

ELECTIONS

After the executive branch has declared a candidate to have won an election, that winner has the right to hold office, subject only to the legislative branch's power to judge the qualifications of its members. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM R. 178, 179-80 (Chk. S. Ct. Tr. 1993).

While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. Robert v. Mori, 6 FSM R. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

While there may be cases in which the court would enter a matter before the election process has been completed the court will not do so where none of the acts complained of are contrary to law. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Voting is a privilege and not a right. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not

to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

There are rare occasions when an equitable remedy may be proper in an election case. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

The innocent voter who has done everything right should not lose the right to vote and be counted because the election officials have disregarded the mandates and directions of the election law. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM R. 503, 507 (Chk. S. Ct. Tr. 2000).

When a congressional candidate seeks the issuance of a temporary restraining order prior to balloting he will be denied since he cannot show irreparable injury because the Election Code provides an aggrieved candidate with sufficient alternate and adequate remedies. When the election law provides for remedies that have not yet been used a candidate cannot show the irreparable harm necessary for the issuance of a temporary restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

The Tolensom Constitution does not grant the Tolensom Legislature the power to create a method to "appoint" persons to the offices of mayor and assistant mayor. Those offices can be filled in only one way – by vote of the Tolensom electorate, that is, by the people of Tolensom. The only exception to that is when the mayoral office becomes vacant with less than a year left in the mayor's term, the assistant mayor assumes the office for the rest of the term. It was the Tolensom Constitution's framers' clearly expressed will that the mayor and assistant mayor be elected by the voters and not appointed by someone else. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

When the Tolensom Legislature elected in 2004 would have been the sole judge of the election of its members elected in that year and that Legislature already judged the four-year members elected, the Legislature elected in 2006 cannot be the judge of the members elected in 2004. The Legislature elected in 2006 can only be the judge of the election of the members elected in 2006. It cannot be otherwise. A later legislature cannot re-examine a four-year member's election at its whim after the mid-term election because that would make a nullity and a mockery of the provision that four at-large seats would have four year terms, not two year terms. The framers' intent is obvious. They wanted the four year seat holders to be held over throughout the term of the Legislature elected at the mid-term election, to provide a certain continuity. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

There may be cases in which the court would enter an election matter before the election process has been completed. But when, assuming the plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount or to aside the election, the plaintiff has not demonstrated that he is in danger of immediate, irreparable harm. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

The only explicit right to suffrage found in the FSM Constitution is the right to "vote in national elections." So an alleged denial of a right to suffrage in a Chuuk state election would be the denial of a right under the Chuuk Constitution's suffrage provisions, and not a denial of FSM constitutional right to suffrage. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

If a runoff election must be held, then it must be held and it is the State Election Commission's problem to come up with the necessary funds or to figure out how to conduct the election without funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The State Election Commission cannot refuse to hold an election because it has insufficient funds. If it refuses to hold an election on that ground, it is clear that, if sought, a writ of mandamus would issue to command that the election be announced and held. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If the State Election Commission has a duty to announce and conduct a runoff election, that duty can only be ministerial and non-discretionary. The State Election Commission does not have the discretion to choose whether to conduct an election or not. Its duty to conduct elections is mandated by the Constitution. Thus, whether the petitioner is entitled to a writ commanding the respondent Election Commission to announce (and conduct) a runoff election to fill the Governor's office depends solely on the meaning of the relevant provisions of the Chuuk Constitution. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

It is a clear non-discretionary duty for the State Election Commission to conduct a runoff election if, during the general election, no ticket of candidates for Governor and Lieutenant Governor receives a majority of the votes cast. However, in a special gubernatorial election to fill a vacancy, the candidates do not run on tickets. They run alone for the office of governor. The Section 7 provision for runoff elections applies to tickets of candidates, not to single candidates. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21-22 (Chk. S. Ct. Tr. 2011).

The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be

conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk State Supreme Court appellate division heartily approves of the method that if there were any discrepancies in tally totals at any of the twenty-five ballot checking points that the tabulating committee would recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed instead of using the methods that introduce a substantial chance of inaccurate results, and, although the Chuuk State Supreme Court appellate division does not require that all future elections use this tabulation method, this method will produce the most accurate result. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct. App. 2013).

A motion to temporarily restrain an election will be denied as moot when that election was held as scheduled. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

The appellate court will not consider a municipal election ordinance's validity when that ordinance's two alleged defects may be remedied or addressed before the next municipal election. Selifis v. Robert, 22 FSM R. 569, 572 (Chk. S. Ct. App. 2020).

– Conduct

The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. Olter v. National Election Comm'r, 3 FSM R. 123, 135-37 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM

Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM R. 28, 30 (Chk. 1993).

The National Election Commissioner has the power to establish voting precincts and designate polling places upon the recommendation of the members of the board of elections of the particular election district. Aten v. National Election Comm'r (II), 6 FSM R. 74, 76-77 (App. 1993).

When a state election is held on the same date as the national election and the closing time for the state poll is later than the 5:00 p.m. closing time for the national election, then the later state closing time prevails for the national election as well. The poll remains open to allow all who are waiting in line at closing time to vote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

By statute, petitions to the National Election Director challenging the acceptability of a vote or votes must be filed prior to certification of the results of the election or within one week of the election, whichever occurs first. Wiliander v. Mallarme, 7 FSM R. 152, 156 (App. 1995).

By statute, absentee ballots are to be examined when received, on or before Election Day, to determine if the voter is qualified to vote absentee, and the ballot envelope deposited unopened in container, and publicly delivered to counting and tabulating committee on Election Day. Wiliander v. Mallarme, 7 FSM R. 152, 156-57 (App. 1995).

Where, because election officials had not processed the absentee ballots until nine and ten days after the election thus making it impossible to file a petition concerning the acceptability of those ballots within the statutory time frame of prior to certification of the results of the election or within one week of the election, whichever occurs first, the petition will still be considered timely if it is filed before certification. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

A timely received absentee ballot may be rejected if the accompanying statement is insufficient, the signatures do not correspond, the procedure for marking and returning the absentee ballot has not been complied with, the voter is not a qualified elector, or the ballot envelope has been tampered with. Wiliander v. Mallarme, 7 FSM R. 152, 156 n.6, 159 (App. 1995).

The formalities involved in the absentee election process are intended to safeguard the electoral process from voter fraud. Therefore a regulation rejecting absentee ballots if the signature on the request form is different from the signature on the statement accompanying an absentee ballot is a reasonable exercise of the National Election Director's power to implement

rules and regulations for absentee ballots. Wiliander v. Mallarme, 7 FSM R. 152, 160-61 (App. 1995).

Since the right to vote is personal – one person’s vote cannot be cast by another – one person’s request to vote absentee cannot be made by another. Wiliander v. Mallarme, 7 FSM R. 152, 160 (App. 1995).

Congress intended that the National Election Code be applied uniformly throughout the nation. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

A radio announcement of the results of an Uman municipal election by the Uman Election Commissioner is not a ruling by the Chuuk Election Commission which would authorize an appeal to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm’r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent Election Commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in the State of Chuuk. David v. Uman Election Comm’r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk Election Law of 1996 applies to all elections in Chuuk including municipal elections unless otherwise specifically provided. David v. Uman Election Comm’r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Chipen v. Chuuk State Election Comm’n, 8 FSM R. 300n, 300o (Chk. S. Ct. App. 1998).

All ballots forwarded to absentee voters and not physically received by the Commission at its main office prior to the closing of the polls on election day shall be rejected. Chipen v. Chuuk State Election Comm’n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent election commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm’r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

Absentee voting is a privilege granted electors, and not an absolute right. The purpose of statutes permitting absentee voting is to enable a qualified voter to vote at a general election in the precinct of his domicil when he is temporarily absent therefrom. Chipen v. Losap Election Comm’r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

Unless voting is expressly allowed elsewhere, all ballots must be cast in the state of residence. Chipen v. Losap Election Comm’r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

Voters’ due process and equal protection rights are not violated by regulation or restriction

of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 1999).

The National Election Commissioner's failure to send out any absentee ballots until eleven days before the election instead of the at least 30 days prior to an election provided for by 9 F.S.M.C. 704(1) is not in substantial compliance with the procedures required by the statute and was a direct violation of a mandatory statute enacted by Congress. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

When requests for absentee ballots were received between January 30th and February 11th and no ballots were sent out until February 19th, those ballots were not sent out as soon as is practicable after the request was received as required by statute. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Errors in not timely providing absentee ballots can be largely remedied by extending the time in which ballots from such voters can be counted as timely received. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Absentee ballots must be sent out at least thirty days before the election to all duly qualified voters who have requested them by then. Braiel v. National Election Dir., 9 FSM R. 133, 136, 137 (App. 1999).

No absentee ballots received after the established close of polling places on Election Day should be counted and tabulated. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Separate mail or delivery by absentee voters is not required by the statute's language. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

Mere irregularities in a ballot's form will not invalidate an election if the voters' intent is obvious. Therefore ballots where the alignment of the candidate's name, picture, and box for an X vary slightly from the specimen ballot are not confusing and will not be invalidated. Braiel v. National Election Dir., 9 FSM R. 133, 139 (App. 1999).

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. FSM v. Moses, 9 FSM R. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election

commissioner when the statute's only stated requirement is twenty-four hours' notice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

All provisions of the Chuuk Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

While conditions may be imposed on candidates, the candidate must be afforded a reasonable opportunity to satisfy the conditions, and the extraction of fees which are arbitrary, or have no relation to the expense of the election will be denied. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

The purpose of election filing fees is to defray the costs of the procedures leading to the election. There must be a reasonable relation to the amount of the fee and the costs incurred. Unreasonable fees not only deny the candidate his right to be a candidate, but also deny the right of every person to select him for office. When the fee requirements go beyond the bounds of reasonable regulation, it operates as a substantial impairment of the right of the electorate to freely choose the candidate of their choice. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When an ordinance has a savings clause and its provision for election filing fees is found unconstitutional, the filing fee provision of the previous ordinance it superseded will be reinstated. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. Olap v.

Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535 (Chk. S. Ct. Tr. 2000).

Even if the purported enactment of the education qualifications for mayor and assistant mayor were unquestionably enacted, the municipal council is without authority to add qualifications to those set out in the municipal constitution unless the constitution so authorizes the council. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 17-18 (Chk. 2001).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

An FSM citizen, who is over 18 years of age, a resident of Chuuk, and not insane, confined to a mental institution or imprisoned, may vote at any Chuuk election provided he is registered to vote. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

Specific procedures and time frames govern voter registration. No one can be registered except by affidavit of registration made before the registration clerk in the municipality where such person resides at least 30 days prior to any election, when the registration rolls close for that election, and the Commission, accepts no further affidavits except for those who turn 18 years of age within the 30 day period. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

The Chuuk State Election Commission has the statutory power to promulgate in writing the necessary rules and regulations including administrative procedures for elections. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 n.8 (Chk. S. Ct. App. 2003).

Any elector who has previously been registered but whose name does not appear on the master list of his or her election precinct may be re-registered provided, he or she signs an affidavit attesting to such previous registration and swears to before the Election Commission or a designated representative. A registered voter from the same precinct must witness the elector's sworn statement. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 (Chk. S. Ct. App. 2003).

The Election Commission must prepare and compile a registration list of all voters for use in a general election, or any other election. The Election Commission's responsibility is to see that the general register lists accurately reflects the registered voters for the State of Chuuk. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

When it was already too late for the 39 persons on the additional list to be registered if they had not previously registered, then their votes were illegal; and when the specific procedures for re-registration were not followed for any of the 39 persons on the additional list that were being re-registered, their votes were illegal. Therefore, the process used to add the 39 persons on the additional list to the general register list on election day so as to allow them to vote was an election irregularity; all 39 persons on the additional list should not have been allowed to vote; and their votes were illegal. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Because the statutory provision prohibits making, using or furnishing copies of official ballots by any person, the Election Director should not have authorized the copying of additional ballots and copied ballots should not have been used in the election. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Opening a ballot box on the day before the election is not in accordance with the election law. In re Nomun Weito Interim Election, 11 FSM R. 461, 468 (Chk. S. Ct. App. 2003).

When voters used a copied ballot but were not aware of it and did not intend to do so and when those voters were properly registered to vote, showed up at the polling place, and properly exercised their constitutional and statutory right to vote, any problem with the ballots that they used was not their fault, but the fault of election officials in carrying out the election. Thus their votes should not be voided. In re Nomun Weito Interim Election, 11 FSM R. 461, 468-69 (Chk. S. Ct. App. 2003).

If true, even a failed attempt to intimidate voters, especially at a polling place, would subject that person to criminal liability. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

The Election Director does not have the authority to open a ballot box and to change the certification on his own. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

When the election law was not complied with in making a certification of votes, that certification is void. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476-77 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk State Election Commission has the power to conduct all elections in the State of Chuuk, including national and municipal elections, if so provided by law or municipal constitutions. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

Allegations of a total failure to provide an accounting of the number of ballots printed for the election; refusal to record or account for the total number of ballots cast in the election; failure to maintain an acknowledgment list to provide proof of which registered voters actually cast ballots; refusal by the Election Commissioner (the brother of an elected candidate) to permit opponents' representatives to accompany the Guam VAAPP ballot box to Fefan; the ballot box's seizure and opening while it was in his possession; evidence, including the fact that the key for the ballot box's lock did not fit the lock, raising an inference that the Election Commissioner had tampered with the ballot box while it was in his possession; deciding, a mere 10 days before the election, to do away with VAAPP sites in Hawaii and Pohnpei, thereby effectively depriving Fefan citizens residing in those places of their right to cast votes in the election; and the fact that the entire Fefan Election Commission had been hand selected by a candidate from his active supporters, thereby calling into question whether the Election Commission was truly independent, if proven to be true, are sufficient to call into question whether the election was in fact free and democratic, as required by the Chuuk Constitution. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 (Chk. S. Ct. Tr. 2003).

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore be denied. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Election irregularities may include the polling place's location was not announced thirty days in advance, voting started without a candidate poll watcher's presence, and poll watchers, who, for some reason, were permitted to sit close to the poll workers in the voting area. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

It is a poll watcher's duty to know where the polling place is and to be present before it is scheduled to open. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

Persons who are present at the polling place before closing (or in line at the door) and who are qualified to vote and have not been able to do so, must be given sufficient time to vote. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

The current Chuuk election statute only gives the Chuuk State Election Commission the power to conduct municipal elections if so provided by law or municipal constitutions. Nikichi v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Elections, particularly, are in the hands of the political branches. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Elections belong to the political branch of the government. The court can exercise authority over election disputes only to the extent that there is a constitutional or statutory provision expressly or impliedly giving it that authority. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Under Chuuk election regulations, stopping the voting at a polling place is authorized if in a precinct board's best judgment an incident creates an imminently extreme and unpreventable danger to human beings, and the election commission's executive director confirms the closing. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 388-89 (Chk. S. Ct. App. 2009).

The determination of whether a ballot can be counted or not is to be performed by examining the integrity of each individual ballot cast to determine if it is lost, destroyed, or defective, or whether it is capable of tabulation. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

When the court finds that although there was damage to the ballot box, there was no evidence that any of the individual ballots had been rendered unreliable or were otherwise

incapable of tabulation, the court will order the ballot box to be delivered to the election commission for a tabulation of cast votes according to the applicable Election Code provisions and election regulations. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

The Commissioners are tasked with a duty that includes the basic administrative planning of an election. Poor planning does not constitute an emergency, and the Commissioners must plan accordingly to ensure that they are carrying out their duties as assigned. To facilitate the process, state law provides that the Commissioners appoint people to conduct the election. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588 (Chk. S. Ct. Tr. 2013).

When the Commissioners' travel authorization was for travel originating in Chuuk on March 1, 2013, and therefore, any prior expenditure of funds, not directly attributable to the travel, cannot be then ascribed to a preliminary injunction's issuance; when the status quo for state government travel is to purchase full fare tickets which are therefore refundable with a minimal fee imposed and when hotel accommodations and car rentals are generally fully refundable given twenty-four hour notice and other costs associated with the election can generally be transferred to the parties that will travel in place of the Commissioners; when the Commissioners' impartiality is necessary to protect the elections' integrity while protecting the plaintiff candidates' and other individuals' fundamental rights; and when the Commissioners stated that they will attempt to be "honest" but that alone is insufficient because impartiality is required, the balance of the equities tips overwhelmingly in the plaintiffs' favor to enjoin the Commissioners' travel to supervise polling places. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588-89 (Chk. S. Ct. Tr. 2013).

Allowing the Election Commissioners to travel to conduct the elections will not serve the public interest since the commissioners' need to be physically present at the polling sites to conduct the election is a mischaracterization of the law because subordinate officers and employees are designated duties for the efficient performance of functions and duties and because the law requires impartiality, whether explicitly or implicitly, and the Commissioners' physical presence at the polling sites defeats impartiality and clouds the Election Commission with the appearance of impropriety. Consequently, an injunction will serve the public interest in a manner, which preserves the integrity of elections by ensuring that the Election Commissioners remain impartial while being available for any necessary quorums and require adequate planning for the elections. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589 (Chk. S. Ct. Tr. 2013).

State election commissioners are enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589-90 (Chk. S. Ct. Tr. 2013).

All ballots forwarded to absentee voters and not physically received by the Chuuk State Election Commission at its main office before the closing of the polls on election day must be rejected. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

Since the FSM Post Office, Chuuk branch was not the Chuuk State Election Commission's main office on March 5, 2013 and the Chuuk State Election Law's language is mandatory and not discretionary and therefore must be strictly adhered to, counting the thirteen absentee mail-in ballots that were in the post office on March 5, 2013, but that were not physically received at the Chuuk State Election Commission main office until after the closing of the polling places was

improper and must be deducted from the totals. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

All Chuuk Election Commissioners must remain neutral to avoid any/all appearances of impropriety, and to be available for any quorum following an election. Additionally, all persons holding a position in the Chuuk State Election Commission must strictly adhere to the mandates of the election laws. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

All Chuuk Election Commissioners are permanently enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations for the purposes of conducting the election at the voting sites. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

No law (including the Nema Constitution) prevents the Chuuk State Election Commission from determining whether an individual should be placed on the Nema Municipality General Election ballot. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

– Contests

An election must be completed and the results announced before the election can be contested. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

If the possibility of double voting is alleged the burden is on the appellant to show that it occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 78 (App. 1993).

When the National Election Commissioner's decision concerning election irregularities is appealed to the FSM Supreme Court, the appellate division must decide whether the National Election Commissioner's decision is proper, and if not, whether the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 81 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections,

its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The time frames established by statute for election petitions to the National Election Director are short. A candidate must be vigilant in asserting his rights to petition. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. Wiliander v. Mallarme, 7 FSM R. 152, 158 (App. 1995).

Congress intended that the election appeal process be timely and expeditious. This is especially important in a year in which the newly elected Congress selects the President and Vice President of the nation from among its members. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

The Chuuk State Election Law, Chk. Pub. L. No. 3-95-26, §§ 126, 130, requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h

(Chk. S. Ct. App. 1998).

The right to contest an election is not a common law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

When a contestant offers no evidence of voting irregularities before a municipal election board and the Chuuk State Election Commission and the Chuuk State Supreme Court appellate division, the appellate division has no basis to disturb the findings of fact reached by the Election Commission. Findings of fact relative to the residence, age and location of electors will generally be left undisturbed. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The right to contest an election is not a common-law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. An election contest is purely a constitutional or statutory proceeding. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

An election contest is purely a constitutional or statutory proceeding. At common law there was no right to contest in a court any public election, the theory being that elections belong to the political branch of the government, beyond the control of judicial power. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

An aggrieved candidate does not have to wait until the final certification of the results to file his complaint. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The Chuuk State Election Commission must meet within three days after certification to consider any complaints. A contestant is justified in considering the Commission's failure to meet within its deadline as a denial of his complaint, and is thus entitled to file a notice of appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153-54 (Chk. S. Ct. App. 2001).

There is no provision in the election law allowing a voter to cast a ballot after the polling places have closed and everyone in line at the time has been allowed to vote. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

When sufficient evidence was not produced to establish a prima facie case for the reliability of state ballots found misplaced in national election ballot boxes, and those ballots were not kept securely, the election contestant has failed to establish an attribute of reliability that might have lead the court to allow those ballots to have been counted. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When the faxed official result form from a polling place abroad is illegible and the results are later sent on an unofficial form, the proper relief for those results' unreliability is not their elimination, but that the ballot box be placed in the court clerk's custody, to be opened and the original official result form used in place of the faxed results to determine the proper result. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

The election statute does not contain a deadline to file an election contest appeal from the Chuuk State Election Commission. The only deadlines in the statute that relate to the court are that the court must "meet within 7 days of its receipt of a complaint to determine the contested election," and that the court must "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

An appellee's cross appeal in an election case will be dismissed when there was no evidence that he had ever raised the issue before either the tabulating committee or the Election Commission. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

The absence of a filing deadline in the election statute means that there is no statutory jurisdictional time bar to an appeal, but that any election contest party who appeals within seven days of when the declared winning candidates are to take office runs the risk that the court will either not meet before its authority to decide the appeal expires or that court may be unable to conclude the proceedings and make its decision before its authority to decide the appeal expires. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When, if an election contestant were declared a winning candidate, only one of two other candidates would no longer be a winning candidate, both may properly be considered defendants under the election statute when it is uncertain which of those two the contestant would have displaced if he had succeeded in being elected. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When a municipal election ordinance has no provision for contesting or challenging the election results after an election has been held, or for resolving election disputes and when the state election law applies to all elections in the state including municipal elections whenever applicable unless otherwise specifically provided, the state election law must apply to this phase of the election, and the proper forum to contest the municipal election is the Chuuk Election Commission. Alafonso v. Suda, 10 FSM R. 553, 557 (Chk. S. Ct. Tr. 2002).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM R. 442, 444 (App. 2003).

A Chuuk Election Commission decision may be appealed to the Chuuk State Supreme Court appellate division where a trial *de novo* may hear witness testimony and oral arguments from the parties. In re Nomun Weito Interim Election, 11 FSM R. 461, 464 & n.2 (Chk. S. Ct. App. 2003).

When even if the number of illegal votes were all subtracted from the real party in interest's legal votes, the real party in interest still has more votes than his opponent, the court cannot set aside the election results because the election results would not change. In re Nomun Weito Interim Election, 11 FSM R. 461, 469-70 (Chk. S. Ct. App. 2003).

When an election contestant has not proven that an unauthorized pollwatcher's actions made the situation at the Pohnpei VAAPP such that the results from that ballot box are so unreliable that they must be discarded, those results will stand. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

A letter to the Commission, that asks that the vote be changed from 154 to 164 is not in the form of a verified complaint as required by statute. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

The unauthorized opening of a ballot box creates severe impediments to resolving an election contest in a manner reflecting the voters' intent. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate has a due process right, created by statute, to be heard on his verified complaint's contentions. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate should file a verified complaint, which should be heard and considered by the Election Commission before it alters or certifies the figures certified by the Overall Chairman and the Director. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

When an election contest comes before the Chuuk State Supreme Court appellate division with the best evidence of the results, the ballots, irreversibly tainted and unusable, the court is forced to consider less authoritative evidence. Since the election law mandates that a trial be held for election contests appealed to the appellate division, this requires the court to make a *de novo* determination of the facts as well as stating its interpretation of the law. The court therefore hears witness testimony in addition to considering documentary evidence and legal argument. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 2003).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 (Chk. S. Ct. Tr. 2003).

A new claim that constitutionally only the state election commission can conduct municipal

elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

When there are multiple dates upon which an election result was certified, the date of making the certification public and notifying the candidates would comport best with due process as the certification starting point for election contests. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

An election contest appellant's failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The conduct of elections is generally left to the political branches of government – the legislative and the executive – and not to the judicial branch. The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to

appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate's appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director's decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in

any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Assuming an allegation that the litigants were denied due process by the Chuuk State Supreme Court trial division to be true, does not assist their argument because they had a clear avenue to appeal that judgment and did not. When no attempt was made to appeal a decision that the candidates considered in error and a violation of their due process rights, the defendants were not vigilant in asserting their rights in seeking appellate review. An aggrieved candidate must be vigilant in asserting his rights to contest an election result. Esa v. Elimo, 14 FSM R. 216, 219-20 (Chk. 2006).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Generally speaking, elections are conducted, carried out, and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the National Election Director's final action, although there may be cases in which the court would enter a matter before the election process has been completed. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another's with the result that he would be declared a winning candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

Chuuk Election Code, section 55 involves complaints in general by any citizen involving any misconduct and a candidate, when the candidate is contesting the election of another, is required, not to follow section 55, but to follow the administrative process specifically set forth in sections 123 through 130 for election contests. The completion of the administrative process outlined in section 55 is delegated to the Election Commission, not to the complainant since it is the Commission that makes the referrals to the other agencies, not the complainant. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

Election Code, sections 126 and 127, involving what must be included in an election complaint and the requirement that it be verified, apply to complaints filed before the Election Commission, not to the papers required to be filed in the Chuuk State Supreme Court appellate division for it to obtain jurisdiction over the case. When the Election Commission did not render its decision rejecting Samuel's petition on the ground that his complaint was not properly verified or did not satisfy certain formalities. Any technical defects in the original complaint are not before the court. Furthermore, the proceedings are not to be dismissed by the Commission or any court for the want of form if the contest grounds are alleged with enough certainty as will advise the defendant of the particular ground or cause for which the election is contested. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

When an election contestant's appeal to the court included what he called a Refutation of Decision of Election Commission in which he contends that the Commission's decision was contrary to law, the contestant has alleged abuse of discretion because one way in which an adjudicatory body may abuse its discretion is when its decision is based on an erroneous conclusion of law. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

For the twenty-plus voters who cast their votes after 5:00 p.m. to have affected the election's outcome, there would have to have been at least twenty-six voters (because the winning margin was twenty-six votes); they would have to have all been illegal votes; and all of them would have had to have voted for real party in interest and none for the petitioner, which since this is a multiple-member district, it was possible that one or more of these voters voted for both. This makes it unlikely that these twenty-plus voters (possibly not even totaling 26), even if they all cast illegal votes, affected the election's outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election cannot be set aside on account of illegal votes, unless by deducting those illegal votes, the result is a tie or a different candidate would be declared the winner. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election contestant will prevail only when it is more likely than not that the irregularities

complained of could have, not necessarily would have, resulted in a tie or the election of a candidate who would not have won had the irregularities not occurred. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When it was not more likely than not that the allegedly illegal votes cast after the Honolulu polling place had closed, if deducted, could have resulted in a tie or in the petitioner's election and when nothing before the court indicated that any of the other irregularities complained of had any affect on the election's outcome, the election contestant therefore failed to carry his burden of proof to show that upon the facts and the law he had a right to relief, and, on motion, the court may dismiss the case. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When a candidate seeks as relief either that the results from certain ballot boxes be nullified, leaving him with a plurality thus making him the "winning candidate" or a revote, it is thus an election contest in which a candidate alleges that fraud or errors affected the election's outcome and challenges the certification of another as the "winning candidate." Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The applicable time frame within which an election contest appeal can be made starts with a petition for a recount or a revote filed with the Election Director within one week of certification of the results of the election; the "winning candidate" is then given seven days to respond; and the Director then has fourteen days to decide whether to approve petition. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus

disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

The court will consider the constitutionality of a municipal ordinance when the one issue that has always been before the court from the case's inception was the right of those municipal officials elected to municipal offices (mayor, assistant mayor, and Tolensom legislators) in 2004 not to be deprived or divested of those offices until their terms are up; when the terms of the legislators elected for two years have already expired but the terms of the four at-large four-year legislators, the mayor, and the assistant mayor have not; and when the new municipal ordinance relates directly to this issue because it purports to create a Tolensom Special Election Tribunal Commission, which can appoint a mayor or assistant mayor when there is an "executive crisis" created because the offices have been "vacant" for more than six months because the right to those offices is disputed between the candidates who ran for those offices. Esa v. Elimo, 15 FSM R. 198, 203 (Chk. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party

whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

The Chuuk Election Law of 1996 applies to Murilo municipal elections. Sections 123-130 of that law provide for the means to contest an election in Chuuk, which is to be before, and decided by, the Chuuk Election Commission. And it is well settled that election contest appeals from the Chuuk Election Commission go directly to the Chuuk State Supreme Court appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

In an election dispute, the person whose right to the office is contested is the real party in interest. When a plaintiff is contesting the right of a candidate to participate in an election but fails to name the candidate as a party in the complaint, the court will deny injunctive relief because the real parties in interest are not parties to the action, since without naming the candidates as parties to this action, and giving them the benefit of due process of law, the court is unwilling and unable to adjudicate their rights in the proceeding. Bisaram v. Suta, 15 FSM R. 250, 255 (Chk. S. Ct. Tr. 2007).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case.

The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The Chuuk State Election Law of 1996, chapter 8 sets forth the procedures for contesting the results of an election. A "contestant" is someone contesting an election. A "defendant" in an election contest is one whose election or qualifications are contested. A contestant must verify a statement of contest and file it within five days after the declaration of the result of the election by the body canvassing the returns thereof, and the election commission must rule on the complaint within three days after the end of time for filing statements of contest. The Election Law imposes no deadline for appealing a ruling of the election commission to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 205-06 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although it may be preferable to have the issue of a candidate's qualification addressed before the election, there is nothing to prevent a petitioner from re-filing his qualification challenge after the declaration of the results, according to the provisions for an election contest. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be some cases where issues regarding the conduct of elections may be raised prior to an election, it seems axiomatic that an election contest only arises once the results of the election are known. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

By filing a complaint under section 55, any person may raise with the state election commission a controversy over a violation of any of the Election Law provisions. If a candidate is found guilty of violating any election law provision, the candidate may be disqualified from office and an Independent Prosecutor or Attorney General, or both, will take whatever necessary legal action to make the disqualification from office legally effective. While there are specific timing provisions that control the filing of an election contest, there is no provision that sets a deadline for filing section 55 controversies. A disqualification resulting from a successful section 55 action may, therefore, occur either before or after a candidate takes office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

The state appellate panel must decide on a contested election before the date upon which the declared winning candidates are to take office in the Senate or House of Representatives since the decision of the specific house concerned will prevail and is final. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

Except for members-elect of the Senate or House of Representatives, the court is not prevented from ruling on cases involving elected officials even after they have taken office. A candidate will continue to have a legally cognizable interest in whether one or more candidates is disqualified because, if one or more candidates is disqualified, then one of the others may stand to be the winning candidate. If the candidates' qualifications are affirmed by the court, the ruling still serves a valuable function by settling a concrete dispute over the qualifications of an elected official. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

The procedures for filing a challenge of a candidate's or elected official's qualifications may

be presented at any time. A properly filed petition is not rendered moot by the results of an election or the swearing in of a mayoral candidate. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case is an election contest when the relief sought may affect or change who the winning candidate is in an election district and the plaintiff-candidate is thus an election contestant. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

An election contest appeal must await the National Election Director's certification of the election results and the Director's subsequent denial of the candidate's timely post-certification petition. If the Director's decision on an aggrieved candidate's petition does not adequately address the candidate's concerns, the aggrieved candidate would then have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

When Congress drafted the election statute, it limited court involvement in election contests until after the issues have been narrowed to the certified result and to whether the Director should have granted a candidate's petition contesting the certified result and, if so, what relief was then appropriate. The statute also designates the FSM Supreme Court appellate division as the forum for election contest appeals. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Any candidate who would be adversely affected by the relief an aggrieved candidate seeks would be an indispensable party to the action and must be joined before a court could grant any relief or a dismissal will ensue. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Election Code sections 131 and 132 specifically provide that the Chuuk State Supreme Court appellate division is to hold a trial de novo on an appeal from the election commission, which necessarily means that the appellate division will make its own determinations of fact. The court is therefore not limited to review of the election commission's findings for an abuse of discretion, but is authorized by law to make findings of fact. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

When the election statute appears to contemplate that the election commission will be open for filing election complaints during the five days following the election results' certification regardless of whether one of those day falls on a weekend or holiday; when the election commission had no written policies or regulations or other notice issued to the public that would

reasonably inform a complainant that the election commission would be open at reasonable, specified times for filing election contests each of the five days following the results' certification; when the election contestant was not reasonably informed that he could file his verified complaint on Saturday, March 14, rather than filing it on the following Monday, as he had done; when the contestant had sought to file his verified complaint on Saturday, but the election commission office was not open for filing; and when, even if there had been written policies or regulations or other reasonable public notice, the commission was not, in fact, open for filing when petitioner sought to file his complaint within the five-day deadline, the court will conclude that the verified election complaint's Monday filing was timely under the circumstances and remand the matter back to the election commission for an expedited ruling. Aten v. Chuuk State Election Comm'n, 16 FSM R. 390, 391-92 (Chk. S. Ct. App. 2009).

A case is an election contest when the relief sought may affect, change, or prevent the change of who the winning candidates are. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

When a candidate seeks relief that would result either in him being confirmed the winning candidate or preventing another candidate from such a confirmation or relief could affect an election's outcome, it is an election contest. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

An election contest is a proceeding to challenge the results of an election. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

The pleading requirements for filing an election contest are liberal. An election contestant must file a verified, written complaint with the election commission setting forth the contestant's

name and that he is a voter in the state, municipality or precinct where the contested election was held; the defendant's name; the office; and the particular grounds of contest, and the complaint must not be rejected, nor the proceeding dismissed by the commission or any court, for want of form, if the grounds of the contest are alleged with such certainty as will advise the defendant of the particular ground or cause for which the election is contested. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

When the petitioners' complaint to the election commission shows numerous, specific allegations of misconduct resulting in election irregularities and when, based on these allegations, the petitioners challenge the election results and request relief that could change the election's outcome, the allegations are set forth with sufficient certainty to advise the defendants of the grounds for the contest, and since the petitioners' complaint challenges the election results with sufficient certainty, it should be treated as an election contest and not an action against the commissioners in their individual capacities. If there is a basis for criminal or civil liability against election commission officials in their individual capacities, the allegations may be pursued in a separate action within the discretion of the Attorney General or an independent prosecutor. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

A complainant before the election commission may name as a defendant a person whose election or qualifications are contested or persons receiving an equal or larger number of votes, other than the contestant, and the election commission or an individual member may also be a defendant. If the election commission believes that the commission is an indispensable party to the action, it can easily order that it be named a party to the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410-11 (Chk. S. Ct. App. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. The deadline for filing a complaint with the election commission is jurisdictional. If the complainant fails to meet the deadline, then the election commission has no jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A timely-filed election complaint confers jurisdiction in the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A court will refrain from addressing whether it has jurisdiction over an election contest when the matter is merely hypothetical and not a justiciable controversy, but if the issue comes properly before the court and if it appears that the court lacks jurisdiction over the complaint's subject matter, the court would dismiss the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An appeal is an election contest when a candidate seeks relief that would result either in him being confirmed the "winning candidate" or preventing another candidate from such a confirmation or the relief could affect an election's outcome. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

If the possibility of double voting is alleged, the burden is on the election appellant to show that it is likely to have occurred; he cannot rely solely on an assertion that double voting is possible. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 n.4 (App. 2009).

A petition presented to the National Election Director must contain a) a statement of the nature, location and extent of the election fraud or error that forms the basis of the petition; b) a statement of the form of relief the petitioner seeks; c) a list of election records and witnesses that will establish the existence of election error or fraud, specifying how each record or official listed is relevant to the petition's allegations; and d) affidavits, documents and any other evidence in support of the petition. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 (App. 2009).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

A court cannot conclude that there was an effective denial of an election petition until there is a determination as to what, if any, substantive action to determine the contest was taken by the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Since, in an election contest appeal, the Chuuk State Supreme Court appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding and since the Election Law itself does not prescribe rules of procedure, the court has, when necessary, followed procedures analogous to those in the Civil Procedure Rules. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

In ruling on a motion to dismiss for failure to prosecute an election contest, the court also takes into consideration the vigilance required of an election contestant to prosecute his claim to a speedy resolution. Due to the time sensitivity of election contests, continuances should rarely if ever be granted since the public interest and the litigants' private rights demand that proceedings be resolved as soon as consistent with justice and orderly process. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 2009).

The burden is on the election contestant to be vigilant and to prosecute his claim diligently to a speedy resolution. When a contestant has not done this; when the contestant's explanation for not complying with the court's order for a pre-trial record was not consistent with a good faith effort to prosecute his appeal; when the contestant otherwise took no action to expedite his appeal's resolution; and when an election contestant, without reasonable justification, failed to comply with a court order requiring a filing by a set deadline or his claim would be deemed abandoned; and when he has not taken steps to diligently pursue the speedy resolution of the election contest, the court is justified in concluding that the prosecution of the claim has been abandoned and will grant a motion to dismiss for failure to prosecute. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 2009).

An election contest petitioners' failure to name all real parties in interest in their pleadings can subject the court's rulings to being later challenged by the real parties in interest as a violation of their due process rights to defend their interest in the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 516 n.1, 517 (Chk. S. Ct. App. 2009).

Absent a showing that the election commission had failed to take meaningful action on their complaint since the court's remand, the court could not take jurisdiction over the remanded election contest since, if the court had taken jurisdiction over the merits of the case before administrative remedies had been exhausted, it would have circumvented the power vested in the election commission to have primary jurisdiction over election contests and the court's rulings would have been subjected to appeal for lack of jurisdiction when administrative remedies had not yet been exhausted. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 517 (Chk. S. Ct. App. 2009).

Matters of statutory interpretation are issues of law that the court reviews de novo. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest appeal in the Chuuk State Supreme Court appellate division, the court will hold a trial on an issue of fact. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest trial in the appellate division, a respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider this as a motion analogous to a Civil Procedure Rule 41(b) motion in the trial division. The motion may therefore be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then make findings of fact and conclusions of law and render judgment against the petitioner. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Whether an election complaint is timely filed is a matter of great importance in election contests, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction since an adjudicator's jurisdiction over election contests is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is

mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint. An oral complaint does not satisfy the requirements of a verified complaint, which is a written complaint sworn to under oath. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

The public announcement of the results, not the date of certification, is the date for determining an election contest filing deadline under the Chuuk Election Law. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the

candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

In the case of a contested election of a member-elect of the Chuuk Senate or House of Representatives, the decision of the specific house concerned prevails. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

When, at the close of the petitioner's case-in-chief, the respondents move to dismiss the petitioner's case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When determining whether a petitioner has shown a right to relief in an election contest appeal, the Chuuk State Supreme Court appellate division is not required to view the facts in the light most favorable to the petitioner but may draw permissible inferences, and if it determines that the petitioner has not made out a prima facie case, the real party in interest is entitled to have the case dismissed. Even if a petitioner makes out a prima facie case, the Chuuk State Supreme Court appellate division, as the trier of fact, may, in assessing the evidence on a Rule 41(b) or analogous motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies, and when weighing the evidence, the court may view the evidence with an unbiased eye without any attendant favorable inferences, and may sift and balance the evidence and give the evidence such weight as it deems fit, and when it renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When there was an eighty-five vote difference between the petitioner and the real party in interest; when, weighing the evidence with an unbiased eye, the Chuuk State Supreme Court appellate division determined that the petitioner did not show that the possible tabulation inaccuracies, even in the unlikely event that they were all in the real party in interest's favor, were enough that there was a substantial chance that the election's outcome was affected; and when, even if the Chuuk State Supreme Court appellate division were to view the facts in the light most favorable to the petitioner and gave the petitioner the benefit of all reasonable inferences, it still would not have been more likely than not that if a more accurate vote count were obtained through a recount the vote totals would have changed enough so that there was a substantial chance that the election's outcome would be affected; the petitioner failed to carry his burden of proof to show that upon the facts and the law he had a right to relief and the Chuuk State Supreme Court appellate division therefore may, on motion made after the presentation of the petitioner's case-in-chief, dismiss the case. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct.

App. 2013).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Whether an election complaint is timely filed is a matter of great importance in election, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction. An adjudicator's jurisdiction over election contest is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of a proceeding. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Court Jurisdiction

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state

law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed,

courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535 (Chk. S. Ct. Tr. 2000).

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The court lacks jurisdiction to hear an election appeal filed too soon because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames in 9 F.S.M.C. 902 have been adhered to. Such an appeal is therefore dismissed as premature (unripe). Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

The relevant Chuuk constitutional provisions do not bar the Legislature from providing by statute for an appeal directly from the Chuuk State Election Commission to the Chuuk State Supreme Court appellate division. The Constitution does provide for appeals from administrative agencies to the Chuuk State Supreme Court trial division, but the Constitution does not make the trial division's jurisdiction exclusive, and the trial division's jurisdiction is further qualified with the proviso "as may be provided by law." Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The Legislature, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, has the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division with an appeal to the appellate division and a further possible appeal to the FSM Supreme Court appellate division. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 589 (Chk. S. Ct. App. 2007).

The court's only authority in election matters is to hear appeals from Chuuk State Election Commission decisions regarding the conduct of elections. Only a house of the Legislature can decide who is to be seated as a member. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a

Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he

could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an

appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

If Congress seats a candidate unconditionally an election contest becomes a non-justiciable political question. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM

Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate

division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

When the appellants dispute the Election Commission's authority to nullify the results of a municipal mayoral election and reschedule the election, the appellants are not contesting the results of any election, especially since an appellant was the first election's declared winner; rather, the appellants dispute the state election commission's authority to nullify the first election's results and order a new election. Since the Election Law does not contemplate Appellate Division jurisdiction over disputes that arise outside the timeframe set by section 127 and since the appellants are not appealing from an election commission decision on an election complaint that was filed in compliance with section 127, the appellate court has no jurisdiction over the matter pursuant to sections 130 and 131 of the Election Law, which are the only provisions in the Election Law that provide for original jurisdiction over election matters in the appellate division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542-43 (Chk. S. Ct. App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the election law provides for remedies that have not yet been used, a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

Since section 131 of Chuuk State Law No. 3-95-26 provides for trials in the Chuuk State Supreme Court Appellate Division when review of Election Commission decisions regarding contested elections is sought and since the plaintiff has availed himself of that remedy, he cannot show irreparable harm. But a court must weigh three factors other than irreparable harm

when considering injunctive relief – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – and when none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

It is the nature of the political process that elections typically yield a single winner and one or more losers. Absent a showing of foul play or procedural irregularity, a defeated election contestant has no claim before any court of law. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court appellate division has jurisdiction of election matters as provided for in Sections 130 through 139, of the Election Law of 1996. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Recount

A decision whether to grant or deny a recount is not an everyday decision, but a large question affecting the public interest profoundly and involving fundamental policy considerations. Olter v. National Election Comm'r, 3 FSM R. 123, 133 (App. 1987).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

The statutory scheme of the National Election Code strongly suggests that Congress intended the word "substantial" in 9 F.S.M.C. 904 to be applied liberally, so that in the event of doubt, a recount would be available. Olter v. National Election Comm'r, 3 FSM R. 123, 138 (App. 1987).

The statutory scheme of the National Election Code reflects far greater concern that appropriate recounts be provided than that inappropriate recounts be prevented. If a recount is denied when it should have been granted, a grave risk is presented to constitutional government. Olter v. National Election Comm'r, 3 FSM R. 123, 138-39 (App. 1987).

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM R. 38, 39 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The standard to determine whether a recount must be ordered is 1) whether a substantial question of fraud or error exists, and 2) whether there is a substantial possibility that the outcome of the election would be affected. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

A partial recount is a less drastic remedy than requiring part of the election to be done over. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

When the election statute provides that a recount is to be taken if a recount is necessary for the proper determination of the election contest, the proper standard to use to determine whether "a recount is necessary for the proper determination of the contest" is that a recount will be ordered when the contestant has shown that it is more likely than not that there were substantial irregularities that could have affected the election's outcome. It is the election contestant's burden to make this showing. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When one member of the tabulating committee, called the speaker, read out the votes on the ballot, another member verified what he read, and three other members recorded the votes on their tally sheets and stopped at various checking places to check their totals and when the methods used to resolve tally sheet discrepancies – if two tally sheets agreed and one did not, the result of the two that agreed was used; and if all three differed, the middle result was used – introduced a substantial chance of inaccurate results, these methods' inaccurate results could have affected the outcome because of the closeness of the official results (a one vote difference). Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156-57 (Chk. S. Ct. App. 2001).

The court heartily approved of a recount method designed to achieve an accurate result by which, if there were any discrepancies in tally totals at any of the checking points, the tabulating

committee would instead recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

When the ballot box was obviously not in the condition it was when locked and it was not even in the condition that the Director asserted that it was in when he opened (and closed) it to retrieve the tally sheet, the possibility that the box could have been tampered with and that the ballots were not in their original condition was unmistakable. Since the court could have no confidence in the integrity of the ballots because they were so tainted that they were inadmissible as evidence of the votes cast, it would be pointless to order a recount. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

If the Director had not opened the ballot box on his own, but instead waited as required by statute, for a court order to recount, the ballots' integrity would, in all likelihood, be unquestioned and a recount could have been ordered which should have satisfied the parties and the public as to the true vote totals. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

A recount will not be ordered when the statements of contest on file do not appear to make it necessary; when the petitioner, who had originally not made that request before the Election Commission, initially made such a request of the court prematurely, but later abandoned his request when the court specifically inquired if he was still seeking a recount; and when, even if the court could be assured of the security and chain of custody of the ballot box in question, it was not shown that it was likely a recount could alter the outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 597 (Chk. S. Ct. App. 2007).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

Provisions for challenging the acceptability of votes apply to individual or particular votes

and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

When the only irregularity clearly alleged in an election petition was that the transmission of the results had been tampered with, a recount of the actual ballots, if the ballot boxes' security and integrity has been maintained and assured, is the logical remedy. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 n.5 (App. 2009).

When the tabulators, after twenty-five ballots had been tabulated, would compare their tabulations and if the tallies did not agree the tabulators would, if two tallies agreed, adopt the majority figure, and if all three were different, they would adopt the middle figure, these methods used to resolve discrepancies introduce a substantial chance of inaccurate results and these inaccurate results, depending on the closeness of the official outcome, could affect the outcome, which would entitle the petitioner to a recount. Hallers v. Yer., 18 FSM R. 644, 647-48 (Chk. S. Ct. App. 2013).

– Revote

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM R. 38, 39 (App. 1993).

That the results of the election would have been changed but for the alleged irregularities is not the correct formulation of the ground for a revote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM R. 143, 145 & n.1 (App. 1993).

The proper standard for determining whether a revote should be ordered is whether the result could have been different had the irregularities not occurred. The plaintiffs' obligation is twofold, to establish that irregularities occurred and to show that the result could have been different had no irregularities occurred. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 277-78 (Chk. S. Ct. Tr. 1998).

No revote can be ordered when there is no proof of the alleged election irregularities and thus no showing that the conduct of the election affected the result, and when the outcome is the result of the plaintiffs' refusal to participate in the election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 278-79 (Chk. S. Ct. Tr. 1998).

The time frame for an aggrieved candidate to seek a revote is the same as that to seek a recount. It must be filed within one week of certification of the election results. The winning candidate has one week to respond to the petition. The National Election Director then has 10 days to decide whether to approve the petition. If he decides not to approve the petition, he must record the reasons for the decision. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

When election irregularities cannot be corrected by recount, a candidate may petition for an election to be set aside and done over, either in a district as a whole or in the part where the irregularities took place. The procedures for the filing a revote petition, action thereon, and appeal of its denial are the same as those for a recount petition. Wiliander v. National Election Dir., 13 FSM R. 199, 203 n.3 (App. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. Asugar v. Edward, 13 FSM R. 209, 212-13 (Chk. 2005).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the Election Commission has ordered a revote and that order has been appealed, the relative harm to each party, or even that either party faces an impending harm at all, is difficult to fathom. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the trial court is without jurisdiction to either decide or second guess the reasoning underpinning future appellate division decisions and, whatever the results of the revote, neither party is likely to suffer a harm of such import that cannot potentially be redressed through the procedures set forth under our laws. The plaintiff does not stand to lose anything of a magnitude so great as to justify issuance of an order enjoining the election from taking place at all because if the defendant prevails in the appeal, there may be utility in the revote and if the plaintiff prevails in the appeal, the revote becomes a nullity. Under either scenario, the results of the revote may be administratively and, if necessary, judicially appealed. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When a plaintiff argues that the District No. 11 constituents should not incur the expenses of a revote where there is a likelihood that the appellate court will set aside the results, the public interest is best served if due process is allowed to run its course. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When, at least procedurally, the law governing appeals of administrative decisions on contested elections has been properly complied with, a plaintiff's petition requesting an injunction against the revote ordered by the Election Commission is wholly without merit and can only serve to frustrate the legal process underway in appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Under Chuuk State Law No. 3-95-26, no irregularity or improper conduct in the proceedings of any election board will void an election result, unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election, and an election will not be set aside on account of illegal votes unless it appears that such number of illegal votes has been given to the person whose right to the office is contested. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 493-94 (Chk. S. Ct. App. 2011).

Since, in order for the Chuuk State Election Commission to have properly declared a revote, in addition to determining that illegal votes were cast, it was required to determine that the illegal votes resulted in the winning candidate being declared elected, a call for a revote was in error when there is nothing to indicate the likelihood that the 18 illegally cast votes would have

resulted in a different candidate being declared elected, or a tie, or would have rendered a different outcome in the district 11 poll results. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

A "winning" candidate cannot show that a revote constitutes irreparable harm because, after the revote is held, that candidate may still be declared and certified as the winning candidate – the revote might not alter the ultimate outcome. In re Decision of Nat'l Election Dir., 22 FSM R. 221, 223 (App. 2019).

A revote is an authorized remedy for fraud or error that cannot be corrected by a recount, and a shortage of ballots at a polling place is, by its nature, an error that cannot be corrected by a recount. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

A revote is the preferred remedy for an error that cannot be corrected by a recount since it does not disenfranchise the many qualified and innocent voters at the polling place(s) where the revote is held. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).

A party seeking a preliminary injunction must clearly show that an immediate and irreparable injury would otherwise occur and that there is no adequate alternative remedy. In re Decision of Nat'l Election Dir., 22 FSM R. 234, 236 (App. 2019).