on to address the specific claims contained in Plaintiffs complaint and the evidence which was presented both in support of these allegations and that which was presented to rebut Plaintiffs' claims.

ILLEGAL VOTES

Plaintiffs have alleged that vast numbers of illegal votes were cast in the November 3, 1998 General Election, and that such illegal votes were rendered in favor of the Defendants to an extent that the results of the election would be altered if those votes were excluded from the total votes cast in this election. Amongst these categories of alleged illegal votes, Plaintiffs contend that there were non United States Citizens who cast votes in this election; that there were non-residents who improperly cast ballots; that there were persons who passed away prior to the election who voted in the election, and that there were

¹ The Court notes in this regard that while it has held that the burden of proof herein is that of clear and convincing evidence, that even assuming the burden was that of a preponderance of the evidence, Plaintiffs have still failed in meeting this burden of proof with regard to the allegations contained in the complaint.

minors who illegally cast ballots in the November 3 General Election.

Specifically, Plaintiffs alleged that there were 1,574 persons who were not United States citizens who cast ballots in the election; no less than 24 dead persons who cast ballots; 104 minors who cast ballots in the election; and 870 non-residents who voted in the election. Thus, from the figures set forth in the Plaintiffs' complaint, Plaintiffs contend that at least 2,572 illegal votes were cast in the November 3, 1998, general election.²

Prior to trial, Plaintiffs were ordered to produce a list of the alleged illegal voters to the Defendants. On December 11, 1998, Plaintiffs made their first disclosure to the Defendants regarding the alleged illegal voters by producing what was marked as exhibit N at the trial herein. Exhibit N contained the names of 24 persons alleged to be deceased; 78 persons alleged to be minors; 2,154 person alleged to be non-residents; and approximately 2,000 persons alleged to be non-citizens. The Court notes that with regard to this first listing, Plaintiffs provided no information to the Defendants with regard to these persons' identity except for their names.

On December 22, 1998, Plaintiffs made a second disclosure to

² The Court notes that assuming at the outset that Plaintiffs' allegations in this regard are correct, and 2,572 illegal voters cast ballots for the Defendants, such would not affect the results of the election due to the fact that as the totals were certified, the Defendants won the election by a margin of 3,050 votes. However it is further noted that the Plaintiffs later supplemented this number of alleged illegal voters.

the Defendants by producing a second listing of alleged illegal voters. This second listing was marked as exhibit O at the trial herein. Contained in exhibit O were the names of 111 persons alleged to be dead and to have voted; 151 person alleged to be minors who voted; 2,162 persons alleged to be non-residents who voted; and 2,337 persons alleged to be non-citizens who voted in the November 3, 1998, General election. Furthermore, it is noted that in this second listing marked as exhibit O, the Plaintiffs provided the Defendants with the alleged illegal voters' names, social security numbers, birthplaces and precinct numbers, as well as the birth dates and death dates for the alleged minors and deceased voters.

Due to the fact that there are several categories of votes alleged by Plaintiff to be illegal, and because the evidence and testimony presented is so vast, the Court shall address each category of alleged illegal votes separately.

A. PERSONS KNOWN AND ALLEGED TO BE DEAD AND ALLEGED TO HAVE VOTED

Pursuant to an Order from the court, Plaintiffs served upon the defendants a listing of various individuals alleged to have voted, who were non-citizens, non-residents, minors or known to be dead and voted. The list was admitted as Exhibit "O". Exhibit 1 to that list included the names of 151 dead individuals known to be dead and alleged to have voted. Joanne Cruz, a volunteer for plaintiffs, testified that she would examine the Pacific Daily News' death or first anniversary announcements and would

check the names of the decedents with the names of individuals who voted in the election. When a name of a deceased person matched the name of a voter who voted in the election, the notice was cut from the PDN and a list was made. Lists compiled by Plaintiffs of names of decedents alleged to have voted as evidenced by the death or first anniversary announcements were admitted as Exhibits P43 to P60.

To determine whether these individuals voted or not, the Court examined the exhibits from P8 (the listing of the dates of deaths of various individuals) to ascertain the decedents' dates of birth and their social security numbers. Those dates of birth and social security numbers were then cross-checked with the dates of birth and social security numbers of the individuals who voted in the general election. The names of individuals known to be dead and alleged to have voted in the general election as contained in Exhibits P43 through P60 were as follows:

P43. TERESITA SABLAN CAMACHO CRUZ (DID NOT VOTE)

RAYMOND SABLAN CAMACHO (DID NOT VOTE)

Exhibit P43 contained the above two names. The PDN first anniversary announcement indicated that the decedents died somewhere around July, 1997. Exhibit P8-28 was cross checked and it was determined that the decedent Teresita Camacho Cruz's date of birth was 09-21-45; her social security number was 586-03-5110 and she was listed as a resident of Arizona. The decedent Raymond Sablan Camacho had a date of birth of 02-11-82; a social security number of 586-74-2526 and a residence of Yigo. In

comparing these names with the voting list (Exhibit 1), it was found that there were two individuals named Teresita C. Cruz who voted in the 1998 general election. In comparing the above decedent's date of birth and social security number with the dates of birth and social security number of the individuals who voted, it was found that the decedent did not have the same date of birth or social security numbers as the two individuals who voted. The Court therefore concludes that the decedent Teresita Sablan Camacho Cruz did not have a vote cast in her name.

In further viewing the voter listing, it was found that there was a Raymond M. Camacho and a Ray Camacho who voted in the election but these individuals did not have the same birth dates or social security numbers as the above decedent. The Court therefore concludes that the decedent Raymond Sablan Camacho did not have a vote cast in his name.

P44. Ana Fujikawa San Nicolas (VOTED ABSENTEE)

In comparing the decedent's date of birth and social security number with the alpha listing, the court concludes that this decedent did vote by absentee in the general election and that she further passed away on November 2, 1998.

P45. Ana Champaco Nangauta (DID NOT VOTE)

The PDN first anniversary announcement indicated that this decedent died on July 18, 1997. Exhibit P8-28 was cross checked and it was determined that the decedent's date of birth was 9-20-08 and her social security number was 586-64-7130. In checking out the voting list (Exhibit 1), it was found that an

individual by the name of Ana C. Nangauta did vote. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number as the individual who voted. The Court therefore concludes that the above decedent did not have a vote cast in her name.

P46. VICENTE CASTRO QUITUGUA (VOTE CAST)

Exhibit P46 was the death announcement of Vicente Castro Quitugua. This decedent's death certificate was admitted as Exhibit P8-3. Pursuant to the death certificate, it was determined that the decedent's date of birth was 01-09-48 and his social security number was 586-05-1721. When the voting list was examined the decedent's name, his date of birth and social security number, were listed thereon as having voted. Further, when Exhibit P3-18K (the Voter Signature Roster Control) for Precinct 18K was checked , it showed that initials were placed next to the name of the decedent, indicating that the listed person did cast a ballot. The Court therefore concludes that the decedent Vicente Castro Quitugua did have a vote cast in his name.

P47. JESUS CASTRO LEON GUERRERO (NO VOTE CAST)

The PDN death announcement indicated that this decedent died on May 25, 1998. Exhibit P8-38 was cross checked and it was determined that the decedent's date of birth was 05-21-33 and his social security number was 586-01-0027. In checking out the

voting list (Exhibit 1), it was found that three individuals with the name of Jesus C. Leon Guerrero did vote. However, in comparing the above decedent's date of birth and social security number with the dates of birth and social security numbers of the individuals who voted, it was found that the decedent did not have the same date of birth date or social security number when compared to the individuals who voted. The Court therefore concludes that the decedent named above did have a vote cast in his name.

P48. LIANA PANGELINAN ATALIG (NO VOTE CAST)

The PDN first anniversary announcement indicated that this decedent died on August 17, 1997. Exhibit P8-29 was cross checked and it was determined that the decedent's date of birth was 07-19-81 and her social security number was 586-74-0027. In reviewing the voting list (Exhibit 1), it was found that there was a Lina P. Atalig who did vote. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number when compared to the individual who voted. The court therefore concludes that the above decedent did not have a vote cast in her name in the 1998 general election.

P49. PETER JOE CHARFAUROS OGO. (DID CAST VOTE)

The decedent was found to have voted in the 1998 general election and it was further found that he passed away

after the election on November 6, 1998, as shown on Exhibit P8-2, his death certificate.

P50. JOSE CRISOSTOMO LIZAMA (NO VOTE CAST)

The PDN first anniversary announcement indicated that this decedent died on April 7, 1997. Exhibit P8-25 was cross checked and it was determined that the decedent's date of birth was 12-10-14 and his social security number was 586-03-0495. In checking out the voting list (Exhibit 1), it was found that a Jose C. Lizama did vote. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number when compared to the individual who voted. The Court therefore concludes that the decedent named above who is known dead and alleged to have voted in the 1998 election, did not have a vote cast in his name.

P51. Laura Paulino San Nicolas (DID CAST VOTE)

The decedent voted by absentee ballot in the general election and passed away on October 26, 1998, prior to the general election.

P52. Ana Diego Afaisen Turosik (DID CAST VOTE)

The individual voted by absentee and passed away on October 16, 1998, prior to the general election.

P53. Jose S.N. Chargualaf (NO VOTE CAST)

The PDN first anniversary announcement indicated that this decedent died in June, 1997. Exhibit P8-27 was cross

checked and it was determined that the decedent's date of birth was 03-05-40; his social security number was 586-03-0655 and he was listed as being a resident of Inarajan. In checking out the voting list, it was found that there was any Jose S.N. Chargualaf from Inarajan who voted in the general election. In comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth or social security as the person who voted. The Court therefore concludes that the decedent named above did not have a vote cast in his name in the general election.

P54. MARIA MATERNE BORJA BLAS (NO VOTE CAST)

A review of the PDN first year anniversary announcement indicated that this decedent would have died on December 12, 1996. Exhibit P8-21 was cross checked and in doing so the court found that there was no Maria Materne Borja Blas listed but a Maria Elena Borja Blas was listed as having passed away on December 12, 1996. The court determined that they may have been the same persons. The decedent's date of birth was 02-10-19; her social security number was 586-62-0945 and she was listed as being a resident of Barrigada. In checking out the voting list, it was found that there were eighteen (18) individuals with the name of Maria Blas who voted. There were two Maria B. Blas' who voted and one Maria Elena A. Blas. In comparing the above decedent's date of birth and social security number with the dates of birth and social security numbers of the individuals who

voted, it was found that the decedent did not have the same date of birth or social security numbers as the tree mentioned individuals who voted. In also comparing her date of birth and social security number with all the other maria Blas', there was also no match in dates of birth or social security numbers. The court therefore concludes that the decedent named above who is known dead and alleged to have voted in the 1998 election did not have a vote cast in her name.

P55. ANA SABLÁN CABRERA TENORIO (NO VOTE CAST)

The PDN first anniversary announcement indicated that this decedent died on February 23, 1997. Exhibit P8-23 was cross checked and it was determined that the decedent's date of birth was 07-26-27; her social security number was 586-62-0385 and she was listed as being a resident of Dededo. When the voting list was checked, it was found that there was an Ana C. Tenorio voted in the election. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number when compared to the individual who voted. The court therefore concludes that the decedent above named did not have a vote cast in her name in the 1998 general election.

P56. JOSE "Joe" ALCANTARA (NO VOTE CAST)

The PDN death and funeral announcement indicated that this decedent died on December 27, 1997 in California at the age of 65 years and his interment was January 10, 1998. Exhibit P8-

34 was cross checked to see if this decedent's name may have been on the list of those individuals who died in December, 1997 as compiled by the Public health and Social Services but there was no such name. When the voting list was checked, it was found that there was an Jose C. Alacantha who voted in the election. However, the voter was born in 1925 which would indicate that he was approximately 73 years of age at the time he voted in the election. The Court therefore concludes that the decedent named above did not have a vote cast in his name in the 1998 general election.

P57. BERTHA CRUZ CASTRO (NO VOTE CAST)

The PDN first anniversary announcement indicated that this decedent died on September 18, 1997. Exhibit P8-30 was cross checked and it was determined that the decedent's date of birth was 01-26-63 and her social security number was 586-68-5447. When the voting list was checked, it was found that a Bertha C. Castro did vote in the election. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number when compared to the individual who voted. The Court therefore concludes that the decedent named above did not have a vote cast in her name in the general election.

P58. JUAN MARCELO MENDIOLA (NO VOTE CAST)

The PDN joint anniversary rosary announcement did not

specifically state when this decedent died other than it was the eighth anniversary. Exhibit "B" introduced into evidence by the Defendants was the decedent's certificate of death. This certificate indicates that the decedent's date of birth was 07-24-27 and his social security number was 586-01-5834. When the voting list was checked, it was found that there were two Juan M. Mendiolas who voted in the election. However, in comparing the above decedent's date of birth and social security number with the dates of birth and social security numbers of the individuals who voted, it was found that the decedent did not have the same date of birth date or social security number as the individuals who voted. The Court therefore concludes that the decedent did not have a vote cast in his name in the 1998 general election.

P59. CRAIG JOSEPH TAITANO CRUZ (NO VOTE CAST)

The PDN death announcement indicated that this decedent died on January 12, 1998. Exhibit P8-34 was cross checked and it was determined that the decedent's date of birth was 10-04-73; his social security number was 586-72-9600 and he was listed as being a resident of Tamuning. When the voting list was checked, it was found that a Craig C. Cruz did vote in the Dededo precinct on the election. However, in comparing the above decedent's date of birth and social security number with the date of birth and social security number of the individual who voted, it was found that the decedent did not have the same date of birth date or social security number as individual who voted. The Court therefore concludes that the decedent named above did not have a

vote cast in his name in the 1998 general election.

P60. JOHN BORJA AGUON

(NO VOTE CAST)

The PDN death and funeral announcement indicated that this decedent died on January 2, 1998. Exhibit P8-34 was cross checked and it was determined that the decedent's date of birth was 01-11-68; his social security number was 586-78-0793 and his residence was not shown. When the voting list was checked, it was found that there were fourteen John Aguons who voted with different middle names. However, in comparing the above decedent's date of birth and social security number with the dates of birth and social security numbers of the individuals who voted, it was found that the decedent did not have the same date of birth date or social security number as the individuals who voted. The Court therefore concludes that the decedent named above did not have a vote cast in his name.

As is evidenced by the foregoing discussion, the court has found the names of three individuals who passed away before the election but whose names are on the list of voting on 11/3/98. These individuals, however, voted by absentee ballot. Guam's law provides as follows:

Section 10125. Ballot of deceased voter. When it shall be made to appear by due proof to the precinct board that any absent voter who has submitted his ballot in accordance with the provisions of this Chapter has died before the ballot is deposited in the ballot box, then the ballot envelope of such deceased voter shall be endorsed, "REJECTED BECAUSE VOTER IS DEAD" and shall be returned unopened with the ballot enclosed by the precinct board to the Commission, but the casting of a ballot of a deceased shall not invalidate the election.

It is clear under Guam law that when an absentee voter passes away before the general election and that fact is made known to the precinct officials, his ballot shall be rejected. If an absent voter's death is not made known to the precinct officials and his or her ballot is deposited in the ballot box, then that vote is counted and the casting thereof does not affect the election. In this case, no evidence was presented to the Court which would indicate that the precinct officials knew these decedents were dead and proceeded to place their ballots in the ballot boxes despite this fact. The Court also finds that the monthly memorandum generated by the Department of Public health and Social Services which advised the Guam Election Commission of all persons who died in the month of October, 1998, could not have been received by the Election Commission before November 3. The date on that memorandum was November 9, 1998. The court therefore finds no fraud in the placement of the ballots of these 3 decedents in the ballot boxes and its ultimate inclusion in the total voter count.

In further reviewing the above exhibits, the court does find that in the case of the decedent Vicente Castro Quitugua, some person did put his initials next to the decedent's name. In his cross examination, Defendants' Counsel asked Plaintiffs' witness whether she knew whether a Vincent C. Quitugua voted and whether that person could have made his initials in the wrong place. There was no evidence presented however to show that was what happened.

Whether or not some voter may have erroneously placed his initials on the wrong name because of similarity with names fails to address the issue that this decedent's name should not have been on the list of registered voters to begin with. When the Election Commission staff received the list (Exhibit P8-35) from the Department of Public Health and Social Services of those who people who died in February, 1998, it should have struck the name of Vicente Castro Quitugua from the list. The Court therefore directs the Guam Election to strike the name of this decedent from the list of voters.

Similarly, the plaintiffs have introduced as evidence Exhibit P8-8. This exhibit is the certificate of death of Jose Vicente Castro. This certificate shows the decedent to have died on October 6, 1997. His address is shown as 223 Javier Street, Agana Heights, Guam, with a date of birth of 04-28-14 and a social security number of 569-38-5790. When cross checked with the master voting list, an individual with the name of Jose C. Castro with the same address, date of birth and social security number is shown to have voted in the 1998 general election. The memorandum (Exhibit P8-31 from P.H.S.S.) should have been received by the Election Commission on or about November 10, 1997. The court notes that the two names do not exactly coincide but a careful look into the names and a comparison of dates of birth and social security numbers would show that these named individuals are one and the same person. In examining Exhibit P3-13, the voter signature roster, a notation which said that the

individual "voted absentee" was crossed out and initialed as it appears that the person that voted absentee was another Jose C. Castro, who has a different date of birth and social security number than the decedent.

In light of the two instances above, the court asks the Election Commission to exercise due care in cross checking names of decedents to make sure that occurrences similar to the above do not recur in the future. The Court is also satisfied that there was no fraud in the inclusion of this decedent's name on the voting list.

In light of the foregoing findings of the Court, the Court hereby directs that the name of VICENTE CASTRO QUITUGUA, with the said date of birth and social security mentioned above and the name of Jose C. Castro, with the date of birth of 04-28-14 and social security number of 589-38-5790 be stricken from the master voting list, as shown in Exhibit 1.

Wherefore, based upon the foregoing discussion, the Court finds that Plaintiffs have failed to prove their allegations with regard to deceased persons voting. It is clear that in most cases, those deceased persons Plaintiffs alleged to have cast illegal ballots did not, in fact, vote in the election. Rather, in most cases, the Plaintiffs did not compare the birth dates and social security numbers of the deceased persons with those of the persons who actually voted, and upon conducting such a comparison, it is clear that in most instances, the voters are not the same person as those found to be deceased.

Moreover, it is clear that in a few instances, the deceased persons cast their ballots via absentee ballot prior to the time they passed away, and as had been set forth, the inclusion of their ballots in the over all count does not invalidate the results of the election.

Finally, the Court finds that there were also a few instances wherein a person cast his or her ballot at the November 3 election, and then passed away shortly thereafter. The Court finds that this fact does not prove that the person now deceased did not personally cast that ballot, and without evidence in this regard, the Court cannot make this finding.

Wherefore, the Court finds that Plaintiffs have not met their burden of proof with regard to the alleged deceased persons voting.

B. MINORS VOTING

In their Complaint, Plaintiffs state that they had reviewed the voting roster and found approximately 104 persons listed who were less than eighteen years of age and therefore ineligible to vote, who did vote. Furthermore, Plaintiffs stated they believe them to be supporters of the Defendants and who cast their votes for the Defendants, which ultimately affected the results of the election. Pursuant to a request from the Defendants', the court ordered the plaintiffs to produce the names of the said minors to the defendants. Plaintiffs produced to the Defendants, Exhibit "O", a list of 151 names, alleged by them to be minors. The first

three names on the list consist of persons born in 1980, 1987, and 1989. The next 27 names consist of individuals with birth dates of August 7, 1991 to December 4, 1998. The majority of the remaining names are individuals with dates of birth after the year 2000. Additionally, there were three names of people born in the 1600's; two names of people born in the 1700's and two names of people born in the 1800's.

Mr. Evan Montvel-Cohen was called by Defendants to testify regarding this list. Mr. Montvel-Cohen testified that his firm, Speciality Communications, is a market research firm who specializes in the collection of data, in performing public opinion polls, and in doing market analysis reports. He stated that he had been hired by the Defendants herein to collect information with regard to the persons alleged to have voted illegally in the November 3 election, as were set forth on Plaintiffs' lists, exhibits N and O. He testified that the research performed by he and his staff showed that 34 of those individuals did not vote and the remaining 117 were verified as being over the age of eighteen. The note to Exhibit "Q" states that the Guam election Commission records indicate no voters under the age of eighteen voted. The court has considered this testimony and the said exhibit and has reviewed Exhibit "N" and compared the listing, with Exhibit P1, the master voting list and makes the following findings.

Of the 151 people on the list, 30 did not vote in the general election. The following named persons who were on

Plaintiffs' list did not vote in the 1998 general election:

1. Agustin, Joe Aquon
5. Taliman, Glenn B.
8. Velasco, Sachiko T.
14. Guzman, Patrick A.
17. Cruz, George E.
23. Ledesma, Ronald B. Jr.
29. Jubinal, Maryann A.
30. Agustin, Corrine Palma
32. Unpingco, Dennis Kalikolani
33. Champaco, Maximino L.G.
34. Quinata, Susana A.
35. Leon Guerrero, Peter F.
36. Hathorne, James R.
37. Ruggles, Candice L.
39. Blas, Timothy E.
40. Guzman, Kenneth K.
45. Orduna, Edna Bunsalan
48. Santos, Reynaldo C.
54. Crisostomo, Rosa S.N.
58. Navarro, Moises T.
59. O'Conner, Gloria P.
61. Shen, Chia-Ming
64. Taitague, Ceferina S.
71. Cruz, Enego E.
80. Sabares, Jonathan S.
96. Alcantara, Benito I.
120. Ignacio, Leonora R.
131. Guiting, Herman D.
134. Paulino, Leonardo N.
142. Taitingfong, Juan A.

Moreover, Eighty-Eight of the individuals named on the list were listed with incorrect dates of birth. Most were shown on the list as being born after the year 2000. The individuals with incorrect birth dates and with their correct birth dates as show in Exhibit P1, the master voting list, are as follows:

21.	Acfalle, Shirley B.	07/06/68	See page 5	Ex.P1
31.	Leyva, Carmen	08/14/20	" " 467	"
41.	Guzman, Klarrissa K.	01/16/74	" " 397	"
43.	Austria, Lee N.	10/20/79	" " 61	"
44.	Delos Santos, Arnold	10/27/75	" " 280	"
49.	Tort, Mariliza C.	08/03/62	" " 868	"
50.	Gibbs, Muhammad A.	04/22/71	" " 373	"
51.	Munoz, Monica I.	05/04/10	" " 568	"

52.	Amuan, Conchita Adrias	04/30/11	"	"	37	"
53.	Estavillo, Rudy S.	08/05/12	"	"	322	"
55.	Mendiola, Asuncion S.A.	05/02/13	"	"	532	"
56.	Hernandez, Veronica S.	10/22/13	"	"	407	"
57.	San Nicolas, Ana C.	06/25/14	"	"	754	"
60.	Dimapiles, Amador T.	10/01/16	"	"	290	"
62.	Benavente, Josefina B.	01/05/17	"	"	94	"
63.	Taitano, Carlos P.	03/14/17	"	"	832	"
66.	Rondolos, Angel R.	06/10/17	"	"	722	"
67.	Maaba, Virginia A.	06/19/17	"	"	487	"
68.	Inocentes, Ricardo P.	03/15/18	"	"	423	"
69.	Pinuela, Demetrio C.	09/21/18	"	"	654	"
70.	Buhain, Rustico L.	10/08/19	"	"	130	"
72.	Alcantara, Maria A.	10/31/20	"	"	30	"
73.	Esberto, Pedro S.	12/05/20	"	"	318	"
74.	Ada, Jose M.	01/26/21	"	"	7	"
75.	Nostrates, Ricardo B.	02/18/21	"	"	586	"
76.	Camacho, Tomas C.	10/02/21	"	"	156	"
77.	Scharff, Ferdinand E.	11/04/21	"	"	793	"
78.	Castro, Alex G.	11/07/21	"	"	168	"
79.	Manosa, Carlos S.	02/22/22	"	"	510	"
81.	Caballes, Federico C.	06/03/22	"	"	134	"
82.	Taijeron, Oliva L.G.	06/03/22	"	"	823	"
83.	Camacho, Isabel T.	07/02/22	"	"	150	"
84.	Inocencio, Dominador D.	07/06/22	"	"	423	"
85.	Pacheco, Godofredo M.	10/01/22	"	"	602	"
86.	Tapiceria, Alberto B.	11/08/22	"	"	844	"
87.	Cepeda, Maria N.	12/16/22	"	"	184	"
88.	San Agustin, Juan C.	04/10/23	"	"	752	"
89.	Benavente, Maria F.	09/21/23	"	"	95	"
90.	Oasay, Bibiano P.	10/23/23	"	"	588	"
92.	Burger, Dominga L.G.	12/29/23	"	"	132	"
93.	Ebidag, Gonzalo E.	04/10/24	"	"	311	"
94.	Wolford, Pilar P.	04/29/24	"	"	910	"
95.	Bautista, Teofila R.	11/03/24	"	"	86	"
97.	Kloulubak, Yoneda T.	03/28/25	"	"	441	"
98.	Tuazon, Manuel N.	06/17/25	"	"	875	"
99.	Del Rosario, Augusto B.	08/23/25	"	"	272	"
100.	Rosario, Federico A.	09/16/25	"	"	724	"
101.	Paulino, Leonard S.N.	09/20/25	"	"	627	"
102.	Fernandez, Honorata C.	11/23/25	"	"	337	"
103.	Oledan, Leopold L.	12/02/25	"	"	593	"
104.	Salvatierra, Moises	12/03/25	"	"	750	"
105.	Narvarte, Panchenilo N.	12/14/25	"	"	576	"
106.	Black, Charles P.	06/24/26	"	"	102	"
107.	Biton, Guillermo G.	06/27/26	"	"	102	"
108.	Pacheco, Cirila M.	07/04/26	"	"	602	"
109.	Villa, Jesus J.	07/18/26	"	"	896	"
110.	Culiat, Sabina Reyes	08/29/26	"	"	258	"
111.	Gaerlan, Cornelio G.	09/16/26	"	"	358	"
112.	Reyes, Cecilia D.	11/22/26	"	"	702	"

113.	Haime, Faustino C.	11/29/26	"	"	399	"
114.	Familiara, Adela R.	12/18/26	"	"	328	"
115.	Gutierrez, Domingo M.	12/20/26	"	"	394	"
116.	Cruz, Oliva L.G.	03/16/27	"	"	248	"
117.	Brown, Mary Arleen	06/15/27	"	"	128	"
118.	Paulino, Clotilde C.	06/28/27	"	"	625	"
119.	Stilwell, Benjamin W.	07/11/27	"	"	813	"
121.	Vibas, Felicisimo A.	10/29/27	"	"	895	"
122.	Valencia, Herminio M.	11/02/27	"	"	889	"
123.	Almandres, Lucia M.	02/06/28	"	"	33	"
124.	Natividad, Jovencio A.	02/08/28	"	"	577	"
125.	Calimpong, Marino H.	02/10/28	"	"	141	"
126.	Han, Kil Sun	02/20/28	"	"	400	"
127.	Mangum, Carlina B.	04/16/28	"	"	503	"
128.	Ecijan, Jorge E.	04/28/28	"	"	312	"
129.	Vitug, Agustin F.	05/05/28	"	"	902	"
130.	Licanto, Edna A.	05/08/28	"	"	467	"
132.	Barclay, Eikiko I.	08/28/28	"	"	80	"
133.	Gonzalo, Rodolfo G.	08/28/28	"	"	378	"
135.	Madeja, Andres B.	11/30/28	"	"	490	"
136.	Borja, Jesusa S.	12/15/28	"	"	119	"
137.	Del Rosario, Elvira O.	12/23/28	"	"	272	"
138.	Dumapias, Purificacion	01/23/29	"	"	307	"
139.	Rafanan, Andrea T.	03/04/29	"	"	691	"
140.	Tendido, Conrad V.	03/16/29	"	"	848	"
141.	Taimanglo, Jose M.	06/18/29	"	"	825	"
143.	Taisipic, Peter L.	05/24/62	"	"	828	"
144.	Cendana, Juan T.	06/22/48	"	"	181	"
146.	Lynch, Edward J.	02/02/53	"	"	487	"

The plaintiffs correctly identified 33 individuals who are listed in the master voting list with GEC with dates of birth which would indicate that these individuals are minors; persons who have not yet been born, and individuals who may be 200 or 300 years old. These individuals with the dates of birth on the official master list (Exhibit P1) are:

2.	Basco, Mariwin O.	07/12/87	"	"	82	"
3.	Ibero, Richard T.	08/13/89	"	"	416	"
4.	Miller, James R.	08/07/91	"	"	556	"
6.	Moniz, Grace Ann	11/11/92	"	"	560	"
7.	Perez, Joseph L.G.	05/12/94	"	"	642	"
9.	Meillicke, Risha N.	07/30/95	"	"	531	"
10.	Sung, Nancy Lan	10/11/95	"	"	817	"
11.	Cruz, Eduardo T.	01/21/96	"	"	227	"
12.	Camacho, Juan A. Jr.	03/01/96	"	"	152	"

13.	Camacho, Joaquin V.C.	03/31/96	"	"	151	"
15.	Ungacta, Rosanne D.	08/30/96	"	"	884	"
16.	Santiago, Rosemarie	10/08/96	"	"	772	"
18.	Diaz, Vicente Terlaje	02/01/98	"	"	287	"
19.	Babberl, Lyle W.	02/13/98	"	"	166	"
20.	Laserna, Marcelino J.	05/14/98	"	"	449	"
22.	Leblanc, Yvonne H.	07/20/98	"	"	452	"
24.	Cruz, Margaret C.	08/15/98	"	"	244	"
25.	McIntyre, Peter B.	08/26/98	"	"	530	"
26.	Quichocho, Therese C.	10/14/98	"	"	669	"
27.	Reyes, Karl A.	10/26/98	"	"	706	"
28.	Blas, Jacqueline M.	10/26/98	"	"	106	"
38.	San Agustin, Kimble	01/02/2003	"	"	752	"
42.	Topasna, George L.G.	01/02/2003	"	"	860	"
46.	Petrus, Rosa S.	01/02/2003	"	"	650	"
47.	Raqueno, Teresita E.	01/02/2003	"	"	695	"
65.	Cruz, Rosa C.	05/21/2017	"	"	251	"
91.	Reyes, Catalina C.	11/18/2023	"	"	722	"
*145.	Yatar, Arthur	01/01/1665	"	"	915	"
*147.	Manzana, Aries	04/01/1880	"	"	514	"
*148.	Juanico, Melissa	05/07/1774	"	"	434	"
*149.	Bamba, Danny S.	09/22/1765	"	"	75	"
*150.	Rivas, Roy M.	10/12/1660	"	"	173	"
*151.	Quindara, Eden G.	12/26/1665	"	"	678	"

Of the 33 people on the list, the first 21 names appear to be minors pursuant to records of the GEC; the next 6 names appear to be individuals who have not yet been born; and the last 6 names cannot be said to be minors because of the dates of birth indicate these individuals are over the age of eighteen.

The Defendants introduced into evidence, Exhibit "T", a list of fifteen names of individuals who have by affidavit stated they were over the age of majority at the time of the November 3 election. Contained within that Exhibit is the name of Richard T. Ibero, the individual listed in number 3 with a date of birth of 8/13/89. In that affidavit, this individual appears to say that he was born on August 13, 1929 and his social security is 586-82-

6189. He has attached thereto a Guam Personal Identification Card, issued on 7/28/93 (No. 93-1647) and a Guam Driver's License which does show his date of birth to be August 13, 1929. His social security number matches the social security number of the individual listed on the voting list, therefore this individual did not cast an illegal vote as he was of legal age to vote in the November 3 election.

In addressing the issue of whether minors voted in this election, the only evidence which the Plaintiffs have produced in this regard are dates of birth of these individuals as contained in the voting lists. A witness produced by the Plaintiffs, Menola Reklai, testified that her affidavit of registration showed her date of birth to be 1998 but she was actually born in 1978.

Based upon the foregoing discussion, there was no evidence presented in this matter which indicated that minors did vote in this election, as there has been no testimony that minors, in fact, voted. Therefore, based upon the evidence which was presented and in light of the fact that the burden of proof rests with Plaintiff, and in light of the fact that no precinct officials have reported having infants voting in the election, the court finds that there were no minors who cast ballots in the 1998 general election. As with the alleged deceased persons voting, in most of the instances wherein Plaintiffs have alleged that minors cast ballots in this election, the Plaintiffs were relying upon erroneous information with regard to the voters'

birth dates.

C. NON UNITED STATES CITIZENS VOTING.

The third category of voters alleged to have cast illegal votes for the Defendants in the November 3, 1998 General Election are non United States citizens (non-citizens). Plaintiffs contended in their election contest Complaint that they believe there were 1,574 persons who were registered to vote by supporters of the Defendants, who cast ballots in the November 3 election, and who are not citizens of the United States. The Court finds that after reviewing the evidence and testimony which was presented in this matter, that Plaintiffs fell far short of proving this allegation, and that Plaintiffs did not provide direct proof that any non-citizens cast votes in this election. Moreover, Plaintiffs further failed to prove that any alleged non-citizens cast their votes in favor of the Defendants, or that supporters of Defendants registered non-citizens to vote in the November 3 election.

As was previously set forth, prior to the commencement of the trial in this matter, Plaintiffs were ordered to provide to the Defendants a list of the alleged illegal voters who Plaintiffs contend cast ballots in the November 3 General Election. Plaintiffs' first list, exhibit N, contained the names of approximately 2,000 persons alleged to be non-citizens, and the second listing, exhibit O, contained the names of 2,337 persons alleged to be non-citizens. After reviewing all of the testimony and evidence which was presented in this matter, this

Court has reached the conclusion that Plaintiffs have failed to prove that there were any non U.S. citizens who cast ballots in the November 3 election.

With regard to this issue, Plaintiffs produced testimony from several witnesses in an attempt to prove that non-citizens cast ballots in the election. The first witness to testify in Plaintiffs' case in chief was Ms. Elizabeth Blas (Liz Blas) who is the Acting Executive Director of the Guam Election Commission. With regard to the issue of non-citizens voting in the November 3 election, she stated that it is a requirement that a voter be a citizen of the United States in order to cast a vote in any Guam election. She also stated that the affidavit of registration form (AOR) seeks information with regard to whether the voter/applicant is a citizen of the United States, and the form has a space provided wherein the applicant's passport number or naturalization certificate number is supposed to be written in on the form.

Ms. Blas also stated that proof of a voter's citizenship is not attached to that voter's AOR, and she stated that the Guam Election Commission will accept affidavits of registration without proof of citizenship, and simply accept them based upon the oath the voter takes by signing the form.

Ms. Blas was also questioned with regard to one specific instance wherein a non-citizen alien was registered to vote in Guam. That voter's name was Narhyatt Leon Guerrero and Ms. Blas stated that the Commission was notified that this voter was not a

citizen and that this voter's name was later removed from the list of registered voters. This was the only person Ms. Blas testified was, in fact, a non-citizen, however this voter did not cast a vote in the 1998 General election.

Plaintiffs also sought testimony from Mr. Henry Torres, the Executive Director of the GEC, with regard to the issue of non-citizens voting in the General election. Mr. Torres confirmed Ms. Blas's testimony regarding the fact that proof of a voters' citizenship was not attached to the AOR. He also stated that many times the affidavits are taken on their face without proof of citizenship.

Ms. Norma Sablan was also asked to testify regarding the citizenship issue. She stated that she had previously worked for the GEC and that she was not instructed to make copies of the registrants' passports or naturalization certificates.

Ms. Rossana San Miguel was called by the Plaintiff to testify. Plaintiff specifically asked her if she registered persons to vote who were not citizens and this witness stated that she never knowingly encouraged non-citizens to register to vote nor to vote. She also testified that she did not personally register people to vote.

Ms. Maria Flores, the Administrator of the Department of Motor Vehicles also testified regarding the citizenship issue. She stated that when individuals apply for a drivers license, they are not required to provide proof of citizenship and that this information is only given on a voluntary basis by the

applicants. Ms. Flores also testified that the only time the information contained in their license records is updated is when the driver comes in for a new license or a renewal. At that time the driver is asked to review the information contained in their records, and changes to this information are only made by the DMV when the driver indicates that the information has changed. Moreover, the only information the driver is asked to review for changes is that information which appears on the license itself, and thus any information regarding citizenship would not be reviewed by the driver.

Thus from this testimony, it appears that any information with regard to citizenship that is contained in the DMV records is not, in and of itself, dispositive on the citizenship issue.

Plaintiffs also called several volunteer registrars to testify with regard to the issue of citizenship. Plaintiffs attempted to demonstrate through these witnesses that the volunteer registrars did not follow the proper procedures for registering voters in that they did not seek proof of the registrant's citizenship.

Specifically in this regard, Plaintiffs called Mr. Ben Degayo to testify. He stated he was a volunteer registrar for the democratic party. After Plaintiffs questioned this witness regarding how he became a volunteer registrar and regarding the training he received, Plaintiffs went on to question this witness as to how many individuals that he registered to vote for the 1998 General election. The majority of the persons Plaintiffs

questioned Mr. Degayo on he did not know or did not remember registering, however there were several whom he personally knew or remembered registering. When he was asked what his understanding was with regard to registering voters, he stated that he was required to make sure that the registrant was a citizen of the United States and that he needed to see either a U.S. passport or a naturalization certificate to prove this fact.

Mr. Degayo was asked about the approximately 53 persons he registered to vote, and he stated that he asked each and every one of them for proof of citizenship. Moreover, on cross examination, Mr. Degayo stated that he kept a personal record of the persons he registered and that two of the people Plaintiffs specifically questioned him on did provide proof of citizenship. He stated that he simply forgot to put their passport or naturalization numbers on the forms, however he stated he later went back to these people to obtain this information.

Thus, in questioning this witness, as with many other witnesses, the Plaintiffs looked at the affidavits of registration and when there was no information contained therein with regard to that registrant's citizenship, Plaintiffs presumed that voter to be a non-citizen. However, Plaintiffs were able to establish nothing more than the fact that neither the GEC nor the volunteer registrars are faithful in carrying out the requirement that proof of the registrant's citizenship be included on their affidavit of registration.

As is evidenced by the foregoing discussion, and as will be

shown through the remaining witness testimony and evidence the Plaintiffs presented with regard to the issue of citizenship, Plaintiffs did not provide the Court with any direct proof that any of the persons contained on Plaintiffs' list of alleged illegal voters, are in fact, non-citizens. The fact that many AOR's had no information contained on them with regard to the citizenship of the applicant is troubling in the sense that it evidences the fact that the GEC and the volunteer registrars either do not strictly adhere to the rule that proof of citizenship must be shown prior to a voter being registered to vote, or they are often neglectful in failing to write the applicant's passport number or naturalization number on the AOR. However, this evidence in no way proves that the persons alleged to be non-citizens are, in fact, not citizens of the United States. Rather, there are numerous possibilities as to why the citizenship information was not included in many AOR's; the voter could have simply forgotten to bring his or her passport to the location where he or she was registered; the registrar could have forgotten to write in this information; or the registrar could have known the applicant personally and on that basis not required that proof of citizenship be shown.

While these are all simply possibilities regarding why such information was not included on so many of the AOR's, so too is Plaintiffs' contention that all of these voters are non-citizens. Without some direct proof on this issue, this Court cannot simply leap the to conclusion that each and every affidavit of

registration which is lacking information regarding citizenship, represents an application of a non-citizen and therefore an illegal voter. As will be evident from the following discussion of the remaining witness testimony and evidence, it is clear that Plaintiffs wholly failed to produced and present any direct evidence that the alleged non-citizen voters were, in fact, not citizens of the United States.

Plaintiffs called several other volunteer registrars and questioned them regarding the requirements for registering someone to vote in a similar manner as Mr. Degayo was questioned. Amongst these witnesses was Mr. Frank Acfaji, who stated that he always asks registrants for proof of their citizenship unless they indicate to him that they are born on Guam or in the U.S. mainland. Again, it was demonstrated that several of the AOR's signed by Mr. Acfaji lacked information with regard to the applicant's citizenship. However, this alone is not sufficient proof that such applicant was not a citizen of the United States.

Similarly, Ms. Rita Tainatongo was called to testify and she stated that she was received training from the GEC with regard to registering voters and that she always asked the applicants for proof of their citizenship. Ms. Rose Tainatongo also testified in this regard and she stated that none of the persons she registered for the 1998 election were born outside of Guam or the United States, thus the issue of citizenship did not arise. However she further stated that if she had registered someone born outside of Guam or the U.S., she would have asked for proof

of their citizenship.

Mr. Manny Vallaba was also questioned regarding his practice of registering voters. He stated he is employed as a consultant to the Governor and that he was a volunteer registrar for the 1998 primary and general elections. Similar to the other witnesses who acted as volunteer registrars, Plaintiffs questioned Mr. Vallaba at length regarding persons he registered to vote, whether he asks for proof of citizenship, etc.. Again, Plaintiffs called into question several AOR's for which Mr. Vallaba was the registrar. He stated that in some instances he did see the proof of citizenship, however he failed to write it in on the AOR. In one specific instance, Plaintiffs questioned him about a Mr. Ben Allabe. The witness had failed to write in information regarding this applicant's citizenship, however he indicated that this particular person was a friend of his and that he knew that he was, in fact, a citizen. The following day, during cross examination, Mr. Vallaba brought a copy of Mr. Ben Allabe's passport to Court to demonstrate that he is a citizen of the United States. Mr. Vallaba also stated that he had a list of persons from whom he did not obtain passport numbers or naturalization numbers. However he stated that he later went back to these people, obtained the information, and called it in to the Election Commission.

Plaintiffs conducted similar questioning on Ms. Faye Zabala who testified that she is employed as an Administrative Assistant in the Governor's office and that she was a volunteer registrar

for the past few elections. As with Mr. Degayo, Mr. Acfaji, and Mr. Vallaba, the Plaintiffs questioned this witness with regard to her practice of registering voters, and Plaintiffs went through specific instances where the AOR's would have information missing from them such as proof of citizenship for persons born outside of Guam or the United States. Much like the prior witnesses, Ms. Zabala stated that she could not personally remember each and every person that she registered, however she stated that she does ask for proof of citizenship when she registers potential voters. While Plaintiffs questioned Ms. Zabala as to many of the persons she registered, Plaintiffs produced no evidence that any of these persons were not citizens. Rather, as with the prior witnesses, the Plaintiffs simply relied upon the missing information with regard to citizenship, and clearly this is insufficient evidence by any burden of proof to prove that the alleged non-citizen voters are indeed, non-citizens.

Again, as was set forth previously, Plaintiffs produced and presented to the Court voluminous affidavits of registration for registered voters on Guam. This document was marked as exhibit P-4 and it was referred to throughout the course of this trial. Contained within this exhibit were many AOR's wherein it was indicated that the registrant was born outside of the United States, but where there was no information with regard to a passport number or a naturalization number. While clearly it is intended that this information be provided to the registrar and

that this information be written in on the application, it is also clear that this practice is not always followed by either the GEC members or the volunteer registrars. However, the Court finds that these documents, along with the witness testimony presented by the Plaintiff do not, in and of themselves, indicate that persons for whom these applications and affidavits were made are not citizens of the United States.

The Court finds that Plaintiffs' reliance on these documents to prove the allegations with regard to citizenship falls far short of the burden Plaintiffs have in this matter. The production of documents with missing information in the area of citizenship does nothing to prove that hundreds of non-citizens cast ballots in the November 3, 1998 election. The Court simply cannot take this voluminous stack of documents know as exhibit P-4 and hold that the documents contained therein prove that non-citizens illegally cast ballots in the election.

Moreover, in addition to the fact that Plaintiffs wholly failed to produce evidence or testimony sufficient to prove that any of the voters listed in exhibits N or O were, in fact, illegal voters based upon their lack of U.S. citizenship, the Defendants also presented evidence which demonstrated that as to a great number of the persons Plaintiffs alleged to be illegal voters, they were citizens of the United States. Defendants introduced testimony of a Mr. Montvel-Cohen, and introduced exhibits prepared by this witness and his employees which indicate that many of the persons set out on Plaintiffs' list of

illegal voters were citizens of the United States.

The exhibit prepared by this witness that specifically addressed the issue of the citizens was exhibit V. Mr. Montvel-Cohen testified that his firm, Speciality Communications, is a market research firm who specializes in the collection of data, in performing public opinion polls, and in doing market analysis reports. He stated that he had been hired by the Defendants herein to collect information with regard to the persons alleged to have voted illegally in the November 3 election, as were set forth on Plaintiffs' lists, exhibits N and O. He stated that a group of his staff came up with a methodology to identify as many people on these lists as they could within a short period of time. In this regard he stated that they first went through these lists in order to find persons who he, or his employees personally knew. For example, he stated that his mother's name was on one of the lists, and thus she was someone whom they could readily remove from the list as he had personal knowledge of the fact that she is a citizen and a resident.

Furthermore, Mr. Montvel-Cohen stated that a newspaper ad was run in the Pacific Daily News (PDN), which set out the names contained in the list. He stated that this advertisement informed these people that if they wished to clarify their status as citizens, residents, persons of legal voting age, etc., then they could go to the office set up by the Defendants at the Compadres Mall. Mr. Montvel-Cohen then testified that people would come in to the office with proof, in this case of their

citizenship, fill out affidavits stating that they are, in fact, citizens of the United States, and in the majority of cases, these people would provide proof of this fact such as passports or naturalization certificates. He stated that he or his employees would then accept these affidavits and supporting documentation, organize them, and provide this information to Defense Counsel.

With regard to the non-citizens, Mr. Montvel-Cohen testified that two exhibits were prepared. Exhibit D which is a summary of the findings with regard to the persons on the non-citizen listing, was prepared and this exhibit sets out the totals of the persons contacted; persons he was unable to contact; persons who were not registered to vote; persons who did not vote; etc.. Moreover, Mr. Montvel-Cohen also testified about exhibit V which was prepared in regard to the non-citizens. Exhibit V contains the affidavits, set out in alphabetical order, of persons who came in to his office and filled out affidavits stating they are, in fact, citizens of the United States, and, in most cases, documentation of this fact is attached to the affidavit. Mr. Montvel-Cohen stated that he and his staff obtained this information, however Defense Counsel organized it in its final form.

Prior to the introduction into evidence of these exhibits, Plaintiffs strongly objected to the admission of exhibits D and

V³ based upon the fact that the documents contained therein are hearsay, and that Plaintiffs were not afforded the opportunity to cross examine the persons who submitted affidavits. Plaintiffs further argued that this evidence constituted "surprise" evidence and that Plaintiffs were put at a disadvantage by not having these documents provided to them at the outset of trial.

The Court admitted these exhibits into evidence over Plaintiffs' objections. The Court found that these exhibits constituted rebuttal evidence and that Defendants produced these documents to rebut Plaintiffs' claims that all of the persons listed in exhibits N and O are non-citizens, non-residents, or whatever the specific allegation was as to that person. Furthermore, the Court found that documents such as a passport speak for themselves and do have an indicia of reliability. The Court also found that the affidavits filed by the persons contained on Plaintiffs' lists contain an oath that the information contained there is, in fact, true and accurate. Therefore, on this basis, the Court found that such exhibits were relevant and may be helpful to the Court in reaching a determination with regard to whether the persons set out on Plaintiffs' list were, in fact, illegal voters.

Moreover, the Court found that the witness, Mr. Montvel-

³ Plaintiffs also objected to the introduction and admission of exhibits Q, R, S, T, U, V, A, B, C, and D. These are other exhibits which were prepared by Mr. Montvel-Cohen and his employees which relate to the alleged minors who voted, the alleged deceased persons who voted, and the alleged non-residents who voted in the November 3 election. These exhibits will be addressed further in the related portions of this Decision.

Cohen, had already testified as to his findings, and thus there was no new information contained in these exhibits other than the individual affidavits and the copies of the passports. Thus these exhibits were admitted into evidence and Mr. Montvel-Cohen testified as to his findings with regard to the alleged non-citizens.

Mr. Montvel-Cohen testified that there were 2,337 persons alleged to be non-citizens contained in Plaintiffs' lists. He stated that of this total, he and his staff found there to be 28 duplicate names. He also stated that of this total, 97 persons were found who were not registered to vote, therefore clearly these 97 persons could not have cast illegal ballots at the November 3, 1998 election.

Additionally, Mr. Montvel-Cohen stated that 2,240 of the names contained on the list were registered to vote in Guam pursuant to the records of the GEC. Additionally, 2,036 of these persons were found to have voted in the November 3 election, 204 failing to vote. He also stated that they found that 54 of these people obtained absentee applications from the GEC and 47 actually cast absentee ballots. Finally, he stated that there were 1,444 people whose names were on Plaintiffs' lists who they were unable to contact, but that they were able to contact and verify that 893 of the people on Plaintiffs' list of non-citizens were, in fact, citizens of the United States and eligible to vote. He also made a notation that from the first list provided by the Plaintiffs, exhibit N, they were able to verify 645 of

those people were citizens and eligible to vote.

The Defendants then submitted these exhibits to the Court, and Plaintiffs undertook a lengthy cross examination of Mr. Montvel-Cohen with regard to all of the exhibits prepared by he and his employees and staff. Plaintiffs elicited testimony from this witness with regard to the fact that he did not personally see all of the affidavits and supporting documentation. Plaintiffs also questioned Mr. Montvel-Cohen as to his familiarity with the requirements for voting on Guam and the Election Code, and the witness informed Plaintiffs that he had only a general understanding of these requirements.

Plaintiffs also questioned the witness with regard to specific affidavits. In some instances, a Guam drivers' license was attached to the affidavit rather than a passport or naturalization certificate, and in a few instances, someone other than the person alleged to be an illegal voter signed an affidavit for that person. In response to these questions, Mr. Montvel-Cohen stated that in instances where improper documentation was attached to an affidavit, those may have been included in the exhibit accidentally. He also stated that in some instances, people would insist on filing affidavits and that neither he nor his employees would refuse anyone the opportunity to do so.

Through the cross examination of this witness, Plaintiffs were not able to discredit the documents prepared by Mr. Montvel-Cohen and his staff, rather they were merely able to call into

question some of the documentation which was attached to the affidavits. The Plaintiffs were however, able to demonstrate that in some instances, the witness and his staff obtained affidavits from the "wrong" person. In other words, in many instances, there were people listed on Plaintiffs' list of alleged illegal voters who had very common names. Due to this fact, there were instances when Mr. Montvel-Cohen and his staff may have obtained affidavits from persons with the same name as someone on the list, however Plaintiffs called into question whether that person was, in fact, the same person Plaintiffs had indicated was an illegal voter.

Thus, in reviewing the exhibits prepared by Mr. Montvel-Cohen, the Court finds that at a minimum, they prove that many of the people who were placed on Plaintiffs' lists of illegal voters are not illegal voters due to the fact that they are citizens of the United States. The Court previously indicated that it found that Plaintiffs' evidence with regard to the non-citizens was insufficient, even to withstand a preponderance of the evidence standard. Plaintiffs merely referred to affidavits of registration wherein information regarding citizenship was not provided. However the Court found that such evidence, or lack thereof, fell short of proving that the persons listed as non-citizens on Plaintiffs list of illegal voters are in fact not citizens of the United States.

Thus, the Court finds that Plaintiffs lack of evidence, coupled with the testimony of Mr. Montvel-Cohen and the

documentation he provided, clearly indicate to this Court that Plaintiffs have failed to demonstrate that anyone on the list of alleged non-citizens was actually an illegal voter. Plaintiffs failed to provide any direct evidence to prove that anyone on the non-citizen list is a non-citizen, while Defendants were able to provide affidavits, passports and naturalization certificates to demonstrate that at least 893 of the people listed as non-citizens in Plaintiffs' exhibit O are citizens of the United States.

Therefore, the Court is not reaching its conclusion with regard to the non-citizen issue solely based upon the evidence and testimony presented by the Defendants. Rather, the Court finds that Plaintiffs have failed to provide competent evidence to this Court which would prove as fact, that the persons contained in exhibit O, alleged to be non-citizens, are not citizens of the United States. Plaintiffs have instead relied upon theories, innuendos, and the lack of information contained on the AORs. However, having made this finding, the Court does note that the Defendants' rebuttal evidence in this regard casts more doubt upon Plaintiffs' allegations. While Plaintiffs were unable to prove that anyone listed in exhibit O is not a citizen, the Defendants provided documentation that at least 893 persons are citizens.

Wherefore, based upon the evidence and the testimony presented by both parties on this issue, the Court finds that Plaintiffs have failed to meet their burden of proof with regard

to the alleged non-citizens. It is the opinion of this Court that Plaintiffs have not proven that any illegal votes were cast by non-citizens in the November 3, 1998 General election.

D. NON-RESIDENTS VOTING

The next category of voters alleged to have cast illegal ballots during the November 3, 1998 election are those who are alleged to be non-resident of the Guam. Based upon the evidence and testimony at the trial herein, there appear to be two categories of persons whom Plaintiffs allege are not resident of Guam for the purpose of casting a vote in the November 3 election. Plaintiffs have challenged the absentee applications of many voters who cast absentee ballots in the election, arguing that these people are not qualified to vote absentee in Guam elections and thus they are not entitled to cast such ballots. Plaintiffs also attempted to tie many of these challenged absentee voters to the Defendants, and Plaintiffs argued that from the evidence they produced, that it can be presumed that these voters cast their ballots for the Defendants.

In addition to the alleged illegal absentee voters, the Plaintiffs have also argued that there are many voters who are registered to vote in another jurisdiction other than Guam. According to the Guam Election Code, to be eligible to vote in Guam, a voter may not currently be registered to vote in another jurisdiction. The Court shall address these two categories of alleged non-citizens separately.

1. Absentee Voters.

Plaintiffs spent a great deal of time at trial going through applications of absentee voters which were provided by the GEC. Plaintiffs questioned both Ms. Elizabeth Blas and Mr. Henry Torres of the Guam Election Commission at length with regard to policies and procedures for voting by absentee ballot. It is clear in reviewing the provisions of the Election Code that in order to be entitled to cast a legal ballot at an election in Guam, a person must first be a resident of Guam. Specifically, §3101 provides:

Every person not confined to a mental institution, nor judicially declared insane, nor committed under a sentence of imprisonment, who is a citizen of the United States over eighteen (18) years of age, or who shall have reached his eighteenth birthday by the day set for election, who is a resident of Guam and who complies with the provisions of this Title governing the registration of electors is entitled to vote at any general election held within the territory of Guam....

(Emphasis added).

Thus, from the foregoing language, it is evident that in order to be qualified to vote in an election in Guam, a voter must be a resident of Guam. The rules for determining whether a voter is a resident of Guam or not for the purpose of voting are set forth at 3 G.C.A. §§9124 and 9125. Specifically with regard to absentee voters, the rules of residency are set forth as follows:

§9124. Rules for Determining Residency. In determining residency according to these rules a spouse may treat herself or himself separately from her or his spouse. The following rules shall determine residency of voters and candidates:

(a) The residency of a person is that place where he lives, and to which, whenever he is absent, he has

the intention to return.

(b) A person does not gain residency in the territory or any voting district into which he comes without the present intention of establishing his permanent dwelling place within the territory or such voting district.

(c) If a person resides with his family in one place, and does business or maintains real property in another place, the former is his place of residence; but any person having a family, who establishes his dwelling place other than with his family, with the intention of remaining there shall be considered a resident where he established such dwelling place.

(d) The mere intention to acquire a new residence without physical presence at such place does not establish residence. For the purposes of an election, there can be only one residence.

(e) A person does not obtain or lose residency solely by reason of his presence or absence while employed in the service of the United States, or of the territory, or while a student at an institution of learning, or while kept in an institution, a hospital, or asylum, or while confined in prison.

(f) A person loses his residency in the territory if he applies to register to vote or votes in an election held in another state, territory or place by absentee ballot or in person.

(g) No person who is registered to vote in another jurisdiction may vote in Guam until his name is removed or requested to be removed from such registration. The Commission shall provide affidavit forms for the removal of names of voters from the election rolls of other jurisdictions.

Thus, in order to be considered a resident of Guam, one must comply with the foregoing provisions.

At the trial in this matter, Plaintiffs attempted to prove that many voters who cast absentee ballots were not entitled to do so as they are not "residents" of the territory of Guam and therefore, their votes were illegally cast.

As was previously stated, both Elizabeth Blas and Henry Torres of the GEC testified at length with regard to the procedure for obtaining an absentee ballot application, and they

further testified with regard to the process whereby a voter is approved for an absentee ballot.

Ms. Blas testified that absentee applications would be received by the GEC and then someone at the Commission would review the form to determine whether or not the applicant was entitled to cast an absentee ballot. She stated that if the person was approved, then a ballot would be sent out to that person. She also stated that if there was insufficient information on the application, or if there appeared to be problems with the application, that someone from the Commission would correspond with the applicant in order to inform the applicant that more information was necessary prior to them being approved for an absentee application. Ms. Blas also stated that in some cases, the swearing or the oath contained on the application was taken to be sufficient and that applications would be approved on this basis.

Mr. Henry Torres also testified with regard to the process of issuing absentee applications. He stated that applications were supposed to be received in their original form, however he also stated that in some circumstances, they would accept faxed applications. He also stated that if there was information missing from the form or if it was not clear from the application whether or not the voter should be approved to vote absentee, that the Commission would correspond with the applicant in order to obtain more information. Mr. Torres also testified that many times the applications were simply accepted based upon the oath

by the applicant contained therein. Moreover, he stated that if an absentee application was erroneously approved, that the ballot could be challenged at the polls and that the precinct board could also pull the ballot prior to it being cast.

Mr. Torres went on to state that all active military personnel would receive an absentee ballot if they applied for one, and that as far as he knew, if a person was attending a learning institution outside of Guam, they were still entitled to cast an absentee ballot in Guam's elections.

Mr. Torres was then questioned with regard to specific absentee applications that Plaintiffs argued were questionable at best, and Mr. Torres was asked why such applications were approved. Mr. Torres indicated that the issue of determining the residency of a voter was a difficult issue to resolve and he stated that if an applicant states on the form that they are entitled to vote absentee, in most cases he would take the applicant at their word and would provide that voter with an absentee ballot. One of the affidavits of registration which Mr. Torres was questioned about was the affidavit of a Mr. Ignacio Aguigui⁴. Plaintiffs questioned Mr. Torres with regard to the fact that this voter had indicated that he was living in San Francisco, California, and that he indicated he was employed as an attorney. Plaintiffs questioned Mr. Torres as to the

⁴ The Court notes that Mr. Aguigui is currently employed with the Superior Court of Guam as a Research Attorney for the Honorable Katherine Maraman., and thus he is clearly a resident of Guam.

propriety of this affidavit, and he stated that this voter could be qualified to vote due to his over seas employment, or for various other reasons.

Plaintiffs also questioned Mr. Torres about the affidavit of registration of a Ms. Angela Sanchez. It was pointed out to Mr. Torres that Ms. Sanchez had indicated that she was requesting an absentee application due to the fact that she was off island attending school. However, Plaintiffs also pointed out the fact that on the reverse side of this affidavit, this voter did not indicate what institution of learning she was attending. Mr. Torres stated that the fact that she indicated she was attending school was sufficient to qualify her to vote absentee, and he also indicated that the Commission does not investigate the applicants' statement that they are attending a certain school or university.

Mr. Torres was also questioned during Defendants' case in chief with regard to specific absentee applications that Plaintiffs had called into question in their case. Mr. Torres was given the applications of Debra Freitas, Milton Freitas, Angela Sanchez, and Laura Souder. Mr. Torres was questioned regarding why these applicants were approved to vote absentee. Mr. Torres testified that their original applications had been insufficient to approve them to vote, however correspondence was later sent out to them and these applicants sent in supplemental information, and on this basis they were approved to vote absentee.

On cross examination, Plaintiffs questioned Mr. Torres as to why someone such as the Freitas' would be entitled to vote in a Guam election when it appears that they live in Hawaii, own a home there and work there. Mr. Torres testified that they may have been approved to vote absentee improperly, however determinations on this issue cannot always be made simply by viewing the face of the application.

Mr. Torres was again questioned with regard to Angela Sanchez, and he stated that her form indicated that she was a student and on that basis she was approved to vote absentee in the November 3 election.

Mr. Torres was also questioned with regard to the Souders. Plaintiffs questioned him regarding the fact that it appeared from their applications that they live in Chicago, Illinois. Again, Mr. Torres stated that determining residency is a difficult issue, and that perhaps these voters were erroneously approved, however there are many factors which come in to play with regard to the residency issue.

Plaintiffs also called Mr. Joseph Mesa to testify in their case in chief. He provided testimony on many issues, including the absentee ballot issue. Mr. Mesa stated that he was currently the Chairman of the Board of the GEC and that he had previously served at the GEC Executive Director as well as a staff member for the Commission.

With regard to the issue of residency, Mr. Mesa stated that this issue was a real "pickle" and that it was a very difficult

issue to determine with regard to voters applying to vote absentee. He stated that absentee applications would have be viewed on a case by case basis, and that determinations with regard to their approval or denial were difficult to make. Mr. Mesa also stated that people could own and live in homes outside of Guam and still maintain their residency for the purpose of voting, and he stated that the Commission does everything it can to help people qualify to vote on Guam. He also stated that, in his opinion, there is not a set period of time which a voter can be off of Guam which, if exceeded by a voter, would automatically render that voter ineligible to vote in Guam elections.

Mr. Mesa further testified that there is nothing which restricts members of the military from casting votes in Guam and he further stated that if a voter is approved to vote, even if that voter is erroneously approved, that there is nothing to stop he or she from going to the polls and casting a vote.

The Plaintiffs also called a Mr. Eloy Hara, who was asked about his brother Carlos Hara. Mr. Hara stated that his brother lives in California and that he has lived there for approximately twenty years. He also stated that his brother is employed with the United States Postal system, however he obtained this employment subsequent to moving to California. Mr. Hara also testified that prior to obtaining this employment, his brother served in the United States military. Plaintiffs asked Mr. Hara if his brother cast a ballot in the November 3 election, and Mr. Hara indicated that he did not know. However the absentee voter

records indicate that he did, in fact, cast a ballot in this election.

Mr, Vicente Sanchez was also called to testify by the Plaintiffs. He stated that he is a part time farmer who was involved in the 98 campaign. He stated that he volunteered to help with the absentee voting and that he was supposed to help the campaign in this regard both here in Guam and abroad. He further testified his understanding of absentee voting was that persons who were absent from Guam due to their work, due to the fact that there are attending school, due to the fact that they are receiving medical treatment off-island or due to the fact that they are in the military, are eligible to vote absentee.

He also testified that he chose to attempt to register persons abroad to vote absentee, and in this regard he stated that he took a trip to California in order to distribute materials to those persons who are eligible to vote. He stated that he met with a Mr. Mike Wheatley and informed him that he was going off-island in an attempt to register eligible voters.

Mr. Sanchez stated that while he was in California he "practically didn't do anything" with regard to registering people. He stated that he attended a Chamorro gathering and that people from the 98 campaign were there. He stated that he also spoke with his son and family members about distributing election materials, however they informed him that they were too busy to help him. He testified that when he returned to Guam, he had not registered anyone to vote absentee. Moreover, he stated that

upon his return he spoke to Frank Acfaji who told him that someone had taken over Mr. Sanchez's duties. Therefore he stated that he packed his things up and left the campaign. Finally, he stated that he never did solicit any votes nor did he ever register any voters.

Thus, the bulk of the testimony and evidence presented by the Plaintiffs with regard to alleged non-citizens who voted via absentee ballots consisted of testimony from the GEC members and board members. Their testimony clearly indicated that the Commission does not carefully review applications for absentee voters, and it further indicated that there are circumstances when voters who are not entitled to cast absentee ballots due to the fact that they are not residents of the territory of Guam, are actually approved to vote and do so cast ballots in Guam elections. Again, the Court finds that while this clearly indicates that there are deficiencies in the manner in which the Guam Election Commission approves absentee voters, the Court does not find that Plaintiffs proved that a significant amount of the challenged absentee voters are not entitled to vote in Guam.

The Court finds that Plaintiffs called into question the propriety of the Election Commission registering voters such as the Freitas' and the Souders. Plaintiffs hope to prove that by linking these absentee voters to the Defendant Governor, that they can show that the Defendants were involved in a conspiracy to commit fraud in the election. The Freitas' and Souders, as Plaintiffs' Counsel notes, are close relatives of the Incumbent

Governor. Plaintiffs argue that because Laura Souder has had a Chicago address in her absentee ballot application for the 1994, 1996 and 1998 elections, that this gives rise to the fact that this voter is a non-resident. However, the Court notes that this voter voted in person on Guam in the 1996 and the 1998 elections.

Additionally, it was testified to that Ms. Souder assisted Mr. Montvel-Cohen in December of 1998, in compiling their findings with regard to alleged illegal voters. From this testimony, it appears that this voter has been coming back to Guam, and not in an infrequent manner. Thus this voter could be working in Chicago, but returning to Guam whenever she has the opportunity to do so. While the Court cannot make a determination as to this fact, it also cannot make the finding that she is an illegal voter simply based upon the information contained in her absentee application.

With regard to the Freitas', the fact that they have answered yes on their absentee applications to a question whether they own a home outside of Guam (in Hawaii) and have lived there for more than 30 days, does not prove that they are non-residents for the purpose of voting. Defendants' Counsel pointed out to the Court that these specific questions contained within the absentee application, while proper to ask at one point in time, are no longer proper questions to be included in the absentee ballot application, as these considerations have been repealed by statute. The Legislature no longer presumes people who have homes outside of Guam and who have lived there continuously for

over 30 days to be non-residents.

Additionally, the testimony of Joe Mesa indicated that a voter could own a home outside of Guam and live there for more than 30 days and still be considered a resident for voting purposes.

Thus, the Court cannot make a decision as to the legality or illegality of these specific voters' votes based upon the testimony presented. The Court notes that all of the testimony presented indicates that the issue of residency is based upon many factors. Moreover, the Court also notes that the Election Commission approved the applications of these voters. However, even assuming the Court found these absentee voters to have cast illegal ballots, the Court also finds that such is a minimal amount of illegal votes, and such would not affect the outcome of the election.

Moreover, the remaining absentee voters who have been challenged by Plaintiffs have been so challenged based upon the absentee applications alone. Plaintiffs have provided no independent evidence that these people are not residents of Guam for voting purposes. Rather, much like with the alleged non-citizens, Plaintiffs are relying on the lack of information or deficiencies contained in the applications for absentee ballots. The Court again finds that these applications, in and of themselves, do not prove that those alleged illegal voters are not residents of Guam.

Moreover, in Defendants' case in chief, Defendants presented

testimony and evidence from Mr. Montvel-Cohen which indicated that there were 1,699 alleged non-resident voters contained in exhibit O. This total includes both those alleged to have fraudulently cast absentee ballots and those who are registered to vote in jurisdictions other than Guam. Of this total number of 1,699, Mr. Montvel-Cohen found that as to 95 of the names, information could not be verified due to the fact that insufficient information was provided to them. He further testified that 165 of these persons are not registered to vote, and therefore did not vote, and that 1,339 were registered to vote according to the GEC's records.

Additionally, Mr. Montvel-Cohen testified that 1,140 of the people listed in Plaintiffs' exhibit O did cast ballots in the November 3 election, and 199 did not vote. Moreover, he stated that according to GEC records, 642 of these people had filled out absentee applications, however only 426 actually cast absentee ballots. He also indicated that of these 426 absentee applications, all of them were approved by the GEC.

As with the alleged non-citizens, Mr. Montvel-Cohen prepared exhibits which are comprised of a summary of the findings of he and his staff, and that summary was marked and admitted into evidence as exhibit R⁵, and affidavits filled out by persons who were placed on the list of alleged non-citizens accompanied by

⁵ The Court notes that the Plaintiffs raised the same objections with regard to all of the exhibits prepared by Mr. Montvel-Cohen, however the Court admitted these exhibits into evidence over the Plaintiffs' objection.

some documentation in most cases, indicating that these people are residents of Guam. This exhibit containing the affidavits is marked as exhibit U.

In reviewing exhibit U, there appear to be hundreds of affidavits accompanied by various forms of identification such as Guam drivers licenses, Guam identification cards, etc., for the purpose of proving that the persons whose names were on the list, are, in fact, residents of Guam.

Again, the Court finds that without this evidence and testimony which was presented by Mr. Montvel-Cohen, Plaintiffs have fallen short of meeting their burden of proving that, with the exception of the few people who will be discussed in the following section, any of the persons contained on the alleged non-resident list are not residents of Guam. As with the alleged non-citizens, Plaintiffs have simply relied upon deficiencies and questionable information contained in numerous absentee applications to prove that the persons set forth in exhibit O are not residents of Guam and thus cast illegal ballots in the November 3 election.

However, again, Plaintiffs' lack of evidence with regard to the alleged non-residents, coupled with exhibit U prepared by Mr. Montvel-Cohen, make it impossible for this Court to reach the conclusion that the persons contained in exhibit O are illegal voters due to the fact that they are non-residents. Plaintiffs have failed to provide any direct proof of these facts to the Court, and Defendants have convincingly rebutted these

allegations with regard to a large number of persons contained in exhibit O. However the Court does note that many people contained in Defendants' exhibit U do not appear to be the same people who are listed on Plaintiffs' exhibit O.

Therefore, based upon the foregoing discussion, the Court finds that with regard to the alleged illegal absentee voters, Plaintiffs have failed to prove that they are, indeed, illegal voters. The Court finds that if the Guam Election Commission could not render a decision on this issue, that this Court is in no better a position to attempt to do so. Furthermore, even if the Court found that these absentee voters whose applications were challenged are, in fact, illegal voters, clearly the omission of their ballots from the total in this election will not affect the results of the election.

2. Dually Registered Voters.

The other category of alleged illegal non-resident voters are those persons who are alleged to be registered to vote in Guam as well as in another jurisdiction.

In this regard, Plaintiffs questioned both Elizabeth Blas and Henry Torres with regard to the law on dual registration. These witnesses testified that in order to be eligible to vote on Guam, a voter may not be registered to vote in any other jurisdiction. They further testified that upon registration, if the voter informs the registrar that he or she had previously voted in another jurisdiction, or was registered elsewhere, that the voter would be provided with a cancellation of registration

card. An example of this cancellation card was marked as exhibit P9. Both Ms. Blas and Mr. Torres stated that a voter who was registered to vote elsewhere was required to fill out this card and send it to the jurisdiction where the voter is registered in order to have that registration canceled. This is consistent with the requirements set forth in 3 G.C.A. §§9124(g) and 9125(d) both of which provide:

(g) No person who is registered to vote in another jurisdiction may vote in Guam until his name is removed or requested to be removed from such registration. The Commission shall provide affidavit forms for the removal of names of voters from the election rolls of other jurisdictions.

Thus, it is clear from the foregoing language that in order to be eligible to vote in elections on Guam, a voter may not be registered to vote in any other jurisdiction, and if they are, they must undertake to cancel that registration prior to voting in any elections on Guam.

With regard to the cancellation of registration forms, Ms. Blas testified that the Commission does not police whether or not voters have canceled their voter registration elsewhere. She also testified that the only way the Commission or a volunteer registrar will know whether a voter is registered in another jurisdiction is if that voters divulges this information.

Additionally, Mr. Torres indicated that with regard to the dual residency issue, if a person was found to be registered in a jurisdiction other than Guam, the matter would be forwarded to the Board so that they could reach a determination as to whether

that voters name should be removed from the voter roster list.

Plaintiffs also called several of the volunteer registrars to testify with regard to the issue of dual registration, and many of these witnesses have been addressed previously in this Decision. Plaintiffs questioned Mr. Frank Acfaji, Mr. Manny Vallaba, Ms. Faye Zabala, and Mr. Ben Degayo regarding their practice of asking voters if they are registered to vote in other jurisdictions. All of these witnesses indicated that they always ask this question of the applicants they are registering. However, in questioning these witnesses with regard to specific affidavits of registration, Plaintiffs provided the witnesses with many examples of AOR's where there is no information written into the space provided which indicates "I last voted in." Moreover, many of the voters who were called to testify indicated that their registration forms were already filled out and that they were merely asked to sign their name on the form, and many stated that they were not asked whether they were registered to vote in another jurisdiction.

In questioning Ms. Faye Zabala, Plaintiffs' Counsel asked Ms. Zabala to treat him as if she were registering him to vote. She indicated that she would ask for proof of citizenship, proof of residence, and then have him fill out the necessary parts of the form. However Ms. Zabala failed to indicate that she would ask Counsel whether he was registered to vote elsewhere. On cross examination, she stated that she does ask this question of the people she registers and that she simply forgot to mention

this on direct examination.

Thus, with regard to the volunteer registrars the Plaintiffs called to testify, they all indicated that they do inquire whether the applicant is registered to vote elsewhere, despite the fact that such information is missing from many of the AORs. Thus, much like the testimony and evidence with regard to the alleged non-citizens and alleged non-resident absentee voters, the Court finds that this testimony and evidence in and of itself is not sufficient to prove that all of the people set forth on the list of non-residents are indeed, non-residents for the purpose of voting on Guam.

In this regard, Plaintiffs attempted to establish that all these volunteer registrars had connections to the Defendants or that they were working for the 98 campaign. In most cases, the witnesses testified that they did not act as registrars for the democratic party only, but rather that they would register anyone who wanted to register and who was qualified to do so. It did appear as to some of these witnesses that they were employed by the Governor or had some connection to the democratic party. Plaintiffs argue that by virtue of this fact, these volunteer registrars did not follow policy and procedures in registering voters, and that they would knowingly register non-residents and non-citizens to vote, and further encourage them to vote for the Defendants. Plaintiffs argue that the Defendants were aware of these actions and by virtue of this fact, the Defendants participated in the fraudulent procurement of votes. This issue

of fraud shall be discussed in further detail later in this discussion. However, the Court finds it important to note that Plaintiffs' theory with regard to these volunteer registrars is that they participated in a scheme to register non-residents to vote in the November 3, 1998 election.

While the Court finds that Plaintiffs' proof falls short of demonstrating that all of those persons set out on their list of alleged non-citizens are in fact, non-residents, Plaintiffs were able to prove eight out of ten voters who presented testimony did vote illegally due to their dual registration.

In order to prove that the alleged non-residents were actually registered to vote in jurisdictions other than Guam, Plaintiffs called Mr. Vicente Manglona to testify. He stated that he was the medical liaison officer for the CNMI and that Plaintiffs had asked him to obtain a copy of the roster of registered voters for the CNMI. Mr. Manglona stated that he had asked Mr. Blas Majinerus to obtain this list for him, and thus Plaintiffs also called Mr. Majinerus to testify. He stated that he requested a copy of the roster of registered voters for the CNMI from the CNMI Election Commission and that they provided him with a photocopied list of the original. He stated that he did not personally make the copies, nor did he watch as the copies were made. He also stated that he was informed by the CNMI Election Commission that the copy he had could not be certified. However he stated that he had made notations on the original which appeared on the copy before him and that upon a brief

review of this document, it appeared to be a accurate copy of the CNMI voters list. On this basis, and over the Defendants objection to its authenticity, the Court admitted this document and it was marked as exhibit P2.

Plaintiffs also called to the stand Mr. Oliver Wood. Mr Wood testified that he is currently employed as an assistant to Counsel for the Plaintiffs. He was asked about exhibit P5, which is the roster of registered voters for Palau. He stated that he went to the airport to receive an envelope and he further stated that he was present while Plaintiffs' Counsel opened the envelope. Contained therein was a copy of the Palau voters' list as well as copy of a letter from the Election Commission in Palau, and that letter was marked as exhibit P5A. Plaintiffs then moved to admit the Palau voters' list in to evidence and over the Defendants' objection that Plaintiffs had not properly authenticated such, the Court admitted these exhibits as presumptively authentic.

With the voters' registration lists from both the CNMI and Palau admitted into evidence, the Plaintiffs then called several witnesses to the stand to testify with regard to their alleged dual registration. The first witness Plaintiffs called in this regard was Henna Arurang. She stated that she is registered to vote on Guam. She also stated that she was born on Guam in 1966, and thus she is a citizen of the United States.⁶ This witness

⁶ The Court notes that Ms. Arurang's name appeared in Plaintiffs' list of alleged non-citizens marked exhibit O. However it was demonstrated by her testimony that Ms. Arurang is,

could not remember who registered her to vote, however upon questioning from the Plaintiffs, she indicated that she thought his name was Frank. Moreover, Plaintiffs asked her if she thought the person who registered her was Frank Acfaji and the witness indicated that she thought it was.

Ms. Arurang also stated that she did not remember whether her registrar asked her if she was registered to vote anywhere else, however she did state when shown exhibit P9, the voter registration cancellation form, that she had never seen it before. She also stated that she was registered to vote in Palau and further that she did vote in the 1996 election in Palau.

Plaintiffs then asked this witness who she cast her vote for in the November 3, 1998 election with regard to the office of Governor/Lieutenant Governor, and the Defendants posed an objection. Defendants argued that it had not been demonstrated that this voter had cast an illegal ballot, and thus the secrecy of the ballot still applied in her case. Plaintiffs argued that by virtue of the fact that she was registered to vote in another jurisdiction, this rendered her vote illegal, and therefore the presumption of secrecy did not apply. After taking a brief recess to consider the matter, Court found that this witness had cast an illegal ballot due to the fact that she was still registered to vote in Palau. The Court then directed the witness to answer the question, and she indicated that she had voted for the

in fact, a citizen of the United States.

Defendants, Gutierrez/Bordallo.

The next witness Plaintiffs called in this regard was Mr. Ichiro Blailes⁷. He stated that he has lived in Guam since he graduated from GW highschool in 1954. He further testified that he is a citizen of the United States, and has been since 1956. Mr. Blailes was also asked about whether he was registered to vote in Palau. He indicated that he was not sure and that he could not remember whether or not he had voted in the 1996 election in Palau. Plaintiffs Counsel informed Mr. Blailes that his name was on the master voters list for Palau, however he stated that he had no idea whether he had registered there.

Mr. Blailes was also questioned with regard to exhibit P9, the voters' registration cancellation card. He testified that he did not know whether or not he had ever filled one out and he indicated that his mind and his memory are not as clear as they used to be. Due to the fact that Plaintiffs could not establish as fact that Mr. Blailes had not canceled his voter registration in Palau, they did not ask him the question with regard to who he cast his vote for in the November 3 election. However, Plaintiffs did ask him if he had campaigned for any party, and he stated that he thought he campaigned for Gutierrez.

⁷ Mr. Ichiro Blailes was also on Plaintiffs' list of alleged non-citizens marked as exhibit O. However, clearly from the testimony he presented, he is, in fact, a citizen of the United States.

Plaintiffs next called Haan Blailes⁸ to the stand. He stated that the prior witness is his father and that he lives at home with him. He stated that there are no campaign signs outside of their home. Furthermore, he testified that he is registered to vote in Guam and that he is also registered to vote in Palau. He testified that he registered to vote in Palau absentee and that he has voted in Palau elections before.

Mr. Blailes also stated that he did vote in the November 3 election on Guam and Plaintiffs then asked him who he cast his vote for with regard to the office of Governor/Lieutenant Governor. Over the objection of the Defendants, the Court directed the witness to answer the question, and he indicated that he voted for the Plaintiffs, Ada/Camacho. Plaintiffs then attempted to challenge this witness with regard to his answer, and he stated that while his father may have voted for Gutierrez, he did not.

Plaintiffs next called Ms. Gina Marie Muna to testify in this regard. She stated that she lived in Rota prior to moving to Guam and that she did register to vote in Rota. Furthermore, she stated that when she registered to vote, she went to the Commission's office in the GCIC building, and at that time, no one asked her if she was registered to vote elsewhere. She also stated that she did not fill out the last part of the affidavit of registration with regard to the area the voter last voted in.

⁸ The Court finds noteworthy that Mr. Haan Blailes was also contained on Plaintiffs' list of alleged non-citizens.

Ms. Muna also testified that she did not recognize exhibit P9 and she never filled out any type of cancellation form for her Rota voters' registration.

The Plaintiffs then asked her who she cast her vote for in the November 3 election as to the office of Governor/Lieutenant Governor, and she questioned the Court as to whether she had to answer the question. Over Defendants' objection and based upon its prior ruling, the Court directed the witness to answer, and she indicated that she had voted for Joseph Ada.

Mr. Kenneth Indalecio⁹ was next called to testify with regard to the issue of dual registration. He stated that he is registered to vote in Guam and that he was previously registered to vote in Saipan. He stated that he lived in Saipan in July of 1998. Mr. Indalecio stated that he had never seen exhibit P9 before, however he stated that he had filled out some other form which was on 8" by 11" paper to cancel his Saipan registration. He stated that he never bothered to check to see if his Saipan voters' registration had been canceled, but that he gave the person who registered him to vote this other cancellation form.

Thus, due to the fact that Plaintiffs could not establish that Mr. Indalecio was, in fact, still registered to vote in Saipan, he was not asked who he cast his vote for.

⁹ Mr. Indalecio was listed on Plaintiffs' exhibit O as being a non-citizen of the United States.

The Plaintiffs also called Jesse Ngiratreked¹⁰ to testify as to his dual registration. He stated that he is registered to vote on Guam and that he was registered at his cousin's house. He also stated that there were other people being registered there at that time. Additionally, he stated that he could not remember who registered him to vote.

Mr. Ngiratreked also stated that he was not asked any questions before he registered, specifically with regard to the issue of registration in other jurisdictions. He stated that the registrar did not tell him to vote for any certain candidate, and after questioning by the Plaintiffs, Mr. Ngiratreked stated that he thinks the registrar could have been Frank Acfaji.

This witness also stated that he was not registered to vote in Palau, however Plaintiffs showed him exhibit P5 which is the voting list for Palau and his name appeared therein. He was asked if he had recently visited Palau and whether he had filled out any forms while there, and he indicated that he had, and thus perhaps one of those forms was a voters' registration form.

Plaintiffs then asked Mr. Ngiratreked who he voted for in the November 3 election for the office of Governor/Lieutenant Governor, and the Defendants objected stating that there was no showing by the Plaintiffs that this witness was still registered to vote in Palau. Over the Defendants' objection the Court

¹⁰ Mr. Ngiratreked was listed on Plaintiffs' exhibit O as being a non-citizen, however he testified that he was born on Guam and has lived here his whole life, thus indicating that he is, indeed a citizen.

ordered the witness to answer the question and he indicated that voted for Ada/Camacho.

The next witness to be called by the Plaintiffs was Margarita Mendiola¹¹. She stated that she registered to vote in Guam at the GCIC building some time in 1998, however she did not remember who the registrar was that registered her. She also testified that she was born in Rota and that in 1997 she registered to vote in Rota and did vote in Rota in the 1997 election. She stated that when she registered to vote, the people at the Guam Election Commission did not ask her any questions and instead just told her to sign her name on the form. She stated that she left the section blank with regard to where she last voted.

Ms. Mendiola also stated that she had never seen exhibit P9 and that she did not take any action to cancel her Rota voters' registration. She was then asked who she voted for in the November 3 election, and she stated that she voted for Gutierrez/Bordallo.

Ms. Charleen Aputang¹² was also called by the Plaintiffs to testify with regard to her dual registration. She stated that when she was registered to vote, her registrar did not have her read the entire form and rather simply had her sign her name. She further testified that she previously lived in Rota and that

¹¹ Ms. Mendiola was listed on Plaintiffs' exhibit O as being a non-citizen, however her testimony indicated that she is, in fact, a citizen of the United States.

¹² It is noted that Ms. Aputang was also included on Plaintiffs' list of alleged non-citizens.

she registered to vote while living there. She was asked about exhibit P9, and she stated that she had never seen it before nor had she ever filled such a form out. She also testified that she had taken no action to cancel her Rota voters' registration, and that she had voted while she was in Rota.

Ms. Aputang was then asked who she voted for in the November 3 election, and she stated that she voted for Gutierrez/Bordallo.

The Plaintiffs then called Mr. Hubert Recheungel in order for him to testify as to his dual registration. He stated that he is registered to vote in Guam, that he was born in Palau but that he became a United States citizen on May 1, 1973.¹³ Mr. Recheungel also stated that while he has never registered to vote in Palau, he is aware that his name is on the list of registered voters there. He stated he does not remember registering there, but that he became aware of the fact that he was registered to vote in Palau many years ago, possibly over ten years ago. Furthermore, Mr. Recheungel stated that he has cast absentee ballots in the Palau elections while living on Guam.

He was then asked who he voted for in the November 3 election with regard to the office for Governor/Lieutenant Governor, and he stated that he voted for Gutierrez.

The final witness called by the Plaintiffs to testify with regard to their alleged dual registration was Ms. Minola Reklai.

¹³ The Court notes that Mr. Recheungel was on Plaintiffs' list of alleged non-citizens. However he testified that he obtained his citizenship on May 1, 1973.

She stated that she was born on December 17, 1978¹⁴ on Guam, and that she believes she registered to vote in 1998. She stated she does not know who registered her, but she was registered to vote at her house. She also stated that there was no campaign activity going on at her house at that time. She was then shown exhibit P9 and she stated that she had neither seen nor filled out such a form before. She also testified that she voted in the Palau election in 1996.

Plaintiffs then asked her who she voted for in the November 3 election for the office of Governor/Lieutenant Governor and she stated, over Defendants' objection, that she voted for Gutierrez/Bordallo.

Thus, from the foregoing testimony, it is clear that the Plaintiffs produced ten witnesses who personally testified with regard to their alleged dual registration. Of these ten witnesses, only eight testified that they were, in fact registered to vote in a jurisdiction other than Guam, and thus Plaintiffs were only able to establish that eight of these witnesses cast illegal votes in the November 3 election. Moreover, of these eight illegal votes which Plaintiffs proved were cast in this election, three of the eight indicated that they voted for the Plaintiffs Ada/Camacho and five indicated that they voted for the Defendants Gutierrez/Bordallo.

¹⁴ The Court notes that Ms. Reklai's birthday is listed incorrectly in her affidavit of registration, as she is listed as having a birth date of December 17, 1998. Ms. Reklai is also listed on Plaintiffs' exhibit O as being a non-Citizen, however from her testimony it was indicated that she is, in fact, a citizen of the United States.

Finally, the Court finds it also important to note the testimony of Ms. Urlinda Aguilar¹⁵. She was called to testify by the Plaintiffs and Plaintiffs attempted to demonstrate that she is not a resident for the purpose of voting. Ms. Aguilar did not testify that she was registered to vote in another jurisdiction, however she was asked about her frequent travel to and from the CNMI. She stated that her grandchildren live in Saipan, however she stated that she lives here in Guam. She testified that she owns her own home here in Guam and that while she goes to Saipan every week to babysit her grandchildren, she also testified that she always comes back to Guam on the weekends.

She also testified regarding the travel to Hawaii and to California she does, and in this regard she stated that she goes to visit her brother in Hawaii and other relatives in California. She stated that after each trip, she returns to Guam and then goes to Saipan to see her children and grandchildren.

Thus, from this testimony, Plaintiffs merely established that Ms. Aguilar travels to Saipan with frequency, however they did not prove that she was not a resident of Guam nor was it proven that Ms. Aguilar is not entitled to vote in Guam elections.

3. Summary as to alleged illegal voters

Plaintiffs, in their closing argument, indicated that based upon the testimony which was presented by the foregoing ten

¹⁵ The Court finds it noteworthy that Ms. Aguilar is on Plaintiffs' list of alleged non-citizens, however her testimony indicated that she is a citizen of the United States.

witnesses, that the Court should apportion the alleged illegal votes accordingly. Plaintiffs argued that of the persons who testified as to who they voted for that six persons indicated that they voted for the Defendants and that three indicated that they voted for the Plaintiffs. Additionally, Plaintiffs argued that while Mr. Indalecio did not testify as to who he voted for, he did indicate that he is a democrat. Thus, on this basis, and pursuant to the rule set out in Russel v. McDowell, 23 P. 183 (Cal. 1890), the Plaintiffs argued that this Court should strike the illegal votes on a 7 to three pro rata basis, attributing 7 out of 10 illegal votes to the Defendants. Plaintiff further argued in this regard that the largest number of questionable votes came from those volunteer registrars who were democrats or some how related to the Defendants' campaign.

In considering the Plaintiffs argument in this regard, the Court sees two definite problems with this approach. First, the Court disagrees with Plaintiffs' argument that the illegal votes were shown to be cast in a 7 to 3 ratio. Rather, the Court upon careful review of the testimony and evidence herein, notes that only eight persons testified as to who they voted for. Mr. Indalecio indicated that he had canceled his Saipan voters' registration, and thus he was not required to state who he voted for. Moreover, the Court finds that simply because he stated he was a democrat is in no way proof of the fact of who he voted for. Of additional importance is the fact that Plaintiffs have not proven that Mr. Indalecio's vote was illegal as they were not

able to demonstrate that he is still registered to vote in Saipan.

Similarly, the Court notes that Mr. Ichiro Blailes did not testify as to who he voted for. Mr. Blailes could not remember whether he registered to vote in Palau nor whether or not he ever canceled that registration. Thus, on this basis, Plaintiffs were not able to demonstrate that he had voted illegally. While the Court notes that Mr. Blailes did state that he believed he campaigned for the Defendant, the Court finds that this is not akin to him testifying as to who he cast his ballot for.

Thus, based upon the Court's recollection of the testimony and evidence, even if the Court were to adopt Plaintiffs' approach to apportioning and striking the illegal votes, the Court finds that it would be at a ratio of five to three.

However, having said this, the Court finds that a second problem with Plaintiffs' theory in this regard arises. Plaintiffs argue that based upon a 7 to 3 pro rata basis, this Court should strike the illegal votes. The problem with this theory is that it assumes that Plaintiffs have proven that there are, in fact, illegal votes which have been cast in this election. It is clear from the testimony of the witnesses with regard to dual registration that eight of them cast illegal votes, and thus the Court shall strike these votes, three from the Plaintiffs' side and five from the Defendants'. However beyond this, there has been no direct proof which establishes that any other votes were cast in this election with regard to

the non-citizens and non-residents which were, in fact, illegal. As this Court has previously discussed, Plaintiffs have failed to establish that other than the eight illegal votes addressed herein, there have been any illegal votes cast in this election. Moreover, even assuming Plaintiffs had proven that other illegal votes were cast in this election, Plaintiff has produced no evidence indicating that these votes should be stricken from the Defendants' total,¹⁶ rather than the Plaintiffs'.

In his closing argument, Plaintiffs' Counsel stated that the Plaintiffs believe that the most significant incident of Defendants' wrongful conduct with regard to this election is the registration of the non-citizens and non-residents. However, as has been previously stated, Plaintiffs have wholly failed to prove that any illegal votes were cast in this election other than the eight voters who were dually registered, and the handful of improperly registered absentee voters. The remaining voters alleged to have cast illegal ballots remain just that; allegations of illegal voters. Plaintiffs have relied upon

¹⁶ The Court also finds it important to once again note the fact that out of the ten witnesses who testified with regard to their dual registration, every one of them was listed on Plaintiffs' list of alleged non-citizens, however every one of them provided testimony that they are citizens of the United States. Thus, if this Court were to adopt Plaintiffs' suggestion that the illegal votes be apportioned on a 7 to 3 basis, the Court finds that it could also apportion the alleged illegal non-citizens' votes on a similar basis. Of this group of persons who testified, none of them were found to be non-citizens, even though they were all on the non-citizen list. Thus, to extend Plaintiffs' logic, the Court could take this representative group, apply it to the Plaintiffs' allegations with regard to non-citizens, and find that every person on that list was, in fact, a citizen. The Court has not undertaken to do so, however the flaw in Plaintiffs' rationale is evidenced in this approach to distributing alleged illegal votes.

missing information contained in the AORs, errors with regard to birth dates, and incorrect information with regard to deceased persons voting. Therefore Plaintiffs have not proven that the Defendants registered non-citizens to vote in this election, nor have they proven that the Defendants have registered non-residents to vote.

The Court notes that there is commonly missing information contained in voters' AORs and the Court finds this fact truly troubling, however the fact that there is missing information contained in an individual's affidavit of registration does nothing to prove that the individual is not a citizen or not a resident of Guam. Rather, this missing information merely leads one to question why this information was not contained within the form. It does not however, amount to evidence sufficient to prove the allegations made by the Plaintiffs herein.

Moreover, the Court finds that while Plaintiffs have argued that the most egregious conduct on the part of the Defendants herein is the registration of non-citizens and non-residents, testimony by members of the Guam Election Commission, as well as several of the witnesses who testified that they are dually registered, indicated that the GEC also fails to request the proper information from voters. Both Liz Blas and Henry Torres indicated time and again that if all the necessary information is not provided to the Commission by an applicant, the Commission will generally accept the application on its face.

Moreover both Gina Marie Muna and Margarita Mendiola

~~testified that they registered to vote at the offices of the Guam~~
Election Commission in the GCIC building. Ms. Muna stated that when she registered to vote, no one asked her if she was registered to vote elsewhere, and she also stated that she did not fill in the portion of the form which asked the registrant for information regarding where they last voted.

Similarly, Ms. Mendiola stated that she was only asked for an I.D. card when she registered to vote at the GEC. She also stated that she was told just to sign her name on the form and that she was not told to fill out the form regarding whether she was registered to vote elsewhere.

The Court also again points to the testimony of Mr. Torres and Ms. Blas which indicated that even if the registrant has not provided a passport or other proof of citizenship, or has not provided proof that he or she is a resident, the Commission will accept the affidavits based upon the oaths contained therein.

Therefore, while Plaintiffs argue that somehow the wrongful conduct of these volunteer registrars can be tied to the Defendants in this matter, the Court notes that the conduct of these volunteers was no different than that of the GEC staff.

Plaintiffs' Complaint in this matter alleged that the November 3 General election was plagued with illegal voters, with the Defendants and the Election Commission participating in fraudulent activities and with the Defendants conspiring to obtain illegal votes. As has been stated, it is this Court's opinion that Plaintiffs have fallen far short of their burden of

~~proof in this matter and have failed to prove that there were any~~
illegal votes in this election with the exception of those
specific voters which the Court has already addressed. The Court
notes that the bulk of Plaintiffs' case relies upon the
shortcomings of the Election Commission and of those volunteer
registrar's whose actions have been called into question.

However this Court is mindful of the fact that other Courts have
held that minor problems with the voters' affidavits or
oversights on the part of the registrars will not, in and of
itself, invalidate the results of an election. See Pohlmann v.
Patty, 33 Cal.App. 390, 165 p. 447 (1917); Goss v. Klipfel, 146
P.2d 217 (Colo. 1944); Tuthill v. Rendleman, 56 N.E.2d 375 (Ill.
1944); Huston v. Anderson, 145 Cal. 320, 78 P. 626 (1904) and
Fischer v. Stout, 741 P.2d 217 (Ala. 1987).

The Court finds that Plaintiffs' failure to prove that, with
the exception of the 8 votes which have been deemed to be
illegal, any illegal votes were cast by non-citizens and non-
residents, coupled with their failure to prove any minors cast
illegal ballots in the election or that there was a scheme
wherein deceased persons cast ballots, speaks volumes in this
matter. As is evidenced from a review of the alleged minors who
voted and the deceased persons who allegedly voted, it is evident
that in many cases, Plaintiffs relied upon incorrect information
in reaching these conclusions and in forming these allegations,
and a simple cross check with the persons' birth dates and social
security numbers proves this fact.

Therefore, based upon the foregoing discussion and all of the testimony and evidence which have been presented in this matter, it is the opinion of this Court that Plaintiffs have not met their burden of proof with regard to the alleged illegal votes herein in that Plaintiffs have failed to demonstrate by clear and convincing evidence that there was a significant number of illegal votes cast in this election. Additionally, any votes which have been proven to be illegal are not sufficient in number to affect the outcome of the November 3, 1998 election, as is required by 3 G.C.A. §§12103 and 12104.

BALLOT COUNT DISCREPANCIES

The Plaintiffs, during the trial and in closing arguments, have asked the court to order a recount of the 1998 gubernatorial election. In their moving papers, the affidavit of Douglas Moylan was included. Mr. Moylan attached to his affidavit several exhibits. Exhibit 4 contained the official precinct clearance sheets, EC-42, from each of the 72 voting precincts. EC-42 is a form in which the precinct officials designate the number of voters which have voted in their respective precincts and their count of the total number of ballots cast for the office of Governor/Lt. Governor. Thus, every EC-42 form has two numbers written on it. The first number is supposed to represent the total number of voters who voted in person, plus all the absentee ballots. The second number on the form is a count of all the ballots cast in that precinct. These two numbers must equal each other. If there are more ballots cast than are counted than the

number of individuals who voted, then the precinct officials must randomly take out ballots from the ballot box equal to the number of over ballots counted and those ballots destroyed.

The EC-42 form also shows the order in which the particular precinct arrived at Election Central for tabulation of the votes contained in the ballot boxes. Also attached to Exhibit 4 is the tabulation of the votes for each of the 72 precincts for the offices of Governor/Lt. governor. Each precinct would show the total votes a particular candidate received; the total blank votes cast in that precinct; and the total over-votes and write-in votes cast in that precinct. The exhibit further shows the total votes counted by the machine for that precinct for the said gubernatorial election. When the results were originally reviewed, it created the controversy regarding the ballot discrepancies.

Mr. Moylan's affidavit also contained Exhibit 3. Exhibit 3 contains a precinct by precinct summary of the total votes tabulated by the machine and the total number of voters certified by the precinct officials as having voted.

In order to fully discuss and describe the problems alleged by the Plaintiffs, the Court has created a table which provides the tabulation of the precinct by precinct voting results and the Court has also compared these results with the EC-42 results. The table is shown below, and it is divided into nine columns. The first column is designated "Pcnt" and it represents each one of the 72 precincts. The second column is designated "# Vote" and

this represents the precinct officials' certification in EC-42 as to the number of voters who voted (this number should also include the absentee voters). The third column is designated "Cast B." and represents the precinct officials' certification in EC-42 as to the number of ballots cast in the said precinct. The fourth column is designated "Mach. Ct." and represents the total number of votes tabulated by the machine in each precinct. The fifth column is designated "A-C" and represents the total number of votes received by the Ada-Camacho team in each of the precincts. The sixth column is designated "G-B" and represents the total number of votes received by the Gutierrez-Bordallo team in each of the precincts. The seventh column is designated "W-I" and represents the total number of write-in votes for each of the precincts. The eighth column is designated "BL" and represents the number of blank votes for each precinct. The ninth and last column is designated "OV" and represents the total number of over-votes for each precinct or those votes where marks were placed in the voting squares after the names of both candidates.

Where there was more than one precinct, the totals were shown below the last precinct. The overall totals are listed at the end of the table. After the audit was performed, the total numbers for the candidates changed and those changes are shown at the very end of the table. The voting tabulation results when compared to the EC-42 is summarized as follows:

TABLE A

Pcnt #	Vote	Cast B.	Mach. Ct.	A-C	G-B	W-I	BL	OV
--------	------	---------	-----------	-----	-----	-----	----	----

HAGATNA								
1	623	623	588	313	235	16	20	04
ASAN-MAINA								
2	563	563	563	235	303	09	10	06
2A	<u>564</u>	<u>565</u>	<u>565</u>	<u>236</u>	<u>309</u>	<u>13</u>	<u>07</u>	<u>0</u>
	1127	1128	1128	471	612	22	17	06
PITI								
3	497	497	497	226	247	08	11	05
3A	<u>356</u>	<u>356</u>	<u>356</u>	<u>149</u>	<u>192</u>	<u>08</u>	<u>04</u>	<u>03</u>
	853	853	853	375	439	16	15	08
AGAT								
4	712	712	713	348	326	22	12	05
4A	738	738	736	339	364	17	11	05
4B	737	737	744	358	320	15	47	04
4C	<u>599</u>	<u>599</u>	<u>598</u>	<u>243</u>	<u>249</u>	<u>12</u>	<u>90</u>	<u>04</u>
	2786	2786	2791	1288	1259	66	160	18
SANTA RITA								
5	511	511	510	274	209	20	05	02
5A	659	659	607	330	247	18	10	02
5B	<u>776</u>	<u>776</u>	<u>773</u>	<u>369</u>	<u>343</u>	<u>32</u>	<u>16</u>	<u>13</u>
	1946	1946	1890	973	799	70	31	17
UMATAC								
6	699	699	749	305	400	19	10	15
MERIZO								
7	651	651	657	250	374	21	10	02
7A	<u>652</u>	<u>652</u>	<u>650</u>	<u>241</u>	<u>370</u>	<u>29</u>	<u>05</u>	<u>05</u>
	1303	1303	1307	491	744	50	15	07
INARAJAN								
8	711	711	612	266	324	13	04	05
8A	521	521	521	199	303	11	03	05
8B	<u>709</u>	<u>709</u>	<u>737</u>	<u>286</u>	<u>421</u>	<u>14</u>	<u>04</u>	<u>12</u>
	1941	1941	1870	751	1048	38	11	22
TALOFOFO								
9	709	709	734	338	361	22	09	04
9A	<u>844</u>	<u>844</u>	<u>845</u>	<u>404</u>	<u>402</u>	<u>20</u>	<u>16</u>	<u>03</u>
	1553	1553	1579	742	763	42	25	07
YONA								
10	842	842	842	397	396	26	12	11
10A	881	881	881	416	404	38	18	05
10B	<u>772</u>	<u>772</u>	<u>773</u>	<u>362</u>	<u>364</u>	<u>28</u>	<u>19</u>	<u>00</u>

	2495	2495	2496	1175	1164	92	49	16
			CHALAN PAGO-ORDOT					
11	804	804	804	379	369	12	38	06
11A	813	813	809	351	419	23	08	08
11B	<u>611</u>	<u>611</u>	<u>610</u>	<u>307</u>	<u>263</u>	<u>18</u>	<u>19</u>	<u>03</u>
	2228	2228	2223	1037	1051	53	65	17
			SINAJANA					
12	589	589	591	283	283	12	11	02
12A	584	584	584	304	246	15	17	02
12B	<u>685</u>	<u>685</u>	<u>682</u>	<u>343</u>	<u>307</u>	<u>18</u>	<u>12</u>	<u>02</u>
	1858	1858	1857	930	836	45	40	06
			AGANA HEIGHTS					
13	554	554	553	182	344	13	12	02
13A	537	537	540	151	358	17	09	05
13B	<u>557</u>	<u>557</u>	<u>556</u>	<u>150</u>	<u>303</u>	<u>15</u>	<u>87</u>	<u>01</u>
	1648	1648	1649	483	1005	45	108	08
			MONGMOMG-TOTO-MAITE					
14	636	636	635	309	285	25	13	03
14A	768	768	770	355	381	19	08	07
14B	<u>715</u>	<u>715</u>	<u>715</u>	<u>383</u>	<u>288</u>	<u>23</u>	<u>13</u>	<u>08</u>
	2119	2119	2120	1047	954	67	34	18
			BARRIGADA					
15	780	780	779	280	335	23	138	03
15A	767	767	767	375	346	25	18	03
15B	710	710	710	340	337	15	12	06
15C	<u>879</u>	<u>879</u>	<u>880</u>	<u>367</u>	<u>402</u>	<u>24</u>	<u>84</u>	<u>03</u>
	3136	3136	3136	1397	1385	87	252	15
			MANGILAO					
16	992	992	992	450	484	22	22	14
16A	784	784	782	317	417	25	14	09
16B	831	831	833	372	412	31	14	04
16C	<u>875</u>	<u>875</u>	<u>874</u>	<u>398</u>	<u>421</u>	<u>29</u>	<u>16</u>	<u>10</u>
	3482	3482	3481	1537	1734	107	66	37
			TAMUNING					
17	512	512	510	238	227	14	23	08
17A	488	488	489	265	191	15	09	09
17B	484	484	484	231	223	06	12	12
17C	507	507	506	238	239	11	14	04
17D	660	660	660	330	291	13	15	11
17E	514	514	514	239	251	09	08	07
17F	590	590	588	271	275	17	18	07
17G	<u>484</u>	<u>484</u>	<u>483</u>	<u>228</u>	<u>234</u>	<u>05</u>	<u>09</u>	<u>07</u>

	4239	4239	4234	2040	1931	90	108	65
DEDEDO								
18	680	680	680	260	367	11	13	29
18A	817	817	817	311	440	14	16	36
18B	775	775	775	324	397	23	15	16
18C	667	667	665	275	343	16	19	12
18D	741	741	744	275	343	32	16	20
18E	638	638	638	257	337	17	12	15
18F	755	755	755	317	392	13	20	13
18G	678	678	742	333	371	14	09	15
18H	643	643	565	226	303	17	14	05
18I	920	920	919	335	521	28	23	12
18J	587	587	586	214	333	11	16	12
18K	678	678	680	281	357	20	13	09
18L	745	745	744	298	395	17	19	15
18M	653	653	653	264	352	11	08	18
18N	<u>689</u>	<u>689</u>	<u>689</u>	<u>274</u>	<u>376</u>	<u>15</u>	<u>09</u>	<u>15</u>
	10666	10666	10652	4244	5685	259	222	242
YIGO								
19	606	606	604	246	316	16	15	11
19A	671	671	671	247	377	19	16	12
19B	825	825	827	329	438	24	12	24
19C	710	718	717	258	416	16	13	14
19D	644	644	642	265	335	22	06	14
19E	<u>452</u>	<u>452</u>	<u>451</u>	<u>203</u>	<u>233</u>	<u>10</u>	<u>02</u>	<u>03</u>
	3908	3916	3912	1548	2115	107	64	78
	48610	48619	48515	21147	24159	1291	1312	606

CHANGES AFTER AUDIT REPORT

48666	21200	24250	1294	1313	609
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In reviewing the totals above, the court finds that only 23 precincts out of a total of 72 precincts had numbers which tallied, i.e. where the number voted (Column 1) equaled the cast ballots or votes cast (Column 2) and the votes counted by the machine (Column 3). These were precincts 2 in Asan-Maina; 3 and 3A in Piti; 8A in Inarajan; 10 and 10A in Sinajana; 11 in Chalan Pago-Ordot; 12A in Sinajana; 14B in Mong-mong-Toto-Maite; 15A and

15B in Barrigada; 16 in Mangilao; 17B, 17D and 17E in Tamuning; 18, 18A, 18B, 18E, 18F 18M and 18N in Dededo; and precinct 19A in Yigo. The other 49 precincts showed some discrepancy. In Precinct 2A in Asan-Maina, the court notes that the number of votes counted by the precinct officials as cast (565) equals the number of machine tabulated votes, also 565 votes. With regard to the other 48 precincts, there were over-counts in 18 precincts and under-counts in 30 precincts. These are summarized as follows:

TABLE B

UNDER-COUNTS				OVER-COUNTS			
Prct.	Cast B.	M. Ct.	Diff.	Prct.	Cat B.	Mach.Ct	Diff.
1	623	588	-35	4.	712	713	+ 1
4A	738	736	- 2	4B	737	744	+ 7
4C	599	598	- 1	6	699	749	+50
5	511	510	- 1	7	651	657	+ 6
5A	659	607	-52	8B	709	737	+28
5B	776	773	- 3	9	709	734	+25
7A	652	650	- 2	9A	844	845	+ 1
8	711	612	-99	10B	772	773	+ 1
11A	813	809	- 4	12	589	591	+ 2
11B	611	610	- 1	13A	537	540	+ 3
12B	685	682	- 3	14A	768	770	+ 2
13	554	553	- 1	15C	879	880	+ 1
13B	557	556	- 1	16B	831	833	+ 2
14	636	635	- 1	17A	488	489	+ 1
15	780	779	- 1	18D	741	744	+ 3
16A	784	782	- 1	18G	678	742	+64
16C	875	874	- 1	18K	678	680	+ 2
17	512	510	- 2	19B	<u>825</u>	<u>827</u>	<u>+ 2</u>

17C	507	506	- 1	12847	13048	+201
17F	590	588	- 2			
17G	484	483	- 1			
18C	667	665	- 2			
18H	643	565	-78			
18I	920	919	- 1			
18J	587	586	- 1			
18L	745	744	- 1			
19	604	602	- 2			
19C	718	717	- 1			
19D	644	642	- 2			
19E	<u>452</u>	<u>451</u>	<u>- 1</u>			
	19637	19332	-305			

Because of the discrepancies which resulted after the final counts were performed, the GEC Board directed an audit of the 49 precincts. The Executive Director, Henry Torres, provided an audit to the Board in a memorandum, dated November, 12, 1998. He explained therein that there were three precincts in which the ballots were not cast. He summarized a common discrepancy and described it as a machine count problem showing undercounts and over counts of ballots and precinct officials miscounting the number of signatures on the Voter Signature Roster.

At the trial herein, Mr. Torres testified that the audit was performed with the GEC staff in the presence of representatives of both political parties. In the course of the audit, 35 absentee ballots were found in Precinct 1 in Hagatna which were recorded in the Voter Signature Roster but were not cast. In Precinct 8 in Inarajan, there were 100 ballots which were placed in an envelope marked USED BALLOTS and taped together with the

UNUSED BALLOT ENVELOPES containing the unused ballots. In Precinct 18G in Dededo, there were 16 absentee ballots recorded on the Voter Signature Roster, but not cast. Thus 151 more ballots were counted and added to the total counts previously determined. The additional ballots increased the total votes tabulated from 48,515 to 48,666. It also increased the votes of the Ada-Camacho team from 21,147 to 21,200; the Gutierrez-Bordallo team from 24,159 to 24,250; it increased the number of write-ins from 1,291 to 1,294; the blank votes from 1,312 to 1,313; and the over votes from 606 to 609. These changes are also reflected on the table set forth above.

In Hagatna, the machine counted only 588 votes from a total cast of 643. Testimony was presented which indicated that 35 absentee ballots were found in the ballot box, recorded on the Voter Roster, but not cast. This number would satisfactorily explain the under-count of 35 votes, which is precisely that number. Counsel for Plaintiffs was able to point out during questioning that P3-1 (the Voter Signature Roster Control) seemed to showed 34 absentee ballots to be cast rather than 35. The Court notes in reviewing the evidence that in P7, the "Absentee Ballot " listing, there were only 33 ballots noted as having been received. In Exhibit P3-1, the Voter Signature Roster count indicated 34 voting by absentee. The Court has also noted that a voter, by the name of Denise Toves, is shown in Exhibit P7 in precinct 1 to have had a ballot mailed to her on September 27, 1998 with no indication that the ballot was ever received. This

individual, however, is shown in Exhibit P3-1, as having voted and as signing the voter roster.

In precinct 2A, it was indicated that the precinct officials miscounted the Voter Signature Roster by one. This would explain the difference of one in the number who voted versus ballots cast and counted. This explanation would satisfy the discrepancy as it relates to Precinct 2A and the entire Asan-Maina district.

In Agat, Precinct 4A and 4C under-counted a total of three ballots and Precinct 4 and 4B over-counted eight ballots, an overall difference of 3 more ballots over-counted. With regard to Precinct 4A, there was a finding that the precinct officials miscounted the Voter Signature Roster by one, thus the under-count total for that precinct was just one ballot, rather than two as shown on the table. There was a general finding that precinct officials miscounted the Voter Signature Roster for precincts 4 and 4B. This finding appears to explain the over-count of eight ballots in both these precincts as there was no finding of an over or under count. It was noted that Precinct 4C had an undercount of one ballot. In reviewing the audit report, the Court finds there was an under-count of one ballot each for precinct 4A and 4C which has not been satisfactorily explained.

In Santa Rita, Precinct 5 showed an under count of 1 ballot; precinct 5A of 52 ballots; and precinct 5B of 3 ballots, or a total of 56 under count ballots. With regard to precinct 5, the audit acknowledged that there was an under count of 1 ballot in that precinct. With regard to precinct 5A, the audit reported

thereby resulting in an over count of one ballot. The audit further reported that precinct officials miscounted the voting signature roster. This explanation explains the discrepancy in the under count and the Court is satisfied that there is no discrepancy in this precinct. The audit report, however, acknowledged the over count of 28 ballots in precinct 8B. The Court therefore finds an over count of 28 ballots in precinct 8B.

In Talofofo, precinct 9 showed an over count of 25 ballots and precinct 9A showed an over count of 1 ballot for a total of 26 over count ballots. The audit reported that in precinct 9, the precinct officials miscounted the voter signature roster and overall there was a discrepancy of only one over count vote. With regard to precinct 9A, it reported the finding with regard to the precinct 6 ballot. To verify the accuracy of the audit report in relation to precinct 9, the Court reviewed Exhibit P3-9, the "Voter Signature Roster Control" for precinct 9. After reviewing the said exhibit, the Court finds that the ballots of 24 absentee voters were not counted in the total 709 voters certified by the precinct officials. These absentee voters were included in pages 803, 808, 811, 812, 815, 819, 823, 824, 829, 830, 835, 836, 840, 843, 844, 847, 849 and page 853 but not included in the overall count. In making this finding, the Court also notes that the certification at the end of the exhibit contains language that "We attest the following that 709 voters signed the roster and voted this 3rd day of November, 1998 for the general election." The precinct officials then attest to the

numbers reached. The Court has observed that in failing to include the absentee voters, the officials may have been confused with the certification language since it may be read as applying only to those who have signed the roster. Their count in that regard may appear to be correct. With the addition of 24 names to the voting roster, the over count ballots is reduced to 1 ballot only. The audit explanation for precinct 9A satisfies the discrepancy with regard to that precinct. The Court therefore finds that with regard to precinct 9, there is 1 over count which has not been satisfactorily explained.

In Yona, precinct 10B reported an over count of 1 ballot and the audit report confirms this over count. The Court therefore makes a finding that there was a 1 ballot over count in the district of Yona in precinct 10B.

In Chalan Pago-Ordot, precinct 11A reported an under count of 4 ballots and precinct 11B with one under count, for a total of 5 under count ballots. With regard to precinct 11A, the audit found that 4 rejected absentee ballots were counted on the voting roster and the deletion of those ballots would place the total votes cast at 809 cast votes, equaling the number of machine counted ballots of 809. In precinct 11B, precinct officials counted a double signature, the deletion of which would place the total number of voters voting at 610, equaling the number of ballots counted by the machine of 610 ballots. The Court therefore finds that in the district of Chalan Pago-Ordot, there is no discrepancy.

In Sinajana, precinct 12 reported an over count of 2 ballots and precinct 12B, an under count of 3 ballots. The audit report for precinct 12B stated that one ballot contained a mis-precinct, which was coded for precinct 12. Thus adding one more ballot to that precinct total would reduce the total under count for precinct 12B to 2 ballots and would further reduce the over count in precinct 12 to 1 ballot. The Court therefore finds that in the district of Sinajana, there is an over count of 1 ballot in precinct 12 and an under count of 2 ballots in precinct 12B; a discrepancy which has not satisfactorily been explained.

In Agana Heights, the tabulation for precinct 13 and 13B both indicated an under count of 1 ballot each and precinct 13A, with an over count of 3 ballots. The audit reported that there was a mis-precinct ballot in precinct 13 where a ballot was coded with a precinct 14A code. Adding that ballot to the under count in precinct 13 would equalize the number of votes cast and the number of machine counted ballots at 554, so there is no discrepancy in this precinct. With regard to precinct 13B, the audit reported that the precinct officials miscounted the voting roster and thus there was no under count. The audit, however, acknowledged the over count of 3 ballots in precinct 13A. Pursuant to these findings, the Court therefore finds that there is no discrepancy in precincts 13 and 13B and there is no under count in these two precincts. The Court further finds that precinct 13A contains 3 over count ballots, the discrepancy of which has not been satisfactorily explained.

In Mongmong-Toto-Maite, the tabulation showed that precinct 14 contained 1 under count ballot and precinct 14A contained an over count of 2 ballots. The audit reported that in precinct 14, the precinct officials miscounted the Voter Signature Roster and when that is taken into account, there is no discrepancy in the purported 1 ballot under count. Precinct 14A reported 2 over count ballots and when that number is reduced by 1 ballot (see mis-precinct in precinct 13), the final over count is 1 ballot. The Court therefore finds that in the district of Mongmong-Toto-Maite, there is no discrepancy in precinct 14 and further finds that there is an over count of 1 ballot in precinct 14A.

In Barrigada, the tabulation showed a 1 ballot under count in precinct 15 and also a 1 ballot over count in precinct 15C. With regard to precinct 15, the audit found that the precinct officials miscounted the Voter Signature Roster and this miscount would equalize the number of votes cast and the number of ballots counted by the machine for this precinct at 779. The audit acknowledged an over count of 1 ballot in precinct 15C. With these findings, the Court concludes that in the district of Barrigada, there is no discrepancy in the totals with regard to precinct 15, and further concludes that there is an over count of 1 ballot in precinct 15C, a discrepancy which has not been satisfactorily explained.

In the district of Mangilao, the tabulation showed that precinct 16A had 2 under count ballots; precinct 16C had 1 under count ballot; and precinct 16B had 2 over count ballots. The

audit confirmed these discrepancies. The Court therefore finds that in the district of Mangilao, precinct 16A had 2 under count ballots; precinct 16C had 1 under count ballot; and precinct 16B had 2 over count ballots, discrepancies which have not adequately been explained.

In Tamuning, the tabulation showed that precinct 17 had 2 under count ballots; precinct 17C had 1 under count ballot; precinct 17F had 2 under count ballots; precinct 17G had 1 under count ballot and precinct 17A had 1 over count ballot. The audit reported that precinct 17A contained one more ballot than the number of voters who voted. It also reported that precinct officials miscounted the Voter Signature Roster and confirmed an under count of 1 ballot. The audit further confirmed the discrepancies noted in precincts 17, 17C, and 17F. The Court therefore finds that in the district of Tamuning, that precinct 17 had 2 under count ballots; precinct 17C had 1 under count ballot; precinct; precinct 17F had 2 under count ballots; precinct 17G had 1 under count ballot; and precinct 17A had 1 over count ballot; discrepancies that have not been adequately explained.

In Dededo, the tabulation showed that precinct 18C had 2 under count ballots; 18H had 78 under count ballots; 18I had 1 under count ballot; 18J had 1 under count ballot; 18L had 1 under count ballot; 18D had 3 over count ballots; 18G had 64 over count ballots; and 18K had 2 over count ballots. With regard to precinct 18D, the audit reported that it contained one mis-

precinct which did not register at its respective precinct; that a voter had cast both his spoiled and good ballot in the ballot box, and it concluded that there was a machine over count of 2 ballots.

With regard to precinct 18G, the audit reported 16 absentee ballots which were recorded on the Voting Signature Roster, but not cast; that 76 ballots were found with precinct 18H; and the audit further concluded that there was a machine under count of 1 ballot. With regard to precinct 18H, the audit reported 76 mis-precincts ballots which should have been allocated to this precinct and concluded that there was a machine under count of 2 ballots. The audit acknowledged the under counts in precincts 18C, 18I, 18J, and 18L. The audit also found that in precinct 18K, the officials miscounted the Voter Signature Roster and there was no discrepancy in the over count initially shown as 2 ballots.

In reviewing the audit report as it relates to precinct 18G, the Court finds that there were 16 ballots which were not cast which must be added to the machine count of 742. When the 16 ballots are added, the total comes to 758. The Court also finds that the 76 ballots which should properly be tabulated with precinct 18H should be subtracted from this total. When subtracted, it leaves 682 votes as the total ballots counted by the machine; thus leaving an over count of 4 ballots (682 less 678). The Court therefore finds that in precinct 18G, there is a total of 4 over count ballots.

Additionally, in reviewing precinct 18H, the Court finds that 76 ballots added to the 565 machine counted ballots leaves a total of 641 ballots, 2 ballots less than the total ballots cast. The Court therefore finds that there is an under count of 2 ballots in precinct 18H. In further reviewing the report, the Court finds that there is no discrepancy in precinct 18K and in precinct 18C, there was an under count of 2 ballots; in precinct 18I, there was an under count of 1 ballot; in precinct 18J, there was an under count of 1 ballot; and in precinct 18L, there also was an under count of 1 ballot.

In Yigo, the tabulation showed that there was an under count in precinct 19 by 2 ballots; precinct 19C had an under count of 1 ballot; precinct 19D had an under count of 2 ballots; and precinct 19B had an over count of 2 ballots. The audit reported that precinct 19 contained three mis-precincts, which were coded with precinct 19A ballots and there was an over count of 1 ballot. The audit also reported that eight signatures were not counted in the Voting Roster in precinct 19C and there was a machine under count of 1 ballot. The audit also confirmed the discrepancies in the other precincts. With these findings in mind, the Court finds that in Yigo, precinct 19 had 1 over count ballot; precinct 19B had an over count of 2 ballots; precinct 19C had an under count of 1 ballot; precinct 19D had an under count of 2 ballots; and precinct 19E had an under count of 1 ballot.

Having made the foregoing findings, the Court concludes that all together, there were a total of 34 under count ballots and a

total of 51 over count ballots for all of the precincts. These findings are reflected in the changes made to the under/over count (Table B) and are incorporated and summarized below. In order to account for mis-precinct ballots, these ballots have been added to the totals of the machine counted ballots in the precincts to which they belong, and this reflects that these ballots do indeed belong to that specific precinct. These ballots have also been subtracted from the original precincts in which they were included. These inclusions and deletions in the machine counted ballots are apparent in precincts 5A, 18G, and 18K. The findings and conclusions of this Court appear in the final summary as shown below in Table C:

TABLE C

UNDER-COUNTS				OVER-COUNTS			
Prct.	Cast B.	M. Ct.	Diff.	Prct.	Cast B.	Mach.Ct	Diff.
1	623	623	- 0	4.	713	713	+ 0
4A	737	736	- 1	4B	744	744	+ 0
4C	599	598	- 1	6	699	700	+ 1
5	511	510	- 1	7	651	657	+ 6
5A	659	656	- 3	8B	709	737	+28
5B	776	773	- 3	9	733	734	+ 1
7A	652	650	- 2	9A	845	845	+ 0
8	711	711	- 0	10B	772	773	+ 1
11A	809	809	- 0	12	589	590	+ 1
11B	610	610	- 0	13A	537	540	+ 3
12B	685	683	- 2	14A	768	769	+ 1
13	553	553	- 0	15C	879	880	+ 1
13B	556	556	- 0	16B	831	833	+ 2
14	635	635	- 0	17A	488	489	+ 1
15	779	779	- 0	18D	741	744	+ 3

16A	784	782	- 2	18G	678	682	+ 4
16C	875	874	- 1	18K	680	680	+ 0
17	512	510	- 2	19	604	605	+ 1
17C	507	506	- 1	19B	<u>825</u>	<u>827</u>	<u>+ 2</u>
					13,486	13,542	+56
17F	590	588	- 2				
17G	484	483	- 1				
18C	667	665	- 2				
18H	643	641	- 2				
18I	920	919	- 1				
18J	587	586	- 1				
18L	745	744	- 1				
19C	718	717	- 1				
19D	644	642	- 2				
19E	<u>452</u>	<u>451</u>	<u>- 1</u>				
	19,023	18,990	- 33				

When making a comparison between the difference in the total of over counts and under counts, the Court notes that the deviation represents 23 ballots. The Court can only speculate as to the reasons why these ballots do not tally. It could have been human error in the counting of voter signatures in the signature roster, or it could have resulted from the failure to count absentee ballots submitted to the precincts as was the case in precinct 9 in Talofoto. The Court notes that these precinct officials had been working for at least 13 hours when the polls closed and they began their tabulation of the voting roster. One does not expect a clear focused mind at that point in time. While one can understand the reasons for an under count, Plaintiffs vigorously question how over counts are possible and analogize the situation to feeding 25 documents into a copying

machine and coming out with 30 copies rather than the 25 put in to be reproduced. The problem with this analogy is that the number of ballots are not clearly determined when put into the voting machine for tabulation. Again as in precinct 9, 24 of the 25 over counts have been explained as the failure of the precinct officials to include the absentee ballots in the total votes cast block. There has also been testimony that the post office box of the GEC is checked at or before 8:00 p.m., and all absentee ballots in the postal box at that point in time are taken to election central and are counted. Thus, this procedure may also lead to over counts in ballots as these ballots are placed in the precinct boxes in which the voter is registered and the opportunity to include their numbers in the EC-42 is not possible if these numbers are tabulated at the voting precincts.

While the Court finds that these numbers have not been fully and satisfactorily explained, a deviation of 23 ballots compared to the total number of ballots counted of 48,666 ballots, does not have a significant effect on the election results. As Joseph Duenas stated, we can never have a "perfect election" where every item corresponds accordingly and the votes are 100% accounted for. What remains clear and without doubt, is the fact that the difference of 23 ballots in the over and under count totals does not have an effect on the outcome of the election.

THE "MISSING VOTES" AND REQUEST FOR A RECOUNT

Douglas Moylan was called to the stand to testify in this trial. He stated he was an Election Commission member and also

legal counsel to the 25th Guam Legislature. During his testimony, he voiced his concerns that the tabulation results may not have been accurate. He stated that one of the scanners had broken down during the tabulation and was shut down. He also testified that a power "glitch" or "brown out" may have affected the accuracy of the count. He stated that the first "run" announced that evening showed Gutierrez-Bordallo with 5,724 votes and Ada-Camacho with 5,613 votes, a difference of only 111 votes. This first run represented a count from 24 of the 72 voting precincts.

Additionally, a second "run" announced that Gutierrez-Bordallo had 19,656 votes and Ada-Camacho had 18,218 votes, a difference of 1,438 votes. The second run represented 51 of the 72 voting precincts. Later on during the telecast of the election results, it was reported in the media that the computer made an error in the total counts for the gubernatorial candidates. Mr. Moylan also testified that Joseph Duenas, the Commission's Vice-Chairman, explained the error in tabulation by the machine. He testified that the error caused different numbers to be announced in the tabulation results for the first 51 precincts. The revised tabulation for 51 of 72 precincts showed that Gutierrez-Bordallo had 13,932 votes while Ada-Camacho had 12,605 votes, a difference of 1,327 votes. As noted, this count represented 51 of the 72 voting precincts. The total votes for the two candidates as announced on KUAM TV was 26,537 votes.

Mr. Moylan was then asked by Plaintiffs Counsel to refer to

the official results from the voting precincts and to count the total number of write-in, blank and over-votes. It was stated that there were 1,294 write-in votes, 1,313 blank votes and 609 over-votes. Mr. Moylan was then asked to refer to his affidavit which was attached to Plaintiffs' motion for recount, and determine the order in which the precincts came in at election central for the voting tabulation. Once he had made this determination that the precincts that came in (52 to 72), he was asked to refer to the EC-42 and tally the votes cast in those precincts. He reported those precincts and gave their final vote count as shown on Table D. The table therefore shows that precinct 19D was the 52nd precinct to report; 19E was the 53rd precinct to report and it also shows the total cast votes from these precincts as shown in the EC-42 form. The order in which these precincts came in and the number of votes cast as taken from the EC-42 is summarized below:

TABLE D

52.	Precinct 19B	Yigo	825 cast ballots
53.	Precinct 19E	Yigo	452 cast ballots
54.	Precinct 15C	Barrigada	879 cast ballots
55.	Precinct 18A	Dededo	817 cast ballots
56.	Precinct 15B	Barrigada	710 cast ballots
57.	Precinct 18	Dededo	680 cast ballots
58.	Precinct 7A	Merizo	652 cast ballots
59.	Precinct 7	Merizo	651 cast ballots
60.	Precinct 16B	Mangilao	831 cast ballots
61.	Precinct 19D	Yigo	644 cast ballots

62.	Precinct 4	Agat	712 cast ballots
63.	Precinct 16A	Mangilao	784 cast ballots
64.	Precinct 4B	Agat	737 cast ballots
65.	Precinct 4C	Agat	599 cast ballots
66.	Precinct 4A	Agat	738 cast ballots
67.	Precinct 11A	C-P-O	813 cast ballots
68.	Precinct 11	C-P-O	804 cast ballots
69.	Precinct 11B	C-P-O	611 cast ballots
70.	Precinct 19C	Yigo	718 cast ballots
71.	Precinct 2	Asan-Maina	563 cast ballots
72.	Precinct 2A	Asan-Maina	<u>565 cast ballots</u>
			14,785 cast ballots

He was then asked to determine the total number of all those votes cast. In doing so, he responded that the votes added up to a total of 14,785 votes. The witness was then asked to add the total of those votes to the total combined votes for the Ada-Camacho and Gutierrez-Bordallo teams as reported in the media report for the second "run" and to add to those totals the GEC certified total number of write-in votes; the GEC certified total number of blank votes and the GEC certified total number of over votes. Once he completed his math calculations, he was asked his opinion about the vote counts. In response thereto, he stated that there were approximately 4,128 missing votes. It is this testimony of approximately 4,128 missing votes that again lead to a request for a recount and the court's ruling that it would wait until the conclusion of the presentation of the evidence to make a determination with regard to the recount issue. The contention by Plaintiffs is as follows:

TABLE E

13,932	Gutierrez-Bordallo Votes from Media Report
<u>+12,605</u>	Ada-Camacho Votes from Media Report
26,537	Total Votes 51 of 72 Precincts Reporting
1,313	Certified Blank Ballots
+1,294	Certified Write-In Ballots
<u>+ 609</u>	Certified Over-vote Ballots
3,216	Certified Blank, Write-In & Over-votes
26,537	Combined Gubernatorial votes after 51 precincts
<u>+3,216</u>	Total Certified Blank, Write-In & Over votes
29,753	Total Votes
48,666	Total Ballots counted in the General Election
<u>- 29,753</u>	Combined Gubernatorial & certified blank votes etc
18,913	Total of Remaining Ballots
18,913	Total Remaining Ballots
<u>- 14,785</u>	Total votes from remaining precincts (52 thru 72)
4,128	Missing Ballots

In response to this testimony, the Defendants called to the stand Joseph T. Duenas, the GEC Vice-Chairman. Mr. Duenas was shown Exhibit K, and this exhibit represented the computer printout which was used by the media to report the tabulation for the first 51 precincts. The witness was questioned regarding the results of the 51 of 72 precincts which were reflected in this report. He stated that he compared the final election results with those set forth in computer printout and the media report and stated that none of the 51 precincts' final totals were the same as what had been shown in the computer printout or media report.

The computer printout, which was reported by the media as representing 51 out of 72 precincts then reporting, is tabulated

below in Table F and shows all the 51 precincts which were included therein and the votes tabulated at the time the report was announced. The Court, in light of Mr. Duenas' testimony, has shown the final vote count by the machine in each of those precincts and the difference in the votes as reported in the second run and the final computer counted votes. These results are summarized below:

TABLE F

	Precinct	Count	Final Count	Difference
1	Hagatna	564	588	- 24
3	Piti	479	497	- 18
3A	Piti	345	356	- 11
4	Agat	680	713	- 33
4B	Agat	682	744	- 62
4C	Agat	562	598	- 36
5A	Santa Rita	573	607	- 34
5B	Santa Rita	728	773	- 45
6	Umatac	703	749	- 46
7	Merizo	614	657	- 43
7A	Merizo	613	650	- 37
8A	Inarajan	478	521	- 43
9	Talofofo	704	734	- 30
9A	Talofofo	798	845	- 47
10A	Yona	820	881	- 61
10B	Yona	731	773	- 42
13	Agana Heights	521	553	- 32
14	M-T-M	594	635	- 41
14A	M-T-M	2	770	-768
14B	M-T-M	670	715	- 45
15	Barrigada	2	779	-777
15A	Barrigada	737	767	- 30
15B	Barrigada	668	710	- 42
16	Mangilao	920	992	- 72
16A	Mangilao	734	782	- 48
16B	Mangilao	781	833	- 52
16C	Mangilao	626	874	- 48

17	Tamuning	487	510	- 23
17A	Tamuning	461	489	- 28
17B	Tamuning	450	484	- 34
17C	Tamuning	477	506	- 29
17D	Tamuning	625	660	- 35
17E	Tamuning	484	514	- 30
17F	Tamuning	545	588	- 43
17G	Tamuning	460	483	- 23
18	Dededo	733	817	- 84
18B	Dededo	713	775	- 62
18C	Dededo	614	665	- 51
18D	Dededo	2	744	-742
18E	Dededo	585	638	- 53
18F	Dededo	1	755	-754
18G	Dededo	70	742	-672
18H	Dededo	524	565	- 41
18J	Dededo	538	586	- 48
18K	Dededo	635	680	- 45
18L	Dededo	688	744	- 56
18M	Dededo	578	653	- 75
19	Yigo	558	604	- 46
19A	Yigo	608	671	- 63
19B	Yigo	1	827	-826
19D	Yigo	<u>588</u>	<u>642</u>	<u>- 54</u>
		27954	34438	-6484

After this second "run" was reported, the computer printout showed the total ballots counted as 27,954. The reported combined totals for the two gubernatorial teams were 26,537 (13,932 + 12,605). The difference in the two totals may be from the blank, write-ins, and over votes that were not yet tabulated.

Having considered all of the evidence as it relates to the request for a recount, the Court concludes that the Plaintiffs' contention is not well founded at all, based upon the evidence and testimony presented. As Table F shows, there were 51 precincts that were reported in the media in the second "run",

but none of them had final voting results.

In the presentation of Mr. Moylan's testimony before the court, Plaintiffs' Counsel and Mr. Moylan assumed that precinct returns are tabulated in the order in which they arrive at election central; thus assuming the first precinct to arrive is first tabulated and so forth down the line. The evidence reveals however, that this is far from the case. In the Moylan presentation, Plaintiffs' Counsel and Mr. Moylan assumed that precinct 19B which was precinct #52 to report would be the 52nd precinct to be counted. Similarly, they assumed that precinct 15B in Barrigada, which was the 56th precinct to report would be the 56th precinct to be counted. In fact, the evidence reveals otherwise.

The evidence reveals that eleven (11) of the precincts which Plaintiffs included in their analysis as representing the final 21 precincts to be counted, (precincts 52 through 72), in the voting tabulation, were in fact, part of the 51 out of 72 precincts reporting when the second "run" was announced. These precincts are identified in Table G below. Table G shows the precincts Plaintiffs included in their analysis but actually included in the first 51 precincts reporting. They are shown below:

TABLE G

52.	Precinct 19B	Yigo
56.	Precinct 15B	Barrigada
57.	Precinct 18	Dededo

58.	Precinct 7A	Merizo
59.	Precinct 7	Merizo
60.	Precinct 16B	Mangilao
61.	Precinct 19D	Yigo
62.	Precinct 4	Agat
63.	Precinct 16A	Mangilao
64.	Precinct 4B	Agat
65.	Precinct 4C	Agat

The Court is of course troubled when there are contentions that there are missing ballots that need to be tabulated. If that is true, then this Court must order a recount if it finds that a recount would make a difference in terms of the outcome of the election. The Court has analyzed the votes of the actual 21 precincts which had yet to report, and incorporated those precincts and their machine tabulated ballots in Table H. Table H therefore represents the final 21 precincts and its votes as tabulated by the voting machine. These findings are summarized below:

TABLE H

Precinct 2A	Asan-Maina	563 ballots counted
Precinct 2A	Asan-Maina	565 ballots counted
Precinct 4A	Agat	736 ballots counted
Precinct 5	Santa Rita	510 ballots counted
Precinct 8	Inarajan	612 ballots counted
Precinct 8B	Inarajan	737 ballots counted
Precinct 10	Yona	842 ballots counted
Precinct 11	Chalan Pago-Ordot	804 ballots counted
Precinct 11A	Chalan Pago-Ordot	809 ballots counted
Precinct 11B	Chalan Pago-Ordot	610 ballots counted
Precinct 12	Sinajana	591 ballots counted
Precinct 12A	Sinajana	584 ballots counted
Precinct 12B	Sinajana	682 ballots counted
Precinct 13A	Agana-Heights	540 ballots counted
Precinct 13B	Agana-Heights	556 ballots counted
Precinct 15C	Barrigada	880 ballots counted

Precinct 18	Dededo	680 ballots counted
Precinct 18I	Dededo	919 ballots counted
Precinct 18N	Dededo	689 ballots counted
Precinct 19C	Yigo	717 ballots counted
Precinct 19E	Yigo	<u>451 ballots counted</u>
		14077 ballots counted

From Table H, the Court finds that the last 21 precincts had 14,077 ballots which were counted by the machine. The Court also finds pursuant to Table G, that of the totals reported by the media in reporting results from the first 51 precincts, that the total numbers did not include 6,484 ballots which were included in the final count. When the Court adds the total number of ballots reported in the media report from the second "run", plus the difference with regard to their final totals and the total ballots counted by the machine as to the last 21 precincts tabulated, these total 48,515 ballots counted and is summarized below:

27,954	Ballots Counted after 51 precincts in Media Report
+ 6,484	Difference in Final Vote Count for above Precincts
<u>+14,077</u>	Total ballots counted for precincts 52 to 72
48,515	Total Ballots Counted

For purposes of ruling on Plaintiffs' request for a recount, the Court has reviewed Tables D, E, F, G, and H. The Court finds from its review that the total ballots counted by the machine amounts to 48,515 ballots. When compared to Table A, this total is exactly the same number of ballots counted by the machine. The Court therefore finds that there are not 4,128 missing ballots that have not been tabulated and thus Plaintiffs' claim that a recount is necessary is without merit. The Court finds that all the ballots counted by the machine have been properly tabulated and accounted for in the overall ballot totals. Since

~~all the ballots have been properly counted, there is no basis for~~
a recount as there are no missing ballots to be counted.

In further reviewing the certified results of the election, the Court notes as it has noted above, that there were initially 48,515 votes that were counted by the machine. The audit discovered 151 ballots that were not counted. When the 151 ballots were added, the vote tally reached 48,666 ballots counted. To determine any final discrepancy in the total vote count, it was necessary to compare that number with the total number of ballots counted by the precinct officials as contained in EC-42. To make this determination, the Court added all the ballot counts contained in column 2, in Table A. This figure came to 48,619 ballots counted, a difference of 47 ballots from the final certified ballot count. In its findings in reviewing the ballot discrepancies, the Court finds that the 48,619 vote tally by precinct officials in EC-42 has to be amended to reflect the Court's findings in the audit and these changes are summarized in the table below:

TABLE I

48,619	Total of ballots counted by precinct officials
<u>- 1</u>	Miscount of Voter Signature Roster in P-4A
48,618	
<u>+ 1</u>	Miscount of Voter Signature Roster in P-4
48,619	
<u>+ 7</u>	Miscount of Voter Signature Roster in P-4B
48,626	
<u>+ 24</u>	Absentee Ballots not counted in roster in P-9
48,650	

+ 1	Miscount of Voter Signature Roster in P-9A
48,651	
- 4	Rejected absentee ballots included in P-11A roster
48,647	
- 1	Double Signature Count in P-11B
48,646	
- 1	Miscount of Voter Signature Roster in P-13B
48,645	
- 1	Miscount of Voter Signature Roster in P-14
48,644	
- 1	Miscount of Voter Signature Roster in P-15
48,643	
+ 2	Miscount of Voter Signature Roster in P-18K
48,645	

The Court finds that the total number of ballots cast as contained in EC-42 and as verified by the precinct officials should read a total of 48,645 ballots. When compared to the official certified count of 48,666, there is a difference of 21 ballots.

Again, in determining whether there should be a recount on the basis of ballot discrepancies, the Court looks at the discrepancies to see if a recount would make a difference in the overall election results. A discrepancy of 21 ballots would not affect the outcome of the election and does not provide a legal basis for ordering a recount. See 3 G.C.A. Sections 12113, 12103, and 12104.

The Court, however, acknowledges media reports in other jurisdictions, which indicate that the legislatures of those states are attempting to have a recount in their state elections

because of machine malfunctioning which has been acknowledged by their machine manufacturers.

In this case, certain witnesses have expressed their doubts as to the accuracy of the gubernatorial election tabulations. The Court notes that this opinion represents lay testimony. The Court further notes that Plaintiffs did not call any person from the "makers of the tabulating machines or the experts", to come to court to testify that indeed these machines malfunctioned on the night of November 3 and 4, while tabulating the election results.

Moreover, while it is argued that these machines made errors in the tabulation of the gubernatorial race, Plaintiffs have not urged that the election tabulation and results for the offices of the 15 Senators as certified by the Election Commission Board was in error and inaccurate; Plaintiffs have not urged that the election tabulation and results of the congressional race as certified by the Election Commission Board was in error and inaccurate; and Plaintiffs have not urged that the election tabulation and results of the school board districts as certified by the Election Commission Board were in error and inaccurate. Common sense and logic would require a conclusion that a machine that is malfunctioning would malfunction with regard to the tabulation of all the various offices and not just single out the gubernatorial race to malfunction in. These offices were in a combined ballot.

The Court finds it noteworthy that no evidence from the

manufacturer was presented at this trial indicating that the tabulating machines malfunctioned. The Plaintiffs bear this burden, and the Court finds that such burden has not been met herein. The Court therefore finds these machines did not malfunction during their tabulation on election night on November 3 and 4, 1998. As there is no evidence of machine malfunction, no grounds for a recount exist in the law. The Court therefore denies the request for a recount and expressly finds in furtherance thereto that there are not 4,128 votes missing; that the ballot discrepancies would not affect the results in the election; and the voting machines did not malfunction during tabulation on election night or the succeeding morning.

While this Court expresses a judicial conclusion and judgment, it does not mean to say nor express an opinion and no opinion is expressed herein whether our Legislature can or can not enact laws for a recount if they doubt the legitimacy of the 1998 elections because of possible machine malfunctions. That is for the determination of the Legislature, and this Court takes no position in this regard.

FRAUD IN THE NOVEMBER 3, 1998 ELECTION

The Plaintiffs also alleged in their election contest Complaint that there was fraud involved in the November 3, 1998 election and that the Defendants as well as members of the Guam Election Commission participated in this fraud. As with the allegations regarding the illegal votes which were cast in this election, the Court also finds that Plaintiffs have failed to

meet their burden of proof with regard to the allegations of fraud.

It is well settled that with regard to a claim for fraud, there is a high burden of proof which much be met. G.R.C.P. 9(b) provides: "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind of a person may be averred generally." Thus, it is clear that even to simply plead a case for fraud, it must be done with particularity and, unlike with other causes of action, general pleading will not suffice. Moreover, in addition to a higher standard for pleading, a proponent of a claim of fraud also has a higher burden of proof which must be met. See Akaka v. Yoshina, 935 P.2d 98 (Hawaii 1997) wherein the Supreme Court of Hawaii held:

the Petitioner must demonstrate that the fraud or mistake of precinct officials made it impossible to ascertain the correct result. (Citations omitted). It is not sufficient that the petitioner points to a "poorly run and inadequately supervised election process" that evinces "room for abuse" or "possibilities of fraud." (Citations omitted). An election contest cannot be based upon mere belief or indefinite information.

Akaka, 935 P.2d at 103.

Similarly, Guam's Election Code provides that a proponent of an election contest must demonstrate that any alleged misconduct, impropriety or fraud actually affected the outcome of the election. Specifically, 3 G.C.A. §12103 provides:

No irregularity or improper conduct in the proceedings

of any precinct election board shall void an election result unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election.

Thus, from the foregoing citations, it is clear that in bringing a cause of action based upon a theory of fraud, the proponent of such must make specific pleadings and may not rely upon averments made upon information and belief. See Campaniello Imports Ltd. v. Saporiti Italia S.P.A., 117 F.3d 655 (2nd Cir. 1997), and Keith v. Sotelting, Inc., 915 F.2d 996 (5th Cir. 1990). Additionally, when an election contest is based upon allegations of fraud and improper conduct, the contestants must demonstrate that due to the fraud or misconduct, the elections results were impossible to ascertain, and the contestants cannot merely point to deficiencies in the election process. Finally, in order for a contestant to bring a successful election contest action, it is imperative that the contestant prove that the alleged fraud or illegal conduct resulted in the Defendants winning the election.

After carefully considering all of the evidence and testimony which were presented at the trial in this matter, this Court has reached the conclusion that as with the alleged illegal votes, the Plaintiffs have failed to prove that there was fraud involved in the November 3, 1998, election. Moreover, Plaintiffs have also failed to demonstrate that any alleged fraud did, in fact, affect the results of the election to the extent that without such alleged fraud, the outcome of the election would

have been different.

Turning to Plaintiffs' allegations with regard to fraud and improper conduct, Plaintiffs specifically alleged in paragraph 19 of their Complaint that persons related to the Defendants illegally registered to vote via absentee ballots by using the Defendants unofficial mailing address. Further Plaintiffs alleged these applications

were part of a conspiracy by the campaign of the defendant, done with the knowledge, and at the behest of, the defendant, to procure illegal absentee votes from non-residents, which effected the results of the election. See page 7 of Plaintiffs' Complaint.

Plaintiffs additionally alleged in paragraph 20 of this Complaint that

Plaintiff is informed and upon such information believes¹⁷, and here alleged, that several poll workers who supported defendant cast votes for others by signing the roster for the voter, and such votes effected the results of the election. The number of votes is yet undetermined but exceeds fifty (50) votes. See page 7 of Plaintiffs' Complaint.

Finally, with regard to the issue of fraud, Plaintiffs alleged in paragraph 27 of their Complaint that

Plaintiffs allege that despite clear and abundant evidence of election fraud, the Election Commission abandoned its duties to investigate these significant irregularities, and in so doing, improperly included the ballots of the precincts whose ballots were tampered, without ascertaining the effect of the tampering, in order to effect the election in favor of certifying the results to declare as elected the defendant. The Commissioners who primarily

¹⁷ The Court notes that it is insufficient to plead and allege election fraud based "upon information and belief." See Campaniello Imports Ltd. v. Saporiti Italia S.P.A., 117 F.3d 655 (2nd Cir. 1997), Keith v. Sotelting, Inc., 915 F.2d 996 (5th Cir. 1990), and Akaka v. Yoshina, 935 P.2d 98 (Hawaii 1997).

orchestrated this abandonment of responsibility are supporters of the defendant, i.e., Frederick J. Horecky, Joseph Duenas, and Rossana D. San Miguel. The certification has resulted in the election materials being secreted from public inspection. See page 9 of Plaintiff's Complaint.

Thus, in reviewing the allegations set forth in Plaintiffs' Complaint, it appears that Plaintiffs' assertion that fraud and impropriety were involved in the November 3 election is based upon Plaintiffs' contention that the Defendants were involved in procuring improper and illegal absentee ballots; that poll workers who supported the Defendant cast votes for people other than themselves; and that members of the GEC such as Mr. Horecky, Mr. Duenas, and Ms. San Miguel, abandoned their duties to the Commission and certified the results of the November 3 election. Upon a review of the evidence and testimony which were presented herein, it is clear that Plaintiffs have fallen far short of providing convincing proof with regard to these allegations, and with regard to some of these allegations, Plaintiffs provided no proof whatsoever.

The first allegation of fraud Plaintiffs assert is that absentee ballots were fraudulently and improperly procured from persons who were not residents of Guam and thus not entitled to cast ballots in the November 3 election. Plaintiffs claim that volunteer registrars and members of the Guam Election Commission, acting on behalf of the Defendants, procured illegal absentee ballots by registering persons to vote who were not entitled to so vote. Plaintiffs have also alleged that these activities were

conducted with the knowledge of the Defendants, and further at their behest.

Allegations with regard to the volunteer registrars have been previously addressed in this Decision. Plaintiffs called a handful of witnesses in their case in chief who testified that they were volunteer registrars for the November 3 General election. These witnesses were questioned at length with regard to their party affiliations, their connections to the Defendants, and they were also questioned as to specific AORs that Plaintiffs contended contained deficiencies. Amongst these witnesses were Mr. Frank Acfaji, Mr. Ben Degayo, Mr. Manny Vallaba, Ms. Faye Zabala, Ms. Rose Tainatongo and Rita Tainatongo. As has been discussed previously, these witnesses all testified that they followed proper procedures in registering voters and that they asked for the appropriate documentation when so registering voters. Additionally, with the exception of Mr. Degayo, these witnesses all stated that they were not registrars for a particular political party. Although some of the witnesses stated that they were employed by the Defendants or that they were democrats, they all indicated that they would register voters regardless of their party affiliation.

With regard to these specific volunteer registrars who testified at the trial herein, the Court finds that it is important to set forth the number of voters these people registered to vote so that a clear view may be had of the numbers of voters at issue here.

Ms. Faye Zabala testified that she is employed as an executive assistant for the Governor's office and that she was a volunteer registrar for the November 3 General election. As is indicated previously in this discussion, she testified that she is aware of the procedures involved in registering applicants to vote and she also stated that she follows these procedures. Plaintiffs questioned her with regard to several of the people she registered to vote, however, as has been stated, Plaintiffs were unable to prove that Ms. Zabala acted inappropriately or illegally with regard to any of the persons she registered to vote. Moreover, Plaintiffs did not provide the Court with any proof that any of these persons were, in fact, illegal voters.

In reviewing what was marked at trial as exhibit P-39, which is a listing of all of the voters registered by the volunteer registrars, it appears that Ms. Zabala registered approximately 200 voters.

Similarly, Mr. Frank Acfaji, stated that he is employed with the Department of Parks and Recreation, and he also stated that he was not a registrar for any political party. Mr. Acfaji registered approximately 100 voters. Plaintiffs elicited testimony from a few of the witnesses who testified with regard to dual registration, and two of them indicated that they thought they were registered by Mr. Acfaji, although this was in response to Plaintiffs' questioning in this regard. Additionally, upon questioning from the Defendants, it was demonstrated that neither of these people were registered by Mr. Acfaji as their names were

not included amongst the list of persons he registered.

Mr. Manny Vallaba testified that he was employed as a consultant for the Governor, and he also stated that he followed the proper procedures when registering applicants to vote. From exhibit P-39, it appears that Mr. Vallaba registered approximately 260 people to vote.

Mr. Ben Degayo testified that he was a registrar for the democratic party, and it appears from exhibit P-39 that he registered approximately 60 voters.

Ms. Rita Tainatongo testified that she is employed with the Merizo mayor's office and she also stated that she what procedures were to be followed when registering people to vote. She registered approximately 100 persons to vote.

Finally, Ms. Rose Tainatongo testified that she was employed as the fund administrator of the Department of Motor Vehicles. She testified that she acted as a volunteer registrar for the November 3 election, and in reviewing exhibit P-39, it appears as though she registered approximately 4 people to vote.

Despite Plaintiffs' allegations, the only voters established as having cast illegal ballots were eight of the witnesses who testified with regard to being registered to vote in a jurisdiction outside of Guam. Thus, as has been discussed, certainly this number of voters, three of who indicated that they voted for the Plaintiffs, is not sufficient to affect the results of the election. However, even assuming that Plaintiffs had proven that the aforementioned volunteer registrars had

improperly registered voters who were not entitled to cast ballots in the November 3 election, that figure would only be approximately 725 voters. Thus, even assuming that Plaintiffs had met their burden in this matter and proven that all of these voters voted illegally, and that these volunteer registrars improperly registered them, 725 votes would not have affected the results of the election. Moreover, and even more importantly, Plaintiffs in no way established who these voters voted for, nor was it even indicated who their party affiliation is with.

Another example of the fact that Plaintiffs have failed to prove any wrongdoing on the part of the volunteer registrars is Mr. Vicente Sanchez. He stated that he was involved in the 98 campaign and that it was his job to try to get those people eligible to vote to fill out applications for absentee ballots. He stated that he traveled to California for this purpose, however he also stated that he did not register anyone to vote.

The Court finds that Plaintiffs proved no wrong doing in Mr. Sanchez's conduct, even if he had distributed absentee ballots, as he stated that he knew the requirements for a register to qualify to vote absentee and that he would not provide applications to anyone not eligible to vote. However, even more indicative of the lack of wrong doing on the part of this witness is the fact that he did not register any voters for the November 3 General election.

Thus, with regard to the volunteer registrars, the Court finds that Plaintiffs have again failed to meet their burden of

proof in proving their allegations as to fraud and improprieties involved in the November 3 election. As has been shown throughout this Decision, the Plaintiffs have failed to prove, with the exception of the eight previously discussed voters, that any voters cast illegal ballots in this election. Furthermore, the Court, in the course of writing this opinion, has uncovered several names of persons who were set forth on Plaintiffs' list of illegal voters who have been proven to be legal and legitimate voters. Thus, while the number of these discoveries has not been significant, the Court finds that such weigh against the validity of Plaintiffs' claims. These discoveries, coupled with the evidence submitted by Defendants, clearly calls into question the merit of Plaintiffs' claims with regard to fraud and illegality involved in the election.

Finally, as to the volunteer registrars, the Court finds that Plaintiffs in no way demonstrated that the Defendants personally encouraged the procurement of illegal votes. Rather, Plaintiffs only established that some of the volunteer registrars were employed by the Defendants, and that others were democrats. The Court concludes that such testimony falls short of constituting proof that the Defendants were personally involved in the fraudulent procurement of votes, and that illegal and fraudulent activities were conducted at their behest.

Another issue raised by Plaintiffs in furtherance of their fraud claim relates to certain absentee voters who Plaintiffs claim were not eligible to vote in the November 3 election, and

who Plaintiffs further assert are either related to or closely tied to the Defendants. The Court has previously addressed these absentee ballots, and the Court has concluded that certain voters who were approved by the Guam Election Commission to submit absentee ballots may be subject to voter challenge in future elections. However, the Court further concluded that there are many different variables which must be considered when reviewing an application for an absentee ballot. All of the witnesses from the GEC who testified in this regard stated that it was a very difficult issue to determine. Thus, on this basis, and based upon the fact that the Election Commission approved some of these questionable applications, the Court reached no determination with regard to the legality of these applications.

Additionally, the Court notes that Plaintiffs have not proven that these voters whose absentee applications were called into questions were involved in any scheme or conspiracy to cast illegal ballots. Rather, the testimony which was presented by Henry Torres was that the issue of determining residency for the purpose of approving or rejecting absentee applications is a difficult issue. He also stated that perhaps some of the people discussed should not have had their absentee applications approved, however in the opinion of this Court the testimony and evidence in this regard merely demonstrated that the GEC is lax in enforcing their requirements as to absentee voters.

Moreover, the Court finds that this is consistent with all of the testimony and evidence presented in this matter. Whether

Plaintiffs were questioning Liz Blas, Henry Torres or Joe Mesa, and whether they were questioning with regard to the issue of citizenship, residency, or age, the testimony indicated overwhelmingly that the Guam Election Commission does not always take the appropriate and necessary steps to ensure that applicants are eligible to vote. In the opinion of this Court, this testimony and evidence demonstrated that applications will be accepted in many instances with or without the proper information and documentation.

Therefore, rather than concluding that fraud was involved in the November 3 General election, the Court has instead concluded that the Guam Election Commission needs to undertake major reform in order to address registration deficiencies.

Plaintiffs also alleged in their Complaint in furtherance of their fraud claim that poll workers who supported the Defendants cast votes for others by signing the voter roster for persons other than themselves. The Court finds that there was no testimony which in any way indicated that poll workers were signing voting rosters for other voters, nor was there any testimony or evidence with regard to poll watchers being affiliated with the Defendants.

The only testimony which was presented which addressed the issue of persons improperly signing the voting rosters was that provided by Ms. Lilian Duenas. She stated that she cast her ballot at the Umatac precinct. She also stated that when she went to sign the voters' roster next to her name, there was

already a signature next to her name. She further testified that one of the poll watchers informed her to sign her name elsewhere within the roster. This was the only testimony provided on this issue.

Clearly, in reviewing Ms. Duenas's testimony, the Court cannot conclude that somehow the fact that another signature was placed on the signature line next to her name proves that fraud was involved in this election. Rather this fact can be explained by many different theories, one of which is the distinct possibility that another voter accidentally signed on the wrong line of the roster. Ms. Duenas indicated that she could not read the writing which was contained on her signature line, nor did she recognize the name signed nor the writing. Thus this is not a case wherein Plaintiffs have proven that someone other than Ms. Duenas signed her name next to her signature line. She did not testify that it was her name that had been signed there.

Therefore, based upon the lack of evidence or testimony regarding Plaintiffs' poll watchers allegation, the Court must find that such have not been proven by Plaintiffs and thus the Court must disregard these allegations.

Another allegation contained within Plaintiffs' complaint which asserts that fraud was involved in this election is the allegation that Frederick Horecky, Joseph Duenas, and Rossana San Miguel abandoned their duties to investigate election irregularities in order to certify the election results. Again, the Court finds that Plaintiffs have not met their burden of

proof in this regard, and as to Mr. Horecky, Plaintiffs have failed to produce any evidence as to his involvement in this election at all.

Ms. Rossana San Miguel was called to testify by the Plaintiffs early on in the Plaintiffs' case in chief. She was questioned with regard to her role in getting voters to register to vote. She stated that as the Mayor of Chalan Pago that she does not personally register people to vote, but that she always encourages people to register and to vote. She also stated in response to Plaintiffs' questions that she would never knowingly encourage an non-citizen to vote in an election, and she further testified that she did not participate in any fund raising or steering committee meetings for the 98 campaign.

As to her duties with the Guam Election Commission, the only question she was asked in this regard was whether or not she was a member of the GEC, and she stated that she was. Plaintiff did not endeavor to ask Ms. San Miguel any questions regarding the certification of the election results, nor did Plaintiffs question her as to any discrepancies or problems with the results of the November 3 election.

Similarly, Plaintiffs did not call Mr. Horecky to testify in the trial herein, nor was there any testimony provided by other witnesses as to Mr. Horecky's role in the certification of election results other than a general statement made by Mr. Moylan.

Mr. Duenas was called to the stand to testify in this

matter, and he testified at length regarding his role in the November 3 election. He was also asked about discrepancies in the election results and how he was able to reconcile these discrepancies and thus vote to certify the election results.

Mr. Duenas testified as to his understanding of the meaning of the media report as has been previously discussed in this opinion. He stated that he was able to reconcile the results as indicated in the media report with the final results which were eventually certified due to the fact that the media report does not indicate a final counting of all of the ballots from each precinct. He also stated that he went back and compared the media report which was testified to by various witnesses, with the final reports from the precincts, and he stated that none of the precincts' numbers remained the same as what was indicated in the initial media report. He stated that this was due to the fact that many ballots had not been counted at that point in time, and that many ballots go to the reconciliation room prior to being counted.

He also stated that Mr. Henry Torres had explained to him that several of the minor discrepancies which were discovered could have been caused by missed precinct ballots. Mr. Duenas also testified that after the audit report was completed, he spoke with legal counsel for the Election Commission and legal counsel informed him that every single ballot discrepancy does not need to be reconciled and that the remaining problems as indicated in the audit report were diminimus and would not have

affected the outcome of the election. Mr. Duenas also testified that Henry Torres had assured him that all of the ballots were properly accounted for, and further Mr. Torres told him that in every election there are some missing ballots or additional ballots.

Finally, Mr. Duenas was asked by Plaintiffs if he was inclined to certify the election results due to the fact that he liked the results. Mr. Duenas was very candid in his answer and he indicated that he was a democrat and thus certainly he liked the election results. However he also stated that his concerns regarding discrepancies in the election had been addressed and thus he voted to certify the election because he felt confident and comfortable that the results were valid.

The Plaintiffs did not introduce any testimony to contradict that of either Ms. San Miguel nor of Mr. Duenas. Mr. Douglas Moylan did testify and he stated that he believed that there was fraud involved in the election and that he did not believe that all of the ballots had been accounted for. Additionally, Mr. Moylan testified that he attempted to bring up the subject of election discrepancies with the Board and that he requested that these discrepancies be addressed, however he stated that the motions to address these problems did not pass. Mr. Moylan did not present any testimony which indicated specifically nor generally that he believed Mr. Duenas, Mr. Horecky or Ms. San Miguel were involved in any improper activities with regard to certifying the election results. Rather, he simply stated that

he did not believe, based upon the discrepancies, that the election results should have been certified.

It is notable, that there was no testimony from Mr. Moylan or from any other witness which suggested that either Mr. Horecky, Mr. Duenas, or Ms. San Miguel acted improperly with regard to the November 3 election, nor that they participated in any fraud or conspiracy in this election. Therefore, based upon the testimony and evidence, or lack thereof, presented, the Court finds that Plaintiffs did not meet their burden of proof as to their contention that these individuals abandoned their duties to ensure that the election results were properly certified. The only evidence which was presented regarding the certification of the results as it related to these three individuals came from Mr. Duenas himself, and he indicated that he undertook to do some investigation of the election results himself, and after making various inquiries and comparing numbers, he was satisfied that the election results were proper.

The final issue the Court must address regarding Plaintiffs' assertion that fraud was involved in the November 3 election is the allegation that many absentee voters who cast illegal ballots used the unofficial mailing address of the Defendant Carl T.C. Gutierrez. In this regard, Plaintiffs have alleged that these absentee voters are not residents of Guam and thus are not entitled to cast ballots in a Guam election. Plaintiffs have further maintained that for the purpose of filling out the absentee applications, these illegal voters have used the

unofficial mailing address of Carl T. C. Gutierrez. Plaintiffs have alleged that amongst others, the applications of Ms. Rosita Dell Isola and Mr. Alphonse Dell Isola have used this address.

At the trial in this matter, Plaintiffs questioned members of the Guam Election Commission regarding the Dell Isola's mailing address, as well as other absentee applicant's mailing addresses. The Plaintiffs demonstrated that there were several absentee applications that contained the same mailing address here on Guam, however Plaintiffs provided no testimony that this address is, in fact, the official or unofficial mailing address of the Defendant, Carl T.C. Gutierrez. No witness was called to provide testimony that the post office box at issue is registered to the Defendant, nor was any testimony or evidence presented which would tie the Defendant to this mailing address.

Additionally, the Court has previously concluded that with regard to several absentee voters, while it may appear from the face of their absentee applications that the applicants are not residents of Guam for the purpose of voting, the Court cannot reach the conclusion that the individuals were illegal voters. As has been previously set forth, due to the fact that there are so many different variables which go in to deciding whether an applicant is a resident of Guam or not, this Court is not in a position to make such a determination. This is especially so in light of the fact that the Election Commission approved the applicant's and issued them absentee ballots. Therefore, while the Plaintiffs have not presented any proof with regard to the

mailing address called in to question, the Plaintiffs have also failed to prove that the absentee voters called in to question are, in fact, illegal voters.

Thus, as to the allegation regarding the Defendant's mailing address, while the Court notes that several absentee applications contain the same mailing address, there has been no testimony or evidence presented to tie this mailing address to the Defendant. Moreover, the Court is mindful of the fact that individual's whose absentee applications were called in to question were registered and approved by the GEC to vote absentee, thus even if the Plaintiffs had provided some evidence with regard to this mailing address, the fact still remains that the Election Commission has the final say as to who is approved and disapproved to vote via absentee ballot.

Therefore, based on the fact that Plaintiffs have provided no evidence to tie the mailing address at issue here to the Defendant Carl T.C. Gutierrez, the Court finds that Plaintiffs have not met their burden of proof and have not proven, by clear and convincing evidence, that illegal absentee voters used the unofficial mailing address of the Defendant, and that this was part of a conspiracy in which the Defendants were involved.

Wherefore, based upon the foregoing discussion, the Court finds that Plaintiffs have not proven by clear and convincing evidence that there was fraud, conspiracy or improprieties involved in this election. While Plaintiffs have successfully pointed to many defects and deficiencies which lie in the voter

registration processes, they have not shown that poll watchers affiliated with the Defendants illegally cast ballots; they have not shown that members of the Guam Election Commission - specifically Mr. Horecky, Ms. San Miguel, and Mr. Duenas, abandoned their duties to the Commission and improperly voted to certify the election results; they have not shown that the mailing address of the Defendant, Carl T.C. Gutierrez, was used by illegal absentee voters as part of Defendants' conspiracy to procure illegal votes; nor have they proven that volunteer registrars were involved in a scheme to register ineligible voters for the November 3 election at the behest of the Defendants. The Court finds that Plaintiffs' proof in this regard has not only fallen short of the clear and convincing standard, but the Court is also of the opinion that Plaintiffs have not met their burden of proof even if a preponderance of the evidence standard were applied herein.

PLAINTIFFS' OPEN GOVERNMENT CLAIM

The final claim asserted by the Plaintiffs that this Court must address prior to setting forth its recommendations and general conclusions, is Plaintiffs' claim that members of the Guam Election Commission violated the provisions of the Open Government Law. Specifically, in paragraph 28 of Plaintiffs' Complaint, Plaintiffs allege that:

Plaintiff is informed and upon such information believes that members of the public were denied access to the meeting at the office of the Election Commission when it voted to certify its results, and that the conduct of the meeting was in violation of the open

government act, and therefor is void. The certification of results in favor of the defendant is therefore without legal support, the artifice of substantial voter fraud.

See page 9 of Plaintiffs' Complaint.

Based upon the foregoing allegation, Plaintiffs called Mr. Angel Santos to testify at the trial herein. He stated that on November 16, 1998, the Guam Election Commission held a meeting during which the results of the November 3, 1998, General election were certified. He further testified that he ran over to this meeting, as he was running late, and attempted to enter the GCIC building where the Commission has its offices. He stated that upon arriving at the GCIC building he was told he could not enter the meeting, and was later arrested. He also testified that subsequent to his arrest, he was handcuffed and taken inside the GCIC building and held in one of the Commission's conference rooms.

Mr. Joseph Duenas also testified with regard to this incident. He stated that there was a meeting held by the Commission on the 16 of November. He also stated that it was a very crowded meeting and that members of the Guam Police Department were present, however he did not know who called them nor why they had chosen to attend, other than due to the fact that certain Commission members had their lives threatened.

Mr. Duenas also testified that the members from the fire department were present at the meeting and that they made announcements that pathways needed to be kept clear. He further

testified that members of the media attended the meeting, as did members of the public, and that many people had signs and placards with them. Mr. Duenas also testified that he did not know that Mr. Angel Santos was present, nor that he attempted to enter the meeting and was stopped from doing so. Finally in this regard, Mr. Duenas stated that the GEC Board never passed a resolution to prevent Mr. Santos from entering the Commission meeting held on November 16.

The Court notes that with regard to the Plaintiffs' claim that the Open Government Act was violated by members of the Commission on this date, Mr. Angel Santos has filed a civil action based upon these same allegations and that such action is currently pending in the Superior Court of Guam. Specifically, on December 1, 1999, Mr. Santos filed a Complaint in civil action number CV2765-98, wherein he sets forth the same allegations with regard to the alleged violation of the Open Government Act.

Thus, based upon the fact that there is currently pending before another Court a separate civil action which deals specifically with this same Open Government claim, it is this Court's opinion that the best course of action regarding this claim is to defer judgment on such claim to the Court who is responsible for presiding over that matter.

This Court finds that the Court which is assigned civil case number CV2764-98 will be in a better position to render a decision with regard to alleged Open Government Act violation, as such Court will receive testimony and evidence specifically

related to that claim. Moreover, the Court finds that in the present case, Plaintiffs' allegation that the Open Government Act has been violated is not dispositive of the issues pending before this Court, and it is this Court's opinion that a decision with regard to the Open Government claim will not affect the findings and conclusions rendered by this Court as to the November 3 election.

Wherefore, this Court defers judgment on this issue to the Court assigned to hear civil cast number CV2764-98.

RECOMMENDATIONS

The final matter this Court wishes to address herein prior to concluding this discussion, are recommendations the Court finds are appropriate to make in light of what the evidence and testimony have presented in this matter. While the Court has indicated that Plaintiffs failed to prove that there was fraud involved in the election or that illegal votes, sufficient to affect the outcome of the election, were cast in this election, the Court does find that there are definite problems and shortcoming which have occurred during the voter registration process which must be addressed.

From a review of the testimony and evidence herein, it is apparent that the voter registration requirements on Guam are not strictly enforced, and in many instances, are not enforced nor complied with at all. The court finds this fact very troubling and if further finds that the lax approach to the registration of voters has contributed to the confusion and concern involved with

this past election. Thus, with the foregoing thoughts in mind, the Court finds it appropriate to issue the following recommendations in order to ensure that subsequent elections proceed smoothly and without incident.

In viewing the proceedings of the trial in this matter, it appears that the major problem area with regard to this election was the registration of voters. It is evident from the testimony of the GEC members that voter registration forms are many times accepted with none of the required documentation; without having had the voter answer some of the pertinent questions, and in many occasions, without the voter reading or personally filling out the form. Therefore the Court finds it imperative that the members of the Election Commission, as well as volunteer registrars and District registrars follow the policies and procedures for registering voters. Any person acting in the capacity of a registrar should request proof of the applicant's age, residency and citizenship when applicable. If an applicant does not have the proper documentation with him or her at the time of registration, that person should not be allowed to proceed to register. Rather, the applicant should be informed as to the type of documentation necessary to complete the form, and should be directed to obtain such documentation. It is the opinion of this Court that such a policy will not discourage persons from voting. Rather, if the applicant is truly interested in becoming a registered voter, that applicant will take the steps necessary in order to become a registered voter.

Additionally, it is this Court's further recommendation that an applicant seeking to register to vote should be required to read to Affidavit of Registration and should also be required to fill out this form himself or herself. The Court heard testimony from many witnesses indicating that they were not required to read the registration forms, nor did they personally fill out the form. Notably, in many instances, witnesses testified that they only signed their name to their AOR and that the registrar had already filled in the other pertinent information. The Court finds that requiring an applicant to read and fill out his or her own form will help to ensure that all the relevant portions of the form are read and understood by the voter. Additionally, if the voter personally writes in his or her social security number, birth date, passport number, or naturalization certificate number, they are less likely to make an error in the transcription of that information than a registrar, unfamiliar with the information, is. Along these same lines, a voter/applicant should be required to read over the final form, to view the information provided, and to acknowledge and ensure that all of the information is accurate and correct.

The Court also feels that it is important for members of the Guam Election Commission to carefully review and scrutinize absentee applications. From the testimony of both Henry Torres and Joe Mesa, the issue of whether an applicant is a resident for the purpose of casting an absentee ballot is a difficult one to resolve. However, the Court finds that applications which are

questionable, or which do not contain sufficient information upon which the form can be approved, should be denied. The applicant should then be informed of the shortcomings of his or her application, and then given the opportunity to supplement the information initially provided.

While the Court notes that Joe Mesa's testimony indicated that the Commission essentially bends over backwards to see to it that applicants are registered, the Court finds that perhaps the Commission should not be so eager to register every voter who requests an application. Certainly this Court is not suggesting that the Commission make it difficult for voters to register to vote; what this Court is suggesting is that the Commission make sure the voter has met all applicable requirements and has provided the appropriate information and necessary documentation.

Additionally in this regard, the Court finds that approval of an absentee application or an affidavit of registration should not be automatic. Rather the applications should be reviewed and when it is necessary, they should be denied. Simply because an application is denied does not equate to the Commission foreclosing that application from voting. That applicant can always submit another application, and as this Court has previously stated, those individuals who truly wish to cast a ballot in Guam elections will take the time and effort to do so.

It is further this Court's recommendation that the Guam Election Commission change the format of the voter registration cancellation card which was marked as exhibit P9 for the purpose

of this trial. The Court finds that if the Commission developed a form that was duplicate in nature, such as the affidavits of registration are, then the voter would be provided a copy of the cancellation form for his or her own records. Thus, this would prevent any questions from arising as to whether that voter ever canceled a prior registration in another jurisdiction. Moreover, if that voter were ever challenged as to his or her ability to cast a valid ballot on the basis of dual registration, that voter would have a copy of the cancellation form to prove that he or she canceled the registration in the other jurisdiction, and thus prove that he or she is, in fact, a legal voter.

In addition to the foregoing, the Court finds that the method as to how and when absentee ballots are to be received and cast at their respective precincts should be clarified and then the procedure should be followed and enforced. If there was a specific time when absentee ballots are to be cast in each election, and if there was a specific method for doing so, the chances that such ballots would become lost or misplaced would be reduced.

Similarly, testimony was presented at the trial in this matter that ballots were picked up from the post office around 8:00 p.m., and yet such ballots were still cast in the election even though this was after the polls closed. Again, if there was a specific procedure as to how and when absentee ballots are to be cast, the Court believes that many problems with regard to missed precincts, and misplaced ballots may be reduced.

Finally, the Court also finds that it would be advantageous for the Commission to implement a system or a policy whereby any discrepancy or problem that arises at the precincts during an election shall be documented. Precinct officials should be trained in this regard and should be tasked with implementing such a practice. Moreover, the documentation of any problem or discrepancy should then be provided to the GEC after the close of the polls on election day. This type of a practice would again ensure that each and every problem, irregularity, discrepancy, etc., is accounted for and documented, and it would also provide the Commission with the information necessary to account for any discrepancies in ballot counts.

The Court further notes that the questions contained in the absentee application form should be modified. A voter may have personal business which would require that person to be absent from Guam on election day. However the questions contained in the absentee application do not address this issue.

In setting out the foregoing recommendations, it is not the intent of this Court to chastise or berate the Guam Election Commission or its staff and members. However, it is this Court's opinion that the evidence and testimony which were presented during the five week period this trial covered clearly indicate that some types of reform need to be undertaken with regard to how the Commission conducts voter registration. Too many examples of applications falling through the cracks and applications containing missing information were brought to the

Court's attention for this Court to disregard these problems. Such recommendations are warranted by the evidence in this case, and it is this Court's sincere hope that the Guam Election Commission take these recommendations to heart and undertake some reform with regard to registration procedures.

CONCLUSION

The Court has given this matter thorough consideration and contemplation prior to arriving at the conclusions set forth in the foregoing discussion. The Court did not enter into any of these findings lightly, nor did the Court find that reaching the conclusions herein was an easy task. Voluminous exhibits were presented for the Court's consideration, and over 45 witnesses presented testimony. This trial spanned a period of over 17 days, and Counsel spent over seven hours in delivering their respective closing arguments in this matter.

However, despite the lengthy and complex nature of this trial, this Court has reached the conclusion that Plaintiffs have failed to meet their burden of proof with regard to the allegations set forth in the Complaint. The Court reaches this conclusion, confident that it is the correct decision based upon the evidence and the testimony which were presented. Because the Court has issued a detailed and lengthy opinion in this matter which addresses all of the issues which were presented, the Court will not rehash all of these points in concluding this discussion. Rather, the Court finds that a brief summary of the findings of this Court will serve as an appropriate end to this

matter.

As was previously set forth, based upon the plain language of §1422 as contained in Guam's Organic Act, as well as based upon the provisions of Guam's Election Code, this Court has reached the conclusion that the Defendants did, in fact, receive a majority of the votes cast in the November 3, 1998 election. The Court reached the conclusion by finding that blank ballots, void ballots and spoiled ballots are not to be counted in the over all tabulation of the votes for the office of Governor/Lieutenant Governor. In rendering this decision, the Court is mindful of the differing opinion issued by the District Court of Guam. However, as was stated previously, the Court found that it was appropriate to address this issue, and the Court further found it properly had jurisdiction to do so. Therefore, based upon the fact that the Defendants Gutierrez/Bordallo won this election by receiving over 3,000 more votes than those received by the Plaintiffs, the Court finds that the Defendants were, in fact, elected by a majority of the votes cast.

Furthermore, the Court concluded that Plaintiffs were required to prove the claims set forth in their Complaint by clear and convincing evidence, and the Court reached the conclusion that Plaintiffs fell short of meeting this burden with regard to all of their allegations.

As to the alleged minors who Plaintiffs contend cast ballots in the November 3 election, the Court found upon a careful review

of the records herein, that no minor cast ballots in the November 3 election. Rather, the Court instead found that with regard to the bulk of the persons alleged to be minors by the Plaintiffs, Plaintiffs had incorrect information as to the birth dates of these individuals. Moreover, as there was no testimony that infants were found to be casting ballots at the election, the Court concludes that Plaintiffs have failed to meet their burden of proof as to this allegation.

Similarly, the Court also found after reviewing the voter rosters and the applicable death certificates, that Plaintiffs also failed in proving that illegal ballots were cast for deceased persons. Again, much like with the minors, upon a careful review of the evidence, the Court found that as to most deceased persons alleged to have voted, Plaintiff simply did not compare the social security numbers and birth dates of the deceased persons with those persons who actually cast ballots. If Plaintiffs had undertaken to do so, it would have been evident to the Plaintiffs that the persons casting the votes were not the same persons as those found to be deceased.

Moreover, pursuant to Guam law, the ballots of the few persons who voted absentee and passed away prior to the election, do not invalidate the results of an election. Therefore, the Court finds that Plaintiffs allegations with regard to deceased persons casting votes in the November 3 election are without merit.

Moreover, after considering Plaintiffs' claims with regard

to non-citizens who were alleged to have cast ballots in the November 3 election, this Court found that Plaintiffs failed to prove that any non United States citizens so voted. Plaintiffs relied heavily upon the affidavits of registration for hundreds of voters to prove this point. However, as was set forth in the relevant section of this opinion, the Court concluded that information missing from a voter's affidavit of registration does not, in and of itself, prove that the voter is a non-citizen.

Additionally, as the Court noted in footnotes throughout this discussion, there were many names that the Court came across in the process of writing this Decision and Order which appeared on Plaintiffs' list of non-citizens, but who are, in fact, United States citizens.

Furthermore, the Court reached the same conclusion with regard to the alleged non-residents. While the Court did find that eight residents cast illegal ballots due to their dual registration, these numbers fall far short of the allegations made by Plaintiffs in this regard. Plaintiffs alleged that 870 non-citizens cast ballots in the November 3 election, however Plaintiffs simply relied upon the lack of information contained in affidavits of registration to prove their allegations in this regard, and such was not sufficient evidence to prove these allegations. The Court wishes to note that these eight individuals may re-register to vote on Guam upon cancellation of their voters registration in the other respective jurisdiction.

The Court also addressed at length the issue of the ballot

count deficiencies and discrepancies, and the Court was able to reconcile the majority of these discrepancies to the point that any unaccounted for ballots are diminimus and would in no way affect the results of the election.

The additional issues of fraud, conspiracy and improprieties in the election were discussed herein, and the Court again concluded that Plaintiffs' evidence fell far short of proving that there was fraud involved in this election. Many of the allegations set forth in Plaintiffs' Complaint were wholly disregarded by Plaintiffs and no evidence at all was presented as to some allegations. Moreover, as to the evidence and testimony which was presented, the Court reached the conclusion that Plaintiffs had not provided evidence sufficient to prove any of the allegations made with regard to fraud and conspiracy.

Finally, while the Court notes that Plaintiffs also included a claim based upon the alleged violation of the Open Government Law in their Complaint, this Court reached the conclusion that it would be prudent to defer to the Court which is assigned to hear the Open Government claim itself as such Court will be in a better position to render a decision on this issue.

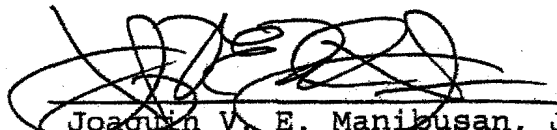
The Court then included several recommendations which it finds are appropriate in light of what the testimony and evidence demonstrated in this trial. Whether such recommendations are accepted and implemented by the Guam Election Commission is a matter which the Commission must determine for itself.

Wherefore, based upon the evidence presented, or the lack

thereof, this Court confidently renders its decision that Plaintiffs have failed to prove any of the allegations contained in their Complaint, save for the 8 voters who the Court found voted illegally based upon Guam's voting requirements. For these reasons, and based upon the foregoing discussion, the Court hereby renders judgment in favor of the Defendants, and finds that Defendants Carl T. C. Gutierrez and Madeleine Z. Bordallo won the November 3, 1998 General election for the office of Governor and Lieutenant Governor by a majority of the votes cast.

These are the findings of this Court.

SO ORDERED this 16th Day of February, 1999.


Joaquin V. E. Manibusan, Jr.
Judge, Superior Court of Guam

I hereby certify that the foregoing is a full true and correct copy of the original on file in the office of the Clerk of the Superior Court, Guam.
Dated at Agaña, Guam
FEB 16 1999
Pauline Untalan-Camacho
Clerk, Superior Court of Guam