

**TOSIE BEDOR, ALFONSO KEBEKOL, TERUO REMOKET,  
OMKATEL REMOKET, MELIMARANG RECHEBEI, and  
ALBERT NGIRASECHEDUI, on behalf of themselves  
and other similarly situated and injured persons,  
Plaintiffs**

**v.**

**THOMAS O. REMENGESAU, in his capacity as Election  
Commissioner for Palau District, TRUST TERRITORY  
OF THE PACIFIC ISLANDS, Defendant**

**Civil Action No. 114-76**

**Trial Division of the High Court**

**Palau District**

**October 20, 1976**

Class action by Palau District voters challenging validity of reapportionment of the district, for purposes of representation in the Congress of Micronesia House of Representatives, into three representative districts having 22, 26 and 52 percent of the population of the Palau District respectively. The Trial Division of the High Court, Hefner, Associate Justice, held the reapportionment invalid as in conflict with Department of the Interior Secretarial Order requiring approximate equality in the population of the representative districts, and with the Trust Territory Bill of Rights.

**1. Trust Territory—Applicable Law—United States Decisions**

The principles and concepts embodied in the United States cases establishing and upholding the one man, one vote rule apply to the Trust Territory.

**2. Trust Territory—Applicable Law—Interior Secretarial Orders**

The legislative power of the Congress of Micronesia extends to all rightful subjects of legislation, but no legislation may be inconsistent with the Department of the Interior Secretarial Orders or the Trust Territory Bill of Rights.

**3. Congress of Micronesia—Apportionment—One Man, One Vote**

Territorial public law reapportioning the Congress of Micronesia House of Representatives is, with respect to the Palau District, invalid, in that it establishes three representative districts having 22 percent, 26 percent and 52 percent of the population of the Palau District, thus violating Department of the Interior Secretarial Order providing that when reapportioned the Palau District shall have three representative districts of approximately equal population, and also violating the Trust Territory Bill of Rights and exceeding the permissible limits of the one man, one vote rule. (P.L. 6-88)

**4. Constitutional Law—Equality of Representation**

The principle of equality of representation lies at the foundation of representative government and requires that no voter shall exercise, in the election of the legislature, a greater voting power than the other voters.

**5. Constitutional Law—Equality of Representation—Apportionment Plan**

In formulating an apportionment plan, it is not sufficient, to justify a population disparity between districts, to recognize a "home area rule" based on compelling social or other interests in preserving cultures, languages and dialects, or recognize heterogeneous characteristics, protect insular minorities, secure representation for economic or other group interests, balance urban and rural power in the legislature or insure effective representation for sparsely settled areas, or give effect to historical or traditional factors or geographical considerations.

**6. Congress of Micronesia—Apportionment—Judicial Implementation**

Where Congress of Micronesia failed in its task of reapportioning the Palau District, for purposes of representation in the House of Representatives, into three districts of approximately equal population, and the congress would not be meeting until after approaching election of representatives, High Court must accept the task of preparing and implementing a reapportionment plan upon finding the plan of the congress to be invalid, and would apportion the Palau District along the lines of the prior apportionment, which provided for three representative districts of 35, 32 and 33 percent of the population respectively of the Palau District, and would make such necessary orders as allowing a re-opening of the time for filing petitions for candidacy and delaying the election for five weeks.

*Assessor:*  
*Interpreter:*  
*Reporter:*  
*Counsel for Plaintiffs:*  
*Counsel for Defendant:*

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FRANCISCO MOREI  
AMADOR NGIRKELAU  
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JOHN RECHUCHER, ESQ., *District*  
*Attorney*

*HEFNER, Associate Justice*

Plaintiffs are Trust Territory citizens and voters in the Municipality of Koror, Palau District. Their action is a class action, the class being similarly situated voters in Koror Municipality.

The issue before the court is whether the reapportionment law passed by the Congress of Micronesia, (Public Law 6-88) as it pertains to the Palau District, is valid. It is held that it is not.

Department of Interior Secretarial Order 2918, as amended, provides that the Palau District shall have three representatives in the Congress of Micronesia House of Representatives and that each single member election district shall have "approximately equal population". The first reapportionment was to be accomplished by law by the Congress of Micronesia no later than the end of the second regular session of the Sixth Congress of Micronesia. Dep. Int. Sec. Order 2918, pt. III, sec. 5(a) as amended January 30, 1975.

Public Law 6-88 was the Congress's attempt to reapportion pursuant to the Secretarial Order.

The Congress of Micronesia used the 1973 census figures as this is the last official census.

The testimony and exhibits of the plaintiffs demonstrate the following:

Prior to the enactment of P.L. 6-88 and pursuant to its predecessor, 43 TTC 53, the three election districts were:

	<i>Total Pop.</i>	<i>Percentage</i>
8th Representative District	4721	35%
9th Representative District	4266	32%
10th Representative District	4515	33%
	<hr/>	
Total population	13,502	

All population figures are from the 1973 census.

The 8th Representative District included the following municipalities and hamlets:

1. Ngardmau
2. Ngaremlengui
3. Ngatpang
4. Aimeliik
5. Peleliu
6. Angaur
7. Sonsorol
8. Tobi
9. Pulo Anna Atoll
10. Meyungs
11. Ngerbeched

The 9th Representative District included the following municipalities:

1. Kayangel
2. Ngarchelong
3. Ngaraard
4. Ngiwal
5. Melekeok
6. Ngchesar
7. Airai

The 10th Representative District included Koror with the exception of the hamlets of Meyungs and Ngerbeched.

After the enactment of P.L. 6-88 and pursuant to its provisions, the three election districts are:

<i>Palau District</i>	<i>Total Population</i>	<i>Percentage</i>
1st Representative District	2,972	22%
2nd Representative District	3,533	26%
3rd Representative District	7,010	52%
	<hr/>	<hr/>
Total Population for Palau District	13,515	100%
	<hr/> <hr/>	<hr/> <hr/>

The Districts include the following municipalities:

*1st Representative District*                      *2nd Representative District*

- |                    |                |
|--------------------|----------------|
| 1. Ngardmau        | 1. Kayangel    |
| 2. Ngaremlengui    | 2. Ngarchelong |
| 3. Ngatpang        | 3. Ngaraard    |
| 4. Aimeliik        | 4. Ngiwal      |
| 5. Peleliu         | 5. Melekeok    |
| 6. Angaur          | 6. Ngchesar    |
| 7. Sonsorol        |                |
| 8. Tobi            |                |
| 9. Pulo Anna Atoll |                |

*3rd Representative District*

1. Koror including Meyungs and Ngerbeched and Airai.

The obvious disparity in population is justified by the defendant by applying a "home area rule".

As testified to by witnesses for the defendant and as indicated in the House and Senate journals, the reapportionment plan is not based on population but upon where a particular citizen considers his "home area" to be. "Home Area" is defined as the place where a person plans eventually to return. House Journal, Pg. 603.<sup>1</sup>

The House Committee on Judiciary and Governmental Relations issued its report on reapportionment to the House of Representatives and its report stated that the committee "rejects any contention as to the applicability of U.S. cases to the reapportionment of the Congress of Micronesia." House Journal, Pg. 604.

The cases the Committee referred to are those which have formed and defined the "one man-one vote rule." This rule is so well established in the United States that it is no longer open to question. *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663; *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506; *Davis v. Mann*, 377 U.S. 678, 84

<sup>1</sup> All references to the House and Senate Journals are for the Sixth Congress, Second Regular Session, January-March 1976.

S.Ct. 1453, 12 L.Ed.2d 609; *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713, 84 S.Ct. 1472, 12 L.Ed.2d 632.

[1] This court holds that the same principles and concepts embodied in the United States cases establishing and upholding the one man-one vote rule apply to the Trust Territory.

The very existence of the Congress of Micronesia is based upon the principle of a legislature representative of the people of Micronesia. The bicameral nature is patterned after the United States Congress. The Congress of Micronesia was afforded the opportunity to convert to a unicameral body in 1969 (Dep. Int. Sec. Order 2918, pt. III, sec. 22), but it chose to maintain the bicameral body.

The House of Representatives (initially known as the General Assembly) has, from its inception in 1965, been formed from single member election districts "of approximately equal population". Dep. Int. Sec. Order 2882, sec. 6, and as superceded by Dep. Int. Sec. Order 2918 and its amendments. This foundation of a representative government has been maintained through all elections to the present date. 43 TTC 53, 2 TTC 105, 108.

Secretarial Order 2918, as amended January 30, 1975 provided for the first reapportionment on the basis of approximately equal population.

[2] The Congress of Micronesia has legislative power which extends to all rightful subjects of legislation, except that no legislation may be inconsistent with the Department of Interior Secretarial Orders or the Bill of Rights of the Trust Territory found in 1 TTC 1-12. Dep. Int. Sec. Order 2918, pt. III, sec. 2.

[3] It is concluded that Public Law 6-88 is in conflict and is inconsistent with both Secretarial Order 2918 and 1 TTC 7, the equal protection provision of the Trust Territory Bill of Rights.

From the wide disparity in population for the respective districts resulting from the application of P.L. 6-88, it is clear that the apportionment is not based on approximately equal population. Two of the districts (1 & 2) consisting of less than one half of the population elect two-thirds of the representatives from Palau. District 3 has over 50% of the population yet it elects only one of the three representatives Palau sends to the House of Representatives. The disparity far exceeds permissible limits when applying the one man-one vote rule or when using the standard of approximate equal population.

The "home area rule" is justified by stating that "compelling social interest exists in preserving the various island cultures and languages, or dialects, found even within administrative districts." House Journal, Pg. 604. Yet the testimony produced by the defendant fails to demonstrate how this is accomplished in Palau. It is conceded by defendant that the only language or basic culture difference in Palau exists in the South West islands of Sonsorol, Tobi, and Pulo Anna Atoll. Under P.L. 6-88, these areas are combined with Ngardmau, Peleliu, etc. In short, there is absolutely no showing made by the defendant that the form of representative government existing now for over 10 years has had any adverse impact on the language or culture of the various islands within the Palau District.

Even if there were some showing to this effect, the obvious violation of the equal protection provision of 1 TTC 7 becomes apparent.

The result of the application of P.L. 6-88 is to effectively disenfranchise certain people and to attempt to make distinctions based on custom or culture which is not legally sanctioned. 2 TTC 108. In short, there is no showing of a governmental necessity for the reapportionment plan established by the Congress of Micronesia. *Mahan v. Howell*, 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320.

[4] The basis of the "home area rule" is an indefinite social concern which cannot be the foundation of a truly representative government. The principle of equality of representation lies at the foundation of representative government and requires that no voter shall exercise, in the election of the legislature, a greater voting power than other voters. *Reynolds v. Sims*, supra. The right to vote is a precious right. Once that right is diluted or taken away by malapportionment, or by any other means, the basis of a representative government is extinguished.

It is up to the defendant to justify the great difference in population. *Kirkpatrick v. Preisley*, 394 U.S. 526, 89 S.Ct. 1275, 22 L.Ed.2d 519, reh. den., 395 U.S. 917, 89 S.Ct. 1737, 23 L.Ed.2d 231.

[5] In formulating an apportionment plan, it is not sufficient to justify a population disparity between districts to recognize the areas' heterogeneous characteristics or to protect "insular minorities" or to secure representation for economic and other sorts of group interests. *Lucas v. Forty-Fourth General Assembly*, supra. Nor can population disparity be justified to balance urban and rural power in the legislature or insure effective representation for sparsely settled areas or to give effect to historical or traditional factors. *Reynolds v. Sims*, supra; *Swann v. Adams*, 378 U.S. 553, 84 S.Ct. 1904, 12 L.Ed.2d 1033, reh. den. 379 U.S. 871, 85 S.Ct. 15, 13 L.Ed.2d 77; *Lucas v. Forty-Fourth General Assembly*, supra.

Geographical considerations have also failed to justify such apportionments. *Germano v. Kerner*, 378 U.S. 560, 84 S.Ct. 1908, 12 L.Ed.2d 1034; *Lucas v. Forty-Fourth General Assembly*, supra.

The discussions of both the House and Senate when the bill was before those respective bodies is enlightening. Each chamber struggled with the "one man-one vote rule" and its incompatibility with the "home area rule". Senate



Journal, pp. 270-271, 429-432. House Journal pp. 326-327 and pp. 386-391 and 411-412.

The latter rule won out in the closing hours of the session. However, the unfortunate part of the legislative history of P.L. 6-88 is that the concept of a truly representative House of Representatives was replaced by the indefinite and politically malleable concept of the "home area rule."

[6] The Trust Territory Government is founded on the concept of the separation of powers. As a balance between the Legislative and Executive Branches stands the Judicial Branch. The Executive Branch is obligated to execute the elections as prescribed by the Legislative Branch. The Legislative Branch was given the duty to legally reapportion, but it has failed in its task. There is no doubt that wide discretion is vested in the legislature and it is best left to that body. However, the Congress of Micronesia will not meet until its next session in January 1977 and this court must accept the unwelcomed task of preparing and implementing a reapportionment plan. *Connor v. Johnson*, 402 U.S. 690, 91 S.Ct. 1760, 29 L.Ed.2d 268, reh. den. 403 U.S. 924, 91 S.Ct. 2220, 29 L.Ed.2d 702; *Reynolds v. Sims*, supra.

Accordingly, it is held that Public Law 6-88 subparagraph (3) for the District of Palau is invalid and the defendant, as Election Commissioner for the Palau District is enjoined from holding any general election for the offices of the Congress of Micronesia House of Representatives except as pursuant to the Plan of Apportionment as hereinafter set forth.

#### PLAN OF APPORTIONMENT

The 1st Representative District of Palau shall be composed of the municipalities and hamlets of Ngardmau,

Ngaremlengui, Ngatpang, Aimeliik, Peleliu, Angaur, Son-sorol, Tobi, Pulo Anna Atoll, Meyungs and Ngerbeched.

The 2nd Representative District of Palau shall be composed of the municipalities of Kayangel, Ngarchelong, Ngaraard, Ngiwal, Melekeok, Ngchesar, and Airai.

The 3rd Representative District of Palau shall be composed of the municipality of Koror with the exception of those portions of Koror which are incorporated into the 1st Representative District, namely, Meyungs and Ngerbeched.

The court has based this plan of apportionment on two major factors. First, the population disparity, pursuant to the 1973 census, is minimal and the election districts are of approximate equal population. District 1 will have about 35% of the population while District 2 will have 32% and District 3, 33%. Second, the task of preparing for the election should be simpler for the Executive Branch if the same election districts are used and which have been in existence for over 10 years. This will also minimize the division of Koror which is a necessity under any reapportionment.

The election now set for November 2, 1976 will have to be postponed because under the Apportionment Plan adopted, a new period of time must be established to allow candidates to file for the new election districts.

There is one candidate, an incumbent nominated by political party, running for the seat in the 1st Representative District and one such candidate running for the seat in the 2nd Representative District. In the 3rd Representative District, the incumbent nominated by political party, is opposed by three candidates nominated by petition.

The reapportionment plan in P.L. 6-88 discouraged candidates from filing and also placed some candidates in Districts which they normally would not have chosen to run in. This "chilling" effect emanating from the reapportion-

ment plan of Congress is sufficient cause to re-open the time for filing petitions for candidacy for the House of Representatives.

In addition, all of the candidates who filed nomination papers by petition, have not complied with 43 TTC 103(3). That section requires that the nominating petition be signed by at least twenty-five persons who are registered voters in the Representative District in which the candidate intends to run. Under the Apportionment Plan herein, no such candidate will have the required twenty-five signatures from the re-structured District 3.

It is therefore ordered that nomination petitions shall be received by the Election Commissioner under the Plan of Apportionment set forth herein so long as they are filed no later than 1630 hours on November 10, 1976. Any petitions filed previously under 43 TTC 103, are null and void.

Any nominations made by political parties pursuant to 43 TTC 104 and which are consistent with this Plan of Apportionment shall remain in effect and be considered as valid. The Election Commissioner shall review any such nominations and if he determines any or all are invalid under this Apportionment Plan, he shall notify the political party involved no later than 1630 hours October 22, 1976. Any such invalid nomination by political party must be resubmitted pursuant to 43 TTC 104 on or before 1630 hours, November 10, 1976.

Any candidate who has paid a filing fee pursuant to 43 TTC 106 for the November 2, 1976 election and who re-files before November 10, 1976, shall not be required to pay a new filing fee.

The Election Commissioner may proceed to hold the senatorial election on November 2, 1976 or he may combine that election with the election to be held on the date of the postponed election.

This judgment, does not affect the candidate for the senatorial seat to be filled by the 1976 election.

The next session of the Congress of Micronesia is to convene in January of 1977. Consequently there is time for the Election Commissioner to perform his duties pursuant to Title 43 of the Trust Territory Code and this Apportionment Plan. Accordingly the election date is hereby postponed to December 7th 1976. Voters who would have been eligible to vote at the election on November 2, 1976 will be eligible to vote on December 7th. The postponement of the election shall not alter the list of eligible registered voters.

All other provisions of Title 43 not inconsistent with this judgment shall remain in full force and effect.

The court retains jurisdiction of this matter to resolve any questions which may arise from this Plan of Apportionment.

Judgment is hereby entered accordingly.