IN THE SUPREME COURT OF GUAM

JOSEPH T. DUENAS and LINA'LA SIN CASINO,
Petitioners,

v.

GUAM ELECTION COMMISSION, and GERALD TAITANO,
Respondents,

GUAM GREYHOUND, INC., ANNETTE M. CRUZ, E.J. CALVO, and CARLO J.N. BRANCH,
Intervenors-Respondents.

Supreme Court Case No. WRM07-007

OPINION

Cite as: 2008 Guam 1

Argued and submitted on January 2, 2008
Hagåtña, Guam

Appearing for Petitioners:
Joaquin C. Arriola, *Esq.*
Leevin T. Camacho, *Esq.*
Arriola, Cowan & Arriola
C & A Building
259 Martyr Street, Suite 201
Hagåtña, GU 96910

Appearing for Respondents:
Cesar C. Cabot, *Esq.*
John V.R. Aguon, *Esq.*
Edge Building, Second Floor
929 South Marine Corps Drive
Tamuning, GU 96913

Appearing for Intervenors-Respondents:
Richard A. Pipes, *Esq.*
Law Offices of Richard A. Pipes
Orlean Pacific Plaza, Suite 201
865 South Marine Corps Drive
Tamuning, GU 96913

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

CARBULLIDO, C.J.:

[1] Petitioners Joseph T. Duenas and Lina'la Sin Casino (collectively "Petitioners") request that this court exercise original jurisdiction over this matter, and issue a Writ of Mandamus ordering Respondents Guam Election Commission and Gerald Taitano (collectively "GEC") to remove Proposal A, the Better Jobs for Guam Act, from the upcoming special election ballot, or not certify the results. We granted the motion to intervene in the action by Guam Greyhound, Inc., Annette M. Cruz, E.J. Calvo, and Carlo J.N. Branch (collectively "Intervenors"). We find that laches bars some of Petitioners' claims. Although we find that the Guam Election Commission's impartial analysis was improperly biased, we are constrained by 3 GCA § 17509.1, and cannot grant the relief requested. We therefore deny the petition for writ of mandamus.

I.

[2] On December 4, 2006, GEC accepted a submission of an initiative measure named by its proponents as the "Better Jobs for Guam Act" (hereinafter "Proposal A").[1] The initiative would legalize slot machine gambling at Guam Greyhound Racing Park, tax slot machine income at 10%, and would require Guam Greyhound Racing Park to make a number of annual charitable contributions for as long as they operate slot machines. The Intervenors-Respondents in this case are proponents of the initiative, Petitioners are opponents of the initiative, and Respondents are the GEC and its Executive Director, Gerald A. Taitano. On December 11, 2006, GEC's legal counsel, Cesar Cabot, certified that Proposal A "does not embrace unrelated subjects." Petition, Ex. C (Memorandum from Cabot to GEC Chairman Horecky and GEC Executive Director Taitano, Dec.

[1] Verified Petition for Writ of Mandamus (Dec. 21, 2007) ("Petition"), Ex. A ("Better Jobs For Guam Act," GEC date-stamped Dec. 4, 2006); GEC's Motion to Dismiss & Opposition to Petition for Writ of Mandamus (Dec. 29, 2007) ("GEC's Opposition"), Ex. 1 (Declaration of Gerald A. Taitano ¶ 3 ("Taitano Declaration")).

11, 2006). GEC received a short title and summary for Proposal A from their legal counsel on December 13, 2006. Petition, Ex. D (Memorandum from Cabot to Horecky and Taitano, Dec. 13, 2006); Taitano Declaration ¶ 6. GEC sent a letter on December 18, 2006 to the proponent of Proposal A, Intervenor Ms. Annette Cruz, which included the summary and short title for Proposal A and a sample signature petition. Petition, Ex. E (Letter from Taitano to Cruz, Dec. 18, 2006); Taitano Declaration ¶ 7.

[3] On or about March 21, 2007, GEC certified that the proponents had collected the required number of valid signatures for Proposal A to be placed on the ballot. Taitano Declaration ¶ 8. On March 30, 2007, GEC received the ballot title from their legal counsel, Taitano Declaration ¶ 9, and in April 2007, published the ballot title and summary in the newspaper for three consecutive weeks. Taitano Declaration ¶ 10 ("The GEC published the Ballot Title and '2008 Election Notice' three (3) times; April 6, 2007; April 13, 2007; and April 20, 2007."); Petition, Ex. G; *Cruz* v. *Guam Election Comm'n*, 2007 Guam 14 ¶ 7.

[4] On October 23, 2007, GEC's legal counsel informed Petitioners' counsel, Joaquin C. Arriola, Jr., that "[a]s you may know, a Special Election is anticipated to fill the vacancy created by the passing of Senator Antonio Unpingco. . . . The [GEC] has yet to determine whether Proposal A . . . shall be included in the Special Election Ballot." Intervenors' Motion to Dismiss and Opposition to Writ Petition (Oct. 23, 2007) ("Intervenors' Opposition"), Ex. 3, p. 3 (faxed letter from Cabot to Arriola).

[5] In an uncontroverted declaration, a GEC employee stated that Petitioners' counsel reviewed the official GEC file regarding Proposal A on October 26, 2007, and obtained a copy of the full text of the initiative measure, among other items. GEC's Opposition, Ex. 2 (Declaration of Bernadette Toves ¶ 3(B)). On October 31, 2007, Cabot submitted his impartial analysis of Proposal A to GEC.

GEC's Opposition, Ex. 1-B (Memorandum from Cabot to GEC Chairman Terlaje and Taitano, Oct. 31, 2007).

[6] On November 1, 2007, Annette M. Cruz, E.J. Calvo, Carlo Branch, and Guam Greyhound, Inc., petitioned this Court for a writ of mandamus that would place Proposal A on the ballot for the special election scheduled for December 15, 2007, and on that same day, this Court issued an order requiring an expedited briefing schedule for the petition. *Cruz*, 2007 Guam 14 ¶ 10. This Court issued an opinion on November 16, 2007, ordering that GEC place Proposal A on the special election ballot, and that the GEC reschedule the election to January 5, 2008. *Cruz*, 2007 Guam 14 ¶ 40.

[7] Lina'la Sin Casino submitted an argument against Proposal A to GEC for inclusion in the ballot pamphlet. Intervenors' Opposition, p. 5; Petition, Ex. J., p. 4 (Argument Against Proposal A, signed by Madeleine Z. Bordallo, Joaquin C. Arriola, and James V. Espaldon)). According to the Intervenors, "[t]he ballot pamphlet was available at the GEC at least as early as December 4, 2007." Intervenors' Opposition, p. 5.

[8] Petitioner Duenas complained to GEC via letter on November 30, 2007 that the initiative "embrace[d] unrelated subjects." Petition, Ex. H (Letter from Duenas to Terlaje, Nov. 30, 2007). This letter only challenged that Proposal A embraced the unrelated subjects of slot machine gambling and taxes. Petition, Ex. H. GEC responded to this letter on or about December 17, 2007.[2] Petition ¶ 22 ("On December 17, 2007, GEC sent a legal memorandum to Petitioner Duenas"); Petition, Ex. I (Letter from Taitano to Duenas, Dec. 14, 2007). Petitioner Duenas received the ballot pamphlet for Proposal A which contained the impartial analysis "[o]n or about December 11, 2007." Petition ¶ 23.

[2] Petitioners state that the reply to Duenas' letter was sent on December 17. The letter from GEC is dated December 14, 2007. Petition, Ex. I.

[9] Early voting began on December 17, 2007. Taitano Declaration ¶ 18 ("In office voting began on December 17, 2007"). GEC began printing 52,200 ballot pamphlets on December 3, 2007, and mailed out these pamphlets by "about" December 6, 2007. Taitano Declaration ¶¶ 14-15. The special election ballots were printed between December 11 and 14, 2007. Taitano Declaration ¶ 16. GEC mailed approximately 25 special election absentee ballots. Taitano Declaration ¶ 17. As of December 27, 2007, GEC had received 1701 votes from in-office voters and no absentee ballot votes. Taitano Declaration ¶ 19.

[10] Petitioners filed this Petition for Writ of Mandamus on December 21, 2007. This Court granted Intervenors' Motion to Intervene and issued an order requiring an expedited briefing schedule regarding Proposal A. GEC and Intervenors each filed a motion requesting that the Petition be dismissed or denied and provided memoranda opposing the Petition on December 29, 2007. Petitioners filed their reply to these motions on December 31, 2007, and oral arguments were heard on January 2, 2008.

II.

[11] This court has discretion to exercise original jurisdiction over a petition for writ of mandamus. 48 U.S.C. § 1424-1(a)(1), (3) (Westlaw through P.L. 110-133, 2007); 7 GCA §§ 3107(b), 31202 (2005). The Organic Act of Guam provides that this court "shall . . . have . . . original jurisdiction as the laws of Guam may provide," and "shall . . . have jurisdiction to issue all orders and writs in aid of its . . . original jurisdiction." 48 U.S.C. § 1424-1(a)(1), (3). The laws of Guam provide that the Supreme Court's authority "includes jurisdiction of original proceedings for mandamus," 7 GCA § 3107(b), and that a writ of mandamus "may be issued by any court . . . to any inferior tribunal, corporation, board, or person to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station." 7 GCA § 31202.

[12] Except in "very unusual"cases, this court will decline to exercise its original jurisdiction to

issue a writ of mandamus where the lower court may grant the writ relief requested. *Underwood v. Guam Election Comm'n (Camacho)*, 2006 Guam 19 ¶ 14. One such "very unusual" case in which the exercise of original jurisdiction may be warranted is found where "'the issues are of great public importance and should be resolved promptly.'" *Id.* ¶ 15 (quoting *Brosnahan v. Brown*, 651 P.2d 274, 276 (Cal. 1982)).

[13] The people of Guam were granted the right of initiative in the Organic Act. 48 U.S.C. § 1422a(a). We have recognized the public importance of initiatives while exercising original jurisdiction over cases seeking a writ of mandate related to initiatives. *Cruz*, 2007 Guam 14 ¶ 4. Because of the imminent special election on January 5, 2008, the relief requested by Petitioners would only be feasible if it were granted promptly. As such, we find the issues raised here "are of great public importance and should be resolved promptly," *Underwood*, 2006 Guam 19 ¶ 15, and therefore find that original jurisdiction is appropriate.

III.

[14] Standing is a component of subject matter jurisdiction, and is a threshold jurisdictional matter. *Taitano v. Lujan*, 2005 Guam 26 ¶ 15. Opponents of a ballot initiative have standing to seek a writ of mandate requiring the removal or invalidation of the results of an initiative election. *Guam Election Comm'n v. Responsible Choices for All Adults Coalition*, 2007 Guam 20 ¶ 30; *see also Cruz*, 2007 Guam 14 ¶ 12 (finding that proponents of an initiative had standing to seek a writ of mandate). Petitioners here are an individual and a group that includes Guam residents, taxpayers, and voters organized in opposition to gambling initiatives, including Proposal A, and they have standing in this case. *Responsible Choices*, 2007 Guam 20 ¶ 30. Intervenors are individuals and a business that support and would benefit from the initiative, and they also have standing. *Cruz*, 2007 Guam 14 ¶ 12.

IV.

[15] The issues raised by the parties are: (a) whether Petitioners claims are barred by laches; (b) whether GEC abused its discretion in certifying that the proposal did not embrace unrelated subjects, in drafting the ballot title, in drafting the impartial analysis, or in preparing the ballot pamphlet; and (c) whether GEC's alleged abuses of discretion require that this court order the removal of Proposal A from the ballot or order that the results not be certified.

A. Whether Laches Bars Petitioners' Claims

[16] GEC and the Intervenors argue that all of the Petitioners' claims in this case are barred by laches because Petitioners delayed until December 21, 2007 to file this case.[3] "Laches is an equitable time limitation on a party's right to bring suit, resting on the maxim that 'equity aids the vigilant, not those who sleep on their rights.'" *Magic Kitchen, LLC v. Good Things Int'l Ltd.*, 63 Cal. Rptr. 3d 713, 723 (Ct. App. 2007) (quoting *Lyons Partnership, L.P. v. Morris Costumes, Inc.*, 243 F.3d 789, 797-98 (4th Cir. 2001)).[4] "The doctrine of laches [applies] to requests for writs of mandamus and to election disputes," *Responsible Choices*, 2007 Guam 20 ¶ 77,[5] and laches deserves special consideration in election cases. *Melendez v. O'Connor*, 654 N.W.2d 114, 117 (Minn. 2002).

[17] In order for the doctrine of laches to apply, there must be: "'(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice against the party asserting the defense.'" *Responsible Choices*, 2007 Guam 20 ¶ 77 (quoting *Torres v. Superior Court*, CV90-00049, 1990

[3] Intervenors argue that laches may not be a defense to any post-election challenge.

[4] *See also Kansas v. Colorado*, 514 U.S. 673, 687 (1995) ("'Doctrine of laches,' is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to the adverse party, operates as bar in court of equity." (quoting Black's Law Dictionary 875 (6th ed. 1990))).

[5] *See, e.g., Torres v. Superior Court*, CV90-00049, 1990 WL 320360 (D. Guam App. Div. Oct. 26, 1990) ("The extraordinary remedy of mandamus should remain available only to the most conscientious of litigants."); *Harris v. Purcell*, 973 P.2d 1166, 1169 (Ariz. 1998) ("[T]he doctrine of laches is available as a defense in an action challenging the legal sufficiency of an initiative measure and seeking to enjoin printing the measure on the official ballot."); *In re Cook*, 882 P.2d 656, 659 (Utah 1995) (explaining in case where the court rejected a petition challenging an election initiative measure that "equity aids the vigilant").

WL 320360, at *5 (D. Guam App. Div. Oct. 26, 1990)). In other words, laches protects against "inexcusable delay which prejudices the [opposing party]'s ability to respond." *May v. People*, 2005 Guam 17 ¶ 27. "'Extreme diligence and promptness are required in election-related matters'" to avoid the application of laches. *State ex rel. Manos v. Del. County Bd. of Elections*, 701 N.E.2d 371, 372 (Ohio 1998) (quoting *In re Contested Election of Nov. 2, 1993*, 650 N.E.2d 859, 862 (Ohio 1995)).[6] "[O]ne who seeks to challenge the election process must do so at the earliest possible opportunity." *In re Cook*, 882 P.2d 656, 659 (Utah 1994).

[18] "In election disputes, the court considers the interests not only of those challenging a ballot measure, but also of 'those devoting efforts and funds to place a proposition on the ballot,' and considers 'fairness to the thousands of citizens who signed petitions and collected the signatures.'" *Responsible Choices*, 2007 Guam 20 ¶ 77 (quoting *Harris v. Purcell*, 973 P.2d 1166, 1171 (Ariz. 1998)). Further, "delay in election cases 'places an unreasonable burden on the court.'" *Id.* (quoting *Harris*, 973 P.2d at 1169).

[19] "'[T]here is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case.'" *Liddy v Lamone*, 919 A.2d 1276, 1283 (Md. 2007) (quoting *Ross v. State Bd. of Elections*, 876 A.2d 692, 704 (Md. 2005)).

[20] Courts are more likely to find a lack of diligence and the existence of prejudice when a party waits to file until the eve of an election, especially if absentee voting has already begun.[7] In *State*

---

[6] *See State ex rel. Ascani v. Stark County Bd. of Election's*, 700 N.E.2d 1234, 1236 (Ohio 1998) (denying writ of prohibition or mandamus challenging an initiative measure on the ballot that was filed in court over a month prior to the election due to laches because petitioners failed to challenge the initiative for nearly three months after the initiative petition was filed with the County Board of Elections).

[7] *See Purcell v. Gonzales*, __ U.S.__, 127 S.Ct. 5, 7 (2006) ("Court of Appeals was required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction [regarding the use of voter identification requirements during an election], considerations specific to election cases and its own institutional procedures. Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.").

*ex rel. Ascani v. Stark County Board of Election*s, the Ohio Supreme Court found prejudice where petitioners challenging the validity of an initiative petition inexcusably did not file a court protest until ten weeks after the petition was filed with the elections board, 23 days after the board certified the issue for the ballot, and the time for providing absentee ballots had unnecessarily passed by the time expedited briefing was completed. 700 N.E.2d 1234, 1236-37 (Ohio 1998). In *In re Cook*, the Utah Supreme Court determined that, though petitioners filed their petition within 30 days of receiving the impartial analysis, "any court-ordered alteration to the voter information pamphlet could work a substantial hardship on the State, county clerks, and citizens who have cast absentee ballots." 882 P.2d at 659.

[21] In *Liddy v. Lamone*, Maryland's highest court stated that "the appellant's dilatory challenge [to a candidate's inclusion on the ballot for not meeting a residency requirement] was, indeed, prejudicial, as it could have been brought long before not just the general election but the primary election as well [but was brought only eighteen days before the election]." 919 A.2d at 1289. The court considered in its determination the harm to the party opposing the challenge, the harm to the electorate as a whole, and the harm to the court, which was left with "a very brief time in which to consider and decide th[e] matter." *Id.* at 1288-89. The court also highlighted the prejudice to the State Board of Elections, which, prior to the filing of the petition had already "printed ballots, received back tens of thousands of absentee ballots, and completed most of its programming and testing of electronic voting machines." *Id.* at 1290. The court explained that the challenger's delay prejudiced the electorate as a whole because removing the name or posting signs explaining that the candidate was ineligible "would have caused a great deal of uncertainty in the entire election process." *Id.*

[22] Some cases have emphasized the prejudice to the courts of rushed decision-making. In *Mathieu v. Mahoney*, the Arizona Supreme Court applied laches to a "last-minute challenge[]" to

an initiative measure, that was brought less than two months prior to the general election. 851 P.2d 81, 81-82, 86 (Ariz. 1993). The court stated:

> At a minimum, the League could have filed its complaint when the Secretary certified the signatures on August 12, 1992, at which juncture the Proposition was certain to be placed on the ballot. Instead, it waited until September 15, 1992 to file its complaint, only days before the absentee ballots were to be printed for statewide absentee voting beginning October 1.

Id. at 84. The court stated that "[t]he ultimate prejudice in election cases is to the quality of decision making in questions of great public importance." *Id.* at 85. The court summed up this prejudice when it stated:

> Last-minute election challenges, which could have been avoided, prejudice not only defendants but the entire system. They deprive judges of the ability to fairly and reasonably process and consider the issues. They unreasonably telescope the process and rush appellate review, leaving little time for reflection and wise decision making.

Id. at 86; *see also State ex rel. Fidanque v. Paulus*, 688 P.2d 1303, 1308 (Or. 1984) ("Plaintiff-Relators have waited until the eleventh hour to bring their present challenge [to a certified ballot initiative that allegedly embraced more than one issue]. To wait until the last moment places the court in a position of having to steamroll through the delicate legal issues in order to meet the deadline for measures to be placed on the ballot.").

[23] The present case differs from the situation dealt with in *Responsible Choices*, where this court declined to apply laches. There, the petitioners had been diligent in asserting their claims and there was little or no prejudice caused by the petitioners' delay. 2007 Guam 20 ¶ 83. Petitioners did not file until 26 days prior to the election, but the delay was caused by GEC's failure to timely comply with its statutory and regulatory duties, not by petitioners' lack of diligence. *Id.* ¶ 83.

[24] In this case, there was a substantial delay between when Petitioners had notice of their claims and when they filed. GEC published a notice in the newspaper for three consecutive weeks in April 2007, which, although technically defective, included the ballot title and summary. *Cruz*, 2007

Guam 14 ¶ 36. Petitioners received a copy of the full text of the initiative proposal no later than October 26, 2007, when Petitioners' attorney reviewed the official GEC file. With reasonable diligence, Petitioners could have obtained a copy of the full text much sooner. Petitioners delayed filing until almost two months later, filing on December 21, 2007, only 14 days prior to the election and four days after early voting began on December 17. Petitioners did not receive a copy of the ballot pamphlet, which is the subject of some of their claims, until December 11, 2007.

1. Application of Laches to Claims That the Initiative Embraces Unrelated Subjects and That the Ballot Title is Misleading

[25] Petitioners were not diligent in asserting their claims related to the initiative embracing unrelated subjects or related to the ballot title. Petitioners claim that the initiative measure embraces unrelated subjects in violation of 3 GCA § 17202 because it allows Guam to opt out of the Johnson Act and amends the gross receipts tax and excise tax provisions. The April 2007 publication of the ballot title and summary should have put Petitioners on notice that the initiative implicated the Johnson Act and the gross receipts and excise taxes. The ballot summary states that Proposal A will "[a]llow persons 21 years and older to engage in slot machine gambling." Petition, Ex. G (Published Ballot Title). The ballot title by its terms necessarily implicates the Johnson Act, which prohibits transportation of slot machines unless a state opts out of its provisions. *See* 15 U.S.C. §§ 1172(a), 1171(a)(1). The summary stated that the initiative would "[l]evy an annual tax of 10% of gross slot income," and this should have put Petitioners on notice that taxation provisions were embraced by the initiative. Petition, Ex. G (Published Ballot Title). After publication of the ballot title, Petitioners likely "knew or should have known," *Mason City School District v. Warren City Board of Elections*, 840 N.E.2d 147, 149 (Ohio 2005), that the ballot title and summary were insufficient. Even if the publication was not sufficient to put Petitioners on notice, they received the full text by October 26, 2007, which was fifty-six days before they filed their Petition. *See ex rel. Manos*, 701

N.E.2d at 372 (requiring "'[e]xtreme diligence and promptness . . . in election-related matters'" (citation omitted)).

[26] Petitioners also claim that the ballot title is misleading because it omits certain information and refers to "gross slot income" instead of "net slot income." As with their claims related to the initiative embracing unrelated subjects, Petitioners should have been aware of their claims related to the ballot title when the ballot title was published, and, in any event, no later than when they viewed the full text of the initiative on October 26, 2007.

[27] Petitioners argue that their delay was justified by their attempt to negotiate with GEC. Petitioners first complained that the initiative "embrace[d] unrelated subjects" in a letter to GEC dated November 30, 2007. Petition, Ex. H (Nov. 30, 2007 letter from Duenas to Terlaje). Petitioners received a response to their letter on December 17, 2007 stating that the initiative did not embrace unrelated subjects. While "a *brief* delay caused by an attempt to negotiate with the opposing party does not suggest a lack of diligence," *Responsible Choices*, 2007 Guam 20 ¶ 83 n.51 (emphasis added), the delay here was relatively long. After complaining to GEC, Petitioners waited 21 of the 36 days remaining before the election to file their Petition. Moreover, even if the 17-day delay between their letter to GEC and GEC's response were excusable, Petitioners have no justification for the remaining thirty-nine days of delay between obtaining the full text of the initiative and filing their Petition.[8] *See Mathieu*, 851 P.2d at 84 (applying laches to 34-day delay in filing even though challenge was filed before absentee ballots were to be printed and 16 days before absentee voting began); *Ascani*, 700 N.E.2d at 1236-37 (applying laches where party unnecessarily delayed until after absentee voting had begun). In addition, the letter to GEC only challenged that the initiative measure embraced the unrelated subjects of the gross receipts and excise taxes, not the

[8] Fifty-six days elapsed between October 26, 2007, when Petitioners viewed the full text of the initiative, and December 21, 2007, when Petitioners filed this suit. Deducting the seventeen days of delay during which Petitioners were waiting for a response from GEC, there were thirty-nine additional days of delay.

Johnson Act or any issues related to the ballot title.

[28] Petitioners also argue that laches does not apply because they did not have notice until this court's November 16, 2007, *Cruz* decision that Proposal A would be on the upcoming January 5, 2008 special election ballot (as opposed to the November 2008 regular general election). The *Cruz* opinion, 2007 Guam 14, ordered GEC to include the initiative on the special election ballot, as required by statute. *Id.* ¶ 1. If Petitioners acted diligently, however, they could have asserted their claims as soon as they became aware of them. They have no excuse for waiting until they were aware that the election was about to be held before they began their challenge. *See Mason City Sch. Dist.* 840 N.E.2d at 149 (applying laches where the party challenging the election "did not . . . promptly file a protest challenging the petition," and explaining that, "[n]otwithstanding [their] argument to the contrary, they did not need to await the board of elections certification of the petition before they protested the petition"); *In re Cook*, 882 P.2d at 659 ("[O]ne who seeks to challenge the election process must do so at the earliest possible opportunity."); *Magic Kitchen, LLC*, 63 Cal. Rptr. 3d at 723 ("[D]elay [is] measured by the period 'from when the plaintiff knew (or should have known) of the allegedly infringing conduct, until the initiation of the lawsuit[.]"). Further, Petitioners did not file their Petition until December 21, 2007, thirty-five days after the *Cruz* decision.

[29] Petitioners delay has caused prejudice. GEC has already printed and distributed ballot pamphlets, mailed absentee ballots, commenced early voting, and made other expenditures in preparation for the election. Correcting the alleged defects would be much more difficult now than if the challenge had been brought in a timely fashion. *See Liddy*, 919 A.2d at 1290 (finding prejudice where the ballots had been printed and absentee voting had already started). Intervenors have been prejudiced because they spent time and money campaigning for the initiative. *See Responsible Choices*, 2007 Guam 20 ¶ 77. This Court has been prejudiced because we must "steamroll through

the delicate legal issues." *Paulus*, 688 P.2d at 1308. Further, the electorate as a whole would be prejudiced by the "great deal of uncertainty in the entire election process" caused by a last-minute decision to invalidate the initiative measure, *Liddy*, 919 A.2d at 1290, and by decreased voter turnout caused by voter confusion over court orders. *Purcell*, 127 S. Ct at 7. Petitioners could and should have filed sooner than 14 days before the election and 4 days after early voting had begun. Instead, Petitioners slept on their rights and the Respondents, the Intervenors, the electorate, and the court have been prejudiced by this delay. Therefore, Petitioners' claims that the initiative embraces unrelated subjects and that the ballot title is misleading are barred by laches.

2. Application of Laches to Claims Regarding the Impartial Analysis and Ballot Pamphlet

[30] Petitioners also raise claims that the impartial analysis is biased and that the ballot pamphlet does not contain required statutory provisions. The delay between when Petitioners received notice of *these* claims and the filing of their petition is much shorter. Petitioners did not receive the ballot pamphlet until on or around December 11, 2007, and filed their petition ten days later, on December 21, 2007. During part of this ten-day period, they were waiting for a reply from GEC to their letter, though the letter addressed issues unrelated to the ballot pamphlet. While this court would have preferred a more immediate filing, it does not appear that any unavoidable prejudice occurred during that ten-day period, and we find that claims related solely to the impartial analysis and ballot pamphlet are not barred by laches. *See State ex rel. Citizen Action for a Livable Montgomery v. Hamilton County Bd. of Elections*, 875 N.E.2d 902, 907-08 (Ohio 2007) (determining that a seven day delay in filing mandamus action with court after election boards' decision was not unreasonable delay in filing, especially because there was no discernable prejudice caused by delay).

B. Whether GEC Abused Its Discretion in Processing the Initiative

[31] A writ of mandamus may be issued "to compel the performance of an act which the law specially enjoins." 7 GCA § 31202. A petitioner seeking mandamus relief must show that there is a "clear, present, and usually ministerial duty on the part of the respondent." *Bank of Guam v. Reidy*, 2001 Guam 14 ¶ 13 (citation omitted). "The primary purpose of mandamus is the enforcement of a plain, nondiscretionary legal duty to act." *Id.* ¶ 14; *Guam Fed'n of Teachers ex rel. Rector v. Perez*, 2005 Guam 25 ¶ 28.

[32] "Mandamus may not ordinarily issue to command a body to exercise its discretion in a particular manner. . . . Nonetheless, where the exercise of discretion, or the failure to exercise such discretion is so fraudulent, arbitrary, or palpably unreasonable that it constitutes an abuse of discretion as a matter of law, mandamus may issue." *Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8 ¶ 12. "The petitioner has the burden of showing that a writ should issue." *Sorensen Television Sys., Inc. v. Super. Ct.*, 2006 Guam 21 ¶ 12.

[33] Petitioners assert that GEC abused its discretion in: (1) preparing a biased rather than impartial analysis of the initiative; and (2) improperly preparing the ballot pamphlet.

1. Whether GEC Abused Its Discretion by Publishing a Biased "Impartial Analysis"

[34] Petitioners argue that GEC's analysis of the initiative in the ballot pamphlet was not impartial, but improperly favored the initiative. Guam's statutes and regulations require that GEC prepare an analysis of the initiative, 500 words or less, that is "impartial" and shows the effect of the measure on existing law and the operation of the measure. 3 GCA § 17507 (2005); 6 GAR § 2111 (1997).[9]

[9] Title 3 GCA § 17507 provides, in relevant part, that "the Election Commission shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure. . . . The length of the analysis shall not exceed five hundred (500) words, except with the approval of the Election Commission." 3 GCA § 17507. Title 6 GAR § 2111 provides that:

[35] The purpose of an impartial analysis of an initiative is "to assist voters in rationally assessing an initiative proposal by providing a fair, neutral explanation of the proposal's contents and the changes it would make if adopted." *Fairness & Accountability in Ins. Reform v. Greene*, 886 P.2d 1338, 1346 (Ariz. 1994). The government analysis is likely to carry greater weight with voters than partisan campaign literature. *Horwath v. City of E. Palo Alto*, 261 Cal. Rptr. 108, 114 (Ct. App. 1989); *see also Hull v. Rossi*, 17 Cal. Rptr. 2d 457, 460 (Ct. App. 1993) (finding a strong public interest in providing accurate voter pamphlet arguments that are not false and misleading because they are published by the government and are likely to carry greater weight). The impartial analysis "must not mislead, be 'tinged with partisan coloring,' or argue for one side or the other." *Ariz. Legislative Council v. Howe*, 965 P.2d 770, 775 (Ariz. 1998) (quoting *Plugge v. McCuen*, 841 S.W.2d 139, 140 (Ark. 1992)). Because the statutory scheme limits its length, the analysis cannot describe every feature of the measure, and it is not designed to fully educate the people on all aspects of the proposal. *In re Title, Ballot Title & Submission Clause Approved Sept. 4, 1991*, 826 P.2d 1241, 1244-45 (Colo. 1992).

[36] When the analysis contains wording that is partisan or misleading, courts have found that the analysis was insufficient. *See, e.g.*, *Responsible Choices*, 2007 Guam 20 ¶ 47 & n.15; *Citizens for Growth Mgmt. v. Groscost*, 13 P.3d 1188, 1189-90 (Ariz. 2000); *In re Cook*, 882 P.2d 656, 658-59 (Utah 1994). In *Responsible Choices*, this court held that an "impartial analysis" and ballot title drafted by GEC were not "impartial" where GEC included the initiative proponent's name and slogan, "Coalition 21 Save Lives, Save Families," and where GEC indicated that the initiative related

---

> Legal counsel for the Commission shall, not less than forty-five (45) days prior to the election at which an initiative measure is to be submitted to the voters, prepare an analysis of the measure, not to exceed five hundred (500) words in length. The analysis shall be impartial and show the effect of the measure on existing law and the operation of the measure.
>
> 6 GAR § 2111.

to the legal age for "consumption" of alcohol, not just purchase and possession as the initiative indicated. 2007 Guam 20 ¶ 47 & n.15. In *Citizens for Growth Management*, the Arizona Supreme Court held that an "impartial analysis" was not impartial where the analysis began not with an analysis of the proposal, but with an attempt "to persuade the reader . . . that present laws adequately address the perceived problems," and the analysis used words that, in context, had partisan connotations. 13 P.3d at 1189-90. An "impartial statement" in a Utah case was held to be partial where it overstated the likelihood that the initiative measure was unconstitutional. *In re Cook*, 882 P.2d at 658-59.

[37] When an effect of an initiative is in dispute, it has been found that the effect should not be listed in the analysis as a possible effect. *See Homuth v. Keisling*, 837 P.2d 532, 535 (Or. 1992) (holding that statement in impartial analysis that "effects may include" certain effects whose occurrence was in dispute was potentially misleading and therefore insufficient).[10]

[38] Courts have also rejected statements that failed to mention key aspects of the initiative. *Fairness & Accountability*, 886 P.2d at 1347 (holding that an analysis was not impartial where it made no reference at all to an important provision of the initiative, understated powers of the people and legislature under existing law, and understated the additional powers the amendment would create); *Nelson*, 789 P.2d at 654-55 (finding that the summary did not impartially summarize the measure and its major effect where it failed to inform voters of the important fiscal consequence that tobacco tax funds would be redirected from the general fund to a dedicated fund). A lack of detail does not necessarily violate the impartiality requirement, however, if the statement does not omit key provisions. *See Tinsley v. Super. Ct.*, 197 Cal. Rptr. 643, 653 (Ct. App. 1984) (holding that the impartial analysis adequately described the impact of the proposition and that "an inclusive legal

[10] An exception might be made if the analysis made clear that the effects were disputed, and was phrased in a way that was not misleading.

discussion of each *part* of the state Constitution which *might* be influenced by the initiative" was not required).

[39] Petitioners argue that the bias of the GEC analysis is demonstrated by the fact that it reflects the same subjects and arguments raised by the initiative's proponents.[11] The first line of the analysis refers to Proposal A as "The Better Jobs for Guam Act," which is the proponent's title for the act, and not the ballot title prepared by GEC. Petition, Ex. J, at 2 (Impartial Analysis). This title is biased in favor of the initiative, as the main focus of the initiative is the legalization of slot machine gambling at Guam Greyhound, not creating better jobs on Guam. *Cf. Ariz. Legislative Council*, 965 P.2d at 775 (holding that the analysis "must not mislead"). Moreover, the opponents of the initiative contend that the initiative "will hurt . . . economic development," and not create better jobs for Guam. Petition, Ex. J, at 4 (Argument Against Proposal A); *cf. Homuth*, 837 P.2d at 535 (disputed effects should not be included in impartial analysis). Thus, the use of the phrase "Better Jobs for Guam" is not impartial, but is partisan and potentially misleading.[12] *See Responsible Choices*, 2007 Guam 20 ¶¶ 47-48 (finding that an "impartial analysis" was not impartial, in part because it included the proponent's slogan).

[40] The second sentence of the analysis provides that "[t]he stated purpose of the Act is to attempt to increase job opportunities and wages in Guam, to enhance tourism by introducing gambling at certain pari-mutuel facilities, and to create additional revenues for health care and education by levying an annual ten (10) percent tax on the gross slot income from the slot machines." Petition, Ex. J, at 2 (Impartial Analysis). While this accurately describes the purpose of the act as

[11] We do not consider those arguments raised by Petitioners that we found were barred by laches, even insofar as they are repeated with respect to the ballot pamphlet. While an argument can be made that laches should not apply to some of these arguments, our end result would be the same.

[12] Instead of using the proponent's title, the analysis could have referred to the measure either as "Proposal A," or by using GEC's ballot title, "[a]n Initiative to legalize slot machine gambling in Guam and to establish a slot machine gambling tax." Petition, Ex. J, at 1 (Ballot Title & Summary); *see* 3 GCA § 17106 (2005) ("Each measure shall be designated on the ballot by the ballot title prepared by the Election Commission.").

stated by the initiative proponents, the purpose of the impartial analysis is not to uncritically repeat the arguments of the proponents, but to provide a neutral explanation of the contents of the proposal. *See Fairness & Accountability*, 886 P.2d at 1346; *see also Citizens for Growth Mgmt.*, 13 P.3d at 1189 (rejecting analysis as partial, finding that, "[w]hile . . the . . . [challenged] analysis may provide a neutral description of [something other than the initiative] . . . . it attempts to persuade the reader at the very outset[.]").

[41] The GEC analysis further states that the proposed racing facility where the slot machines would be located must "*promote tourism* by marketing primarily to tourists." Petition, Ex. J, at 2 (Impartial Analysis) (emphasis added). While the text of the initiative requires that the facility "market[] predominantly to tourists and visitors to Guam," it is disputed whether the initiative will promote tourism even if the facility markets predominantly to tourists, and the use of the phrase "promote tourism" is partisan in this context. Petition, Ex. J, at 4 (Argument Against Proposal A) ("Slots at the dog track will not appeal to our tourists or increase their numbers."); *see Homuth*, 837 P.2d at 535 (finding that disputed effects of initiative should be contained in arguments, not impartial analysis).

[42] The remainder of the analysis provides a detailed discussion of the benefits to be provided by the unnamed "Proposed Facility," but does not list a single potential drawback, stating that the Proposed Facility must: "increase wage standards," "provid[e] health insurance," "accommodate at least four hundred fifty . . . employees," "make certain charitable contributions," "provide scholarships for education," "provide at least $5000 annually to each public school in Guam," and "support health care." Petition, Ex. J, at 2 (Impartial Analysis).

[43] The analysis mentions that a ten percent tax will be levied on the gross slot income, and that the tax will replace the gross receipts tax and excise tax, but provides no analysis of the fiscal impact of the tax, or of how the gross slot income tax compares to the gross receipts and excise tax that it

is replacing for slot machines. *See* 3 GCA § 17507 (requiring the analysis to "show[] the effect of the measure on the existing law"); 11 GCA §§ 26201 to 26216 (gross receipts tax); 11 GCA §§ 22101 to 22404 (excise taxes); *Nelson*, 789 P.2d at 655 ("[T]he electorate should be informed . . . [of] important fiscal consequence[s]."). The analysis also fails to mention the $25 annual license fee for each slot machine.

[44] Further, the analysis fails to show "the effect of the measure on the existing law[s]," as required by 3 GCA § 17507. For example, the analysis states that the act will "introduce" slot machines, but does not explain that the measure will legalize the importation, possession, operation, and use of such machines, implicitly repealing, at least in part, 9 GCA §§ 63.10, 64.20, 64.22, 64.22A, and opting out of 15 U.S.C. § 1172.

[45] Considering these various defects, we find that GEC's poorly-drafted "impartial analysis" fails to comply with 3 GCA § 17507, and is so "arbitrary[] or palpably unreasonable that it constitutes an abuse of discretion as a matter of law," *Holmes*, 1998 Guam 8 ¶ 12; *see also Citizens for Growth Mgmt.*, 13 P.3d at 1190-91 (granting relief in special action case where impartial analysis "appears to be an attempt to affect the outcome of the public vote"); *Fairness & Responsibility*, 886 P.2d at 1340 n.1, 1347-49 (granting relief in "special action" case, which is "the modern equivalent of common law writs such as mandamus," where impartial analysis was "not neutral").

2. Whether GEC Abused Its Discretion by Failing to Include Copies of Certain Affected Statutory Provisions

[46] Petitioners also argue that GEC erred in failing to include in the ballot pamphlet "[a] copy of the specific statutory provision[s] . . . proposed to be affected." 3 GCA § 17509. Petitioners contend that statutory provisions related to the Johnson Act, 15 U.S.C. §§ 1171-78, the gross receipts tax, and the excise taxes should have been included. GEC responds that it appropriately exercised its discretion and chose not to include those statutes because they would not be generally affected

by Proposal A.

[47] The proposed initiative would not amend or repeal the Johnson Act, but simply invokes and complies with an explicit opt-out provision of the Johnson Act. Similarly, the initiative would affect the gross receipts and excise taxes only insofar as the revenue authorized by the initiative would be exempted from those taxes.

[48] Petitioners contend that the proposal completely repeals the gross receipts tax and excise taxes, and replaces it with a tax only on slot machines because the initiative states that the "10% Slot Machine Gaming Tax will replace the gross receipts tax . . . and the excise taxes." Petition, ¶ 38. GEC and Intervenors respond that the 10% tax replaces only the gross receipts tax and excise taxes for slot machine income, and non-slot machine revenues will continue to be subject to gross receipts tax and excise taxes. The meaning of a statute may be determined by reference to the language of the statute, the context in which that language is used, and the broader context of the statute as a whole. *People v. Lau*, 2007 Guam 4 ¶ 14. The provision at issue here, section 3001 of the proposal, provides, in the context of an initiative legalizing slot machine gambling at Guam Greyhound Racing Park, that:

> Section 3001. Tax; Levy
>
> There is hereby levied an annual tax of ten (10%) percent upon Gross Slot Income. This Slot Machine Gaming Tax shall be [paid and disbursed as specified]. The 10% Slot Machine Gaming Tax will replace the gross receipts tax in 11 GCA sec. 26201 *et seq.* and the excise taxes in 11 GCA sec. 22101 *et seq.* But any and all other taxes imposed by the tax codes of Guam on all businesses shall be applicable. That is, this Title shall not exempt the Established Pari-mutuel Racing Facility from any otherwise applicable taxes.

Petition, Ex. J, p. 9 (Initiative Text). Based on the context, which relates solely to slot machine gambling, we find that a complete repeal of the gross receipts tax and excise taxes was not intended.

[49] Moreover, arguments and analysis in ballot pamphlets are "'accepted sources from which [courts] ascertain the voters' intent and understanding of initiative measures.'" *Washburn v. City of*

Berkeley, 240 Cal. Rptr. 784 (Ct. App. 1987) (quoting *In re Lance W.*, 694 P.2d 744, 753 n.8 (Cal. Ct. App. 1985)). Nothing in the arguments or analysis indicates that the initiative was intended to repeal the gross receipts and excise taxes, and the proponents of the initiative have affirmatively stated that such a repeal was not intended.

[50] Thus, the issue is whether GEC abused its discretion in determining that the statutes at issue were not "affected" by the initiative, where the initiative would not modify or repeal the statutes, but would create a limited exemption from the statutes or would comply with an explicit opt-out provision. 3 GCA § 17509. There is some ambiguity in the degree to which a statute must be "affected" to require inclusion on the ballot pamphlet. We need not decide the issue, however, because we find that the relief sought by Petitioners is unavailable.

C. Appropriate Remedy

[51] Title 3 GCA § 17509.1 provides that "[a]ny defect in the Ballot Pamphlet shall not cause a delay in the election or be grounds to invalidate the election." The only violations at issue here that are not barred by laches in this case are a defective impartial analysis, which is part of the ballot pamphlet, and a failure to include certain statutory provisions in the ballot pamphlet. Because these errors involve alleged "defects in the Ballot Pamphlet," section 17509.1 applies, and we cannot delay or invalidate the election on the basis of these defects.[13]

[52] At oral argument, Petitioners asserted that section 17509.1 was not validly enacted because the law did not receive a public hearing and 2 GCA § 2103 provides that "[n]o bill shall be passed by *I Liheslatura Guåhan* unless it received a public hearing, *except* . . . when the Presiding Officer of *I Liheslatura Guåhan* . . . certif[ies] that emergency conditions exist, involving danger to the

[13] Another potential ground that may prevent invalidation of an election is if the violated provisions were directory rather than mandatory. *See Responsible Choices*, 2007 Guam 20 ¶¶ 73-75; *Benavente v. Taitano*, 2006 Guam 16 ¶ 27. Because section 17509.1 applies, we need not decide whether the provisions at issue here are directory or mandatory.

public health, safety, or welfare . . . ." Guam Pub. L. 25-22 (May 26, 1999), amended by Guam Pub. L. 28-12 (Mar. 9, 2005). The parties dispute whether such emergency conditions existed, though the presiding officer of the Legislature certified that emergency conditions existed involving a danger to the public welfare. *See Responsible Choices*, 2007 Guam 20 ¶ 98 n.62 (quoting Certification of Vicente Pangelinan, Speaker of the Guam Legislature (Oct. 25, 2004) ("I . . . hereby certify, in conformance with Title 2 Guam Code Annotated § 2103, *Public Hearings Mandatory*, as amended, that an emergency condition exists involving danger to the public welfare of the people and therefore waive the statutory requirements for a public hearing on Bill Number 374 . . . .")). While some jurisdictions have held that the legislative determination of an emergency is conclusive, others have held that the legislative determination may be overturned if there is an abuse of discretion. *Responsible Choices*, 2007 Guam 20 ¶ 100 & nn.65-66. For example, some courts have found that a declaration of emergency can be voided if there is a showing of "bad faith or fraud," it is an "obvious mistake," the declaration is "obviously illusory or tautological," or it is "obviously false and a palpable attempt at dissimulation." *Id.* ¶ 100 n.65 (quoting *Slack v. City of Colo. Springs*, 655 P.2d 376, 379 (Colo. 1982); *Jefferson Std. Life Ins. Co. v. Noble*, 188 So. 289, 293 (Miss. 1939); *Moscow v. Moscow Vill. Council*, 504 N.E.2d 1227, 1234 (Ohio Ct. C.P. 1984); *Wash. State Farm Bureau Fed'n v. Reed*, 115 P.3d 301, 305 (Wash. 2005)). Even if we were to determine that legislative declarations of emergency are reviewable, Petitioners have failed to meet their burden, as nothing in the record indicates that the emergency declaration was false. *See CLEAN v. State*, 928 P.2d 1054, (Wash. 1996) ("[A]ppellants have not borne their burden; nothing in the record suggests the emergency declaration was 'obviously false and a palpable attempt at dissimulation.'").

[53] Petitioners have requested a writ of mandamus ordering the invalidation of the election. Petition, p. 25 (requesting an order that GEC remove Proposal A from the ballot or ordering GEC not to certify the results). Section 17509.1 prohibits the requested relief. Given that only 3 days

remain before the election, it appears that no other effective relief could be granted even if it had been requested. We must therefore deny the petition.

[54] We are sympathetic to the Petitioners, who are being denied relief despite a statutory violation by GEC. We note that if a constitutional challenge were brought, and if Petitioners were able to meet the higher standard presented for a constitutional challenge, relief might be available.[14] There might also be situations short of a constitutional violation where section 17509.1 would not apply to a defect in a ballot pamphlet. For example, a ballot pamphlet must include a ballot title pursuant to 3 GCA § 17509, but the ballot title must also meet requirements specified by 3 GCA § 17105, including impartiality and publication in a newspaper. The publication of a ballot title that suffered defects under section 17105, such as not being impartial, would not be subject to section 17509.1 simply because the defective ballot title was included in the ballot pamphlet.[15] Furthermore, section 17509.1 does not prohibit the court from ordering relief short of delaying or invalidating the election. For example, if there were sufficient time, it might have been appropriate for the court to order GEC to rewrite and redistribute the impartial analysis. *See Fairness & Accountability*, 886

[14] *Melendez v. O'Connor*, 654 N.W.2d 114, 117 (Minn. 2002) (holding that a candidate could not be prejudiced by a delay in filing a petition challenging his candidacy because he would be constitutionally ineligible to run "regardless of the timing of the challenge to his eligibility."). Impartial analyses have been challenged on constitutional grounds in several California cases. *See. e.g.*, *Cal. Family Bioethics Council v. Cal. Institute for Regenerative Medicine*, 55 Cal. Rptr. 3d 272, 290 (Ct. App. 2007); *People ex rel Kerr v. County of Orange*, 131 Cal. Rptr. 2d 274, 288-89 (Ct. App. 2003); *Horwath v. City of East Palo Alto*, 261 Cal. Rptr. 108 (Ct. App. 1989). If federal constitutional due process required the invalidation of an election, then 3 GCA § 17509.1 could not prevent such an invalidation. In order to demonstrate that a defective impartial analysis violates constitutional due process rights, California courts have held that there must be a showing that the impartial analysis "profoundly misled the electorate, not just that it didn't educate the electorate as to all the legal nuances of the measure." *People ex rel. Kerr*, 131 Cal. Rptr. at 289. In determining whether an analysis was "so inaccurate or misleading as to prevent the voters from making informed choices," some courts have looked at "the extent of preelection publicity, canvassing and other informational activities, ... [t]he ready availability of the text of the ordinance, or the official dissemination and content of . . . arguments for or against the measure, ... [as well as] the materiality of the omission." *Horwath*, 261 Cal. Rptr. at 115. Such factual evidence has not been presented to the court in this case, and this court is not as well suited to hear factual evidence as the superior court.

[15] An impartial analysis is required by both 3 GCA § 17509 and 3 GCA § 17507, but in this case the significance of the analysis is its inclusion in the ballot pamphlet pursuant to section 17509.

P.2d at 1348-49.[16]

V.

[55] In sum, we find that laches bars Petitioners' arguments that the initiative embraces unrelated subjects and that the ballot title is false or misleading. We also find that GEC abused its discretion in preparing an "impartial analysis" that was biased. But because 3 GCA § 17509.1 prevents the invalidation of an election based on defects to the ballot pamphlet, we must **DENY** the petition for writ of mandamus.[17]

RICHARD H. BENSON
Justice *Pro Tempore*

ROBERT J. TORRES, JR.
Associate Justice

F. PHILIP CARBULLIDO
Chief Justice

[16] The GEC and the Intervenors conceded at oral argument that in an extreme or egregious case, section 17509.1 would not necessarily prevent us from delaying or invalidating an election based on a flawed impartial analysis.

[17] In this case, GEC again erred in its processing of a ballot initiative, causing prejudice to the voting public and the opponents of the initiative, but we have no means to correct GEC's errors. California requires that a ballot pamphlet be made available for public examination not less than 20 days before submitting it to the state printer. Cal. Gov. Code § 88006; Cal. Elections Code § 9092. The Guam Legislature or GEC may wish to consider adopting a similar requirement by statute or by regulation, as such a procedure would provide interested parties an opportunity to seek timely changes to the ballot pamphlet without interfering with the holding of the election or requiring the re-printing of the ballot pamphlet. *Cf. Page v. McCuen*, 884 S.W.2d 951, 954-55 (Ark. 1994) ("We respectfully ask [the Legislature] to make an[] attempt to establish an initiative and referendum procedure that will permit early resolution of such issues. . . . This court does not enjoy being in the 'last-minute' position of review. The people . . . deserve an initiative and referendum procedure which allows them the confidence that measures, after having been adequately reviewed, will not be removed from the ballot. The sponsors of initiative proposals should also be assured their ballot titles and proposed measures meet required guidelines and rules before they spend their time, energy and monies in getting their proposal before the voters."). Such a procedural change would be especially warranted in light of the Legislature's decision to limit the relief available to a petitioner pursuant to 3 GCA § 17509.1.