IN THE SUPREME COURT OF GUAM

ROBERT L.G. BENAVENTE, TRINI T. TORRES, FRANK DUENAS CRUZ, PETER ANTHONY SAN NICOLAS, JAMES THOMAS MCDONALD,
Petitioners-Appellants,

vs.

GERRY TAITANO, DIRECTOR, GUAM ELECTION COMMISSION and THE GUAM ELECTION COMMISSION,
Respondents-Appellees.

Supreme Court Case No.: CVA06-013
Superior Court Case No.: SP0140-06

OPINION

Cite as: 2006 Guam 15

Appeal from the Superior Court of Guam
Argued and submitted on October 25, 2006
Hagåtña, Guam

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BEFORE: F. PHILIP CARBULLIDO, Chief Justice; RICHARD H. BENSON, Justice *Pro Tempore*; J. BRADLEY KLEMM, Justice *Pro Tempore*.

CARBULLIDO, C.J.:

[1] Petitioners-Appellants Robert L.G. Benavente, Trini T. Torres, Frank Duenas Cruz, Peter Anthony San Nicolas, and James Thomas McDonald (collectively, "Petitioners") appeal from a Superior Court Judgment dismissing their challenge to the September 2, 2006 Primary Election for lack of jurisdiction. The underlying petition was dismissed on three separate and independent grounds. Petitioners argue on appeal that: (1) the trial court erred in dismissing the petition for lack of standing; (2) the trial court erred in dismissing the petition for failure to state a claim upon which relief can be granted; and (3) the trial court erred in dismissing the petition for failure to join the 2006 Primary Election nominees.

[2] With regard to standing, we hold that Petitioners have statutory standing under 3 GCA § 16501 to contest the Primary Election, and therefore the trial court erred in dismissing the petition on this ground. We further hold that 3 GCA § 12115 provides the remedy sought by Petitioners and therefore the trial court erred in dismissing the petition for failure to state a claim upon which relief can be granted. Finally, we hold that the trial court erred in failing to properly consider the relevant interests and factors required under Rule 19 of the Guam Rules of Civil Procedure before dismissing the petition, and such errors amount to an abuse of discretion. Accordingly, we reverse the Decision and Order dismissing the petition, and remand to the Superior Court with instructions to vacate the Final Judgment and conduct further proceedings consistent with this opinion.

I.

[3] In 2006, Guam's Primary Election included races for the seats of Governor and Lieutenant Governor, Congressional Delegate, Attorney General, and Senator. Because there were only thirteen Republican candidates seeking senatorial seats, the Guam Election Commission[1] canceled the

[1] Title 3GCA § 1103 (2005) defines "Commission" as the Election Commission.

Primary Election for the Republican Party with regard to the senatorial race, pursuant to section 6 of Guam Public Law 28-128, which amended 3 GCA § 16108.[2]

[4] The Primary Election was held on September 2, 2006, and did not include a race for the Republican Party's senatorial candidates. After the unofficial results of the Primary Election, but before the results had been certified, Petitioners Benavente and Torres filed a lawsuit against Respondents-Appellees Gerry Taitano, Director of the Guam Election Commission and the Guam Election Commission (collectively, "the Commission"). They requested that the court void the Primary Election and its results. Over the Commission's objection, the trial court granted Petitioners' motion to amend, and Petitioners then filed a First Amended Petition ("the Petition").

[5] The Petition alleged constitutional violations, specifically, violations of the Fifth and Fourteenth Amendment rights of equal protection under the law and due process of law, and violations of the First Amendment rights of free association and free speech. Petitioners also alleged statutory violations under Title 3 GCA and the Organic Act of Guam. The Petition made the following statutory claims under Title 3 GCA: (1) that the paper ballots failed to contain the

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[2] As amended, the provision states, in relevant part:

> **§16108. Primary Election Cancelled When Unnecessary.**
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> (a) When the Commission determines that a political party that has qualified for placement on the primary ballot has:
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> (i) the same or fewer number of candidates running for nomination to the Legislature than the number of senatorial seats allowed in law, it shall cancel such Primary Election for that party for the Legislature because of the lack of any contest . . .
>
> . . .
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> (b) Certification of candidates. Following such cancellation, the Commission shall certify all candidates who qualified to appear on the ballots in such cancelled primary elections for placement on the general election ballot as candidates of their respective political parties for the general election.

3 GCA § 16108 (as amended by Guam Pub. L. 28-128:6 (June 27, 2006)).

warnings required by 3 GCA § 16301(d)[3]; (2) that warnings were not given on the electronic voting machines and were not posted within the voting booths; (3) that the use of electronic voting machines is not permitted under 3 GCA § 16402[4]; (4) that voters could not write in a candidate in the republican primary or vote for such candidate as required under 3 GCA 16301(f)[5]; (5) that the Commission failed to properly tabulate the vote; and (6) that there were widespread abuses of the primary electoral process. *See* ER at 8-19 (Pet'r First Amended Pet. and Mem. of P. and A.).

[6] In addition to raising these legal challenges, the Petition also added Petitioners Cruz, San Nicolas and McDonald as parties to the action.

[7] The Petition made the following requests for relief: "declare the results of the 2006 [Primary Election] null and void and order the Commission to conduct a new primary election forthwith or, alternatively, place all candidates named on the general election ballot." ER at 21 (Pet'r First Amended Pet. and Mem. of P. and A.).

[8] The Commission filed a motion seeking dismissal of the Petition, which Petitioners opposed. After conducting hearings on the motion, the trial court granted the motion, and dismissed the

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[3] Title 3 GCA § 16301(d) (2005) states:

> There shall appear specific instructions in boldface type on each ballot that a voter may cast votes for candidates appearing on that ballot for one (1) party only; that if votes are cast for candidates of more than one (1) party for any office or nomination of offices appearing on the ballot, the entire ballot shall be void. The instructions on the ballot shall clearly indicate that voters are allowed to cast votes in only one (1) party for all offices in that Primary Election. Any ballot wherein votes are cast for more than one (1) party for all offices in that Primary Election shall be void[.]

[4] This provision states in its entirety:

> **§ 16402. Manner of Voting.** Any person desiring to vote at a primary shall state his name and residence to the election officials. If the person desiring to vote is not challenged, one of the officials shall give to him one and only one official primary ballot. The voter shall proceed to one of the compartments provided and therein mark the ballot. The marked ballot shall immediately be placed in the ballot box provided. In addition, the provisions of Chapter 10 of this Title (Absent Voting) shall also apply to a primary election so as to permit voting by absentee ballot therein.

3 GCA § 16402 (2005)

[5] Title 3 GCA § 16301(f) (2005) states: "The Guam Election Commission shall make accommodation for the voter to write in the name of a person or persons not otherwise appearing on the ballot, under each office being contested under each party heading[.]"

Petition on three grounds: (1) lack of standing; (2) failure to state a claim upon which relief can be granted; and (3) failure to join an indispensable party. *See* ER at 100-03, 98, 107-08 (Decision and Order). A final Judgment was entered, and Petitioners timely appealed.

II.

[9] We have jurisdiction over this appeal from a final judgment pursuant to 48 U.S.C. § 1424-1(a)(2) (Westlaw through Pub. L. 109-279 (2006)), and 7 GCA §§ 3107(b) and 3108(b) (2005). We also have authority to expedite the appeal process pursuant to 3 GCA § 12121 (2005) and Rule 2 of the Guam Rules of Appellate Procedure.

III.

[10] A trial court's decision on whether a party has standing is reviewed *de novo*. *Taitano v. Lujan*, 2005 Guam 26 ¶ 15. Review of a dismissal for failure to state a claim is *de novo*. *See Kelson v. City of Springfield*, 767 F.2d 651, 653 (9th Cir. 1985); *see also Archbishop of Guam v. G.F.G. Corp.*, 1997 Guam 12 ¶ 9 (stating that determination of whether a party failed to state a claim is a question of law which is reviewed *de novo*). Finally, we review for an abuse of discretion the trial court's decision to dismiss pursuant to Rule 19 of the Guam Rules of Civil Procedure. *See Rishell v. Jane Phillips Episcopal Mem'l Med. Ctr.*, 94 F.3d 1407, 1410-11 (10th Cir. 1996).

IV.

[11] Petitioners-Appellants claim three errors on appeal. First, they argue that the trial court erred in dismissing the Petition for lack of standing. Second, Petitioners argue that the trial court erred in dismissing the Petition pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. Finally, Petitioners contend that the trial court erred in dismissing the Petition pursuant to Rule 19(b) for failure to join the absent nominees. We address each claim of error in turn.

A. Standing

[12] We first address whether Petitioners have standing to file the underlying petition which, in effect, contests the results of the Primary Election.

[13] The trial court in this case determined that because the Petitioners failed to meet the standing requirements of causation and redressability under Article III, Petitioners' constitutional claims must be dismissed. On appeal, Petitioners argue that because the laws of Guam confer statutory standing to raise their constitutional claims, they need not satisfy the constitutional requirements of Article III.

[14] "Standing is a threshold jurisdictional matter." *Guam Imaging Consultants, Inc. v. Guam Mem'l Hosp. Auth.*, 2004 Guam 15 ¶ 17 (citing *Brewer v. Lewis*, 989 F.2d 1021, 1025 (9th Cir.1993)). Thus, we have held that a court has no subject matter jurisdiction to hear a claim when a party lacks standing. *Id.* The question of standing focuses on who may bring an action. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000). In essence, the relevant inquiry is "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

[15] The United States Supreme Court has stated that "the irreducible constitutional minimum of standing" under Article III of the United States Constitution contains three elements:

> First, the plaintiff must have suffered an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. . . . Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citations, footnote, and quotation marks omitted). In the context of the federal courts, the Court has recognized that in order to invoke the federal judicial process, a party must adhere to the requirements of standing under Article III, except where standing is expressly conferred by statute. *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973). The Court has further recognized that "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Id.* at

617 n.3. Stated another way, because federal courts are courts of limited jurisdiction, a federal plaintiff must satisfy standing under Article III, unless standing is statutorily conferred.

[16] With respect to the application of Article III's standing requirements to state courts, the Court has held that, unlike federal courts, "state courts are not bound to adhere to federal standing requirements." *ASARCO, Inc. v. Kadish*, 490 U.S. 605, 617 (1989) (noting that the constraints of Article III of the federal Constitution do not apply to state courts). To be sure, the Ninth Circuit Court of Appeals has observed that "state courts (and by extension, territorial courts) are not bound by Article III requirements. . . ." *Gutierrez v. Pangelinan*, 276 F.3d 539, 544 (9th Cir. 2002). Rather, in state courts, "standing is a self-imposed rule of restraint." *Id.*

[17] Unlike some state constitutions, the Organic Act of Guam provides no express case or controversy requirement similar to the standing requirements found in Article III. The issue of whether the common law Article III standing requirements will be imposed upon those seeking relief in Guam courts has not been directly addressed by this court. Nor has this court had the occasion to discuss such standing requirements in the face of statutes that confer standing and thereby entitle a particular litigant to have the court decide the merits of a dispute. Nonetheless, while we recognize that Guam courts are not bound by Article III standing requirements, we do not reject such principles.

[18] Consistent with federal case law on the statutory standing exception, state courts have observed that the traditional rules of standing apply except where standing is statutorily conferred. *Press-Enter. Inc. v. Benton Area Sch. Dist.*, 604 A.2d 1221, 1223 (Pa. Commw. Ct. 1992). Thus, state courts have held that standing may be predicated on either common-law standing by applying Article III principles or statutory standing, where the statute serves as the proper framework of analysis. *Daimler Chrysler Corp. v. Inman*, 121 S.W.3d 862, 869-70 (Tex. App. 2003). In other words, "[a] party acquires standing either by suffering an injury in fact or as the beneficiary of express statutory authority granting standing." *Tanner v. Town Council*, 880 A.2d 784 (R.I. 2005).

[19] Where standing is statutorily conferred, the court's analysis begins with "a straight statutory construction of the relevant statute to determine upon whom the Legislature conferred standing and whether the Petitioners here fall in that category." *Id.* n.6. Moreover, the Legislature, in conferring standing, may by statute exempt litigants from proof of the "special injury" required to establish common law standing. *Everett v. TK-Taito, L.L.C.*, 178 S.W.3d 844, 850 (Tex. App. 2005).

[20] We agree with the above line of cases and hold that standing may be predicated upon the statutory grant of such standing by the legislature or the common-law standing principles of Article III. Therefore, where standing is statutorily conferred, we look first to the language of the relevant statute to determine whether a party has statutory standing. Where standing is not conferred by statute, we turn to the common law principles of Article III to determine whether a litigant satisfies such standing requirements. In the latter case, we will defer "to the more extensive jurisprudential experience of the federal courts on this subject for any guidance it may yield." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

[21] Thus, in determining whether Petitioners have standing, our analysis begins by examining if any statutory authority exists for the claims asserted. Under Guam's Elections Law,[6] an election contest may be filed under 3 GCA § 12102[7] or 3 GCA § 16501. We believe, and the parties do not

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[6] Title 3 GCA § 1101 (2005) states that such Title "shall be known and may be cited as the Elections Law."

[7] Title 3 GCA § 12102 (2005) states, in its entirety:

> **§ 12102. Causes for Contest.** Any voter of the territory of Guam in a general election, or of a municipality or precinct in a municipal election, may contest any election held therein, for any of the following causes:
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> (a) That the person who has been declared elected to an office other than as a member of the Guam Legislature was not, at the time of the election, eligible to that office.
>
> (b) That the precinct board or any member thereof was guilty of misconduct.
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> (c) That the defendant has given to any elector or inspector, judge or clerk of the election, any bribe or reward or has offered any bribe or reward for the purpose of procuring his election, or has committed any other offense against the elective franchise of Guam.

dispute, that Petitioners filed the underlying action pursuant to section 16501. Thus, we look to this statute to determine upon whom the Legislature conferred standing and whether the claimant in question falls in that category.

[22] Title 3 GCA § 16501 (2005) provides that: "Any candidate directly interested, or any registered and qualified elector of any precinct, may file a petition in the Superior Court of Guam, setting forth *any cause or causes* why the decision of the Commission should be revised, corrected or changed." (Emphasis added). This provision is specific as to who can bring an action to contest an election. To fall within the category of persons prescribed in the statute, a person must be either a "directly interested" candidate or a "registered and qualified elector." *Id.*

[23] "A candidate is one who either seeks a nomination or is proposed for a nomination by sponsors in accordance with the provisions of this Title." 3 GCA § 1114 (2005). An elector is "any person who is entitled to register under § 3101 of this Title." 3 GCA § 1104 (2005). Accordingly, 3 GCA § 3101 (2005), entitled "Persons Entitled to Vote: Compliance With Registration Provisions," sets forth the requirements that would entitle a person to be able to vote. A petitioner who satisfies the definition of a "directly interested" candidate or a "registered and qualified voter" may file a petition for any cause or causes as to why the decision of the Commission should be revised, corrected, or changed.

[24] Here, Petitioners Benavente and Torres were candidates who sought nomination in the 2006 Primary Election and were qualified electors. As such, they meet the definition of a candidate under the statute. Moreover, as candidates who appeared on the Primary Election ballots, they have a

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(d) That illegal votes were cast.

(e) That the precinct board in conducting the election or in counting the ballots, made errors sufficient to change the results of the election as to any person who has been declared elected.

(f) that the Election Commission in conducting the election or in canvassing the ballots made errors sufficient to change the results of the election as to any person who has been declared elected.

direct interest in the outcome of the election. We therefore find that Petitioners Benavente and Torres are "directly interested" candidates under the statute who may file a petition to contest the election. Petitioners San Nicolas, Cruz, and McDonald were also qualified electors.

[25] To become a "qualified elector" under the Elections Law, one must be a registered voter who has satisfied the registration provisions. The parties do not dispute that Petitioners, San Nicolas, Cruz, and McDonald were registered voters at the time of the September 2, 2006 Primary Election, and there is no evidence in the record to suggest otherwise.

[26] We do not agree with the Commission's argument that 3 GCA § 16501 imposes a "case or controversy" requirement. The plain language of section 16501 does not require a petitioner to satisfy the "case or controversy" requirement. Rather, it requires that a petitioner must either be a "directly interested" candidate or a "registered and qualified voter" to bring suit. If this court were to adopt such analysis, it would require that Petitioners meet an additional requirement, and such an interpretation is not supported by the express language of the statute. The Commission's argument is therefore misplaced.

[27] Therefore, using the statute as the proper framework for our analysis, standing is statutorily conferred on the Petitioners because they are either: (1) candidates directly interested in the 2006 Primary Election, or (2) registered and qualified voters of a precinct.

[28] Having determined that Petitioners Benavente and Torres qualify as "directly interested" candidates and Petitioners San Nicolas, Cruz, and McDonald qualify as "registered and qualified electors," we next determine whether the claims asserted in their Petition are the type of claims which could be brought under 3 GCA § 16501.

[29] In this case, Petitioners allege numerous constitutional and statutory claims under Title 3 GCA, all of which stem from the 2006 Primary Election. A petition may be filed for "any cause or causes." 3 GCA § 16501. The trial court in its decision dismissed Petitioners' constitutional claims for lack of standing, as discussed *supra*, section A., and failed to address Petitioners' standing to

assert their statutory claims.[8] We assume that because the trial court in its decision first dismissed the Petition for failure to state a claim, it likely found it unnecessary to address Petitioners' standing to bring their statutory claims.

[30] As previously stated, standing here is established by statute. Petitioners' constitutional claims, in addition to the statutory class asserted in the Petition, are allowed under section 16501, because this section does not limit the type of claims which can be asserted in an election contest petition. Although we find that Petitioners can assert their constitutional claims to contest a Primary Election under section 16501, our holding here is limited to an action brought under this statute. We do not extend our holding to denote that where a statute confers standing on a plaintiff to bring an action, that such plaintiff may assert any claim in bringing the action. The type of claims which may be brought where standing is statutorily conferred is limited to the express language of the relevant statute,[9] and in this case, there exists statutory authority for Petitioners to assert their constitutional claims in contesting the Primary Election.

[31] We therefore hold that Petitioners have statutory standing to file the underlying petition to contest the Primary Election under 3 GCA § 16501. Accordingly, the trial court erred in dismissing the Petition for lack of standing.

B. Failure to State a Claim

[32] We next address whether the trial court erred in dismissing the Petition for failure to state a claim upon which relief can be granted. Thus, the relevant inquiry is whether the relief requested

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[8] The trial court dismissed the entire Petition on alternative grounds. The trial court began its analysis under Rule 12(b)(6) of the Guam Rules of Civil Procedure, and there set out the statutory claims made by Petitioners. The court did not address whether Petitioners had relief under their constitutional claims. Instead, it first held that Petitioners failed to state a claim under which relief can be granted and accordingly, dismissed the entire Petition on those grounds. We believe the trial court should have begun its analysis by first deciding the issue of standing, because standing is a threshold jurisdictional matter which focuses on who may bring an action. More importantly, without standing, the court does not have jurisdiction to determine whether Petitioners failed to state a claim upon which relief may be granted.

[9] For instance, 3 GCA § 12115 (2005), discussed *infra*, section B., prescribes specific grounds for contesting an election under such section, unlike the statute here which provides that such action may be filed for any cause or causes.

by the Petitioners is the type of relief available under our Elections Law.

[33] The trial court in this case held that because the Petition does not seek to "declare any candidate nominated" as required by the specific provisions of Chapter 16, "the Petition does not strictly comply with the requirements of the statutes governing the petition, and must be dismissed for failure to state a claim." ER at 98 (Decision and Order).

[34] On appeal, Petitioners argue that the relief requested through their Petition is provided for in Guam's Elections Law, more specifically, 3 GCA § 12115, wherein the court has the authority to confirm or annul and set aside the election. Thus, they argue that the trial court erred in holding that the relief requested by the Petitioners is limited to Chapter 12 of Title 3 GCA, Guam's Elections Law. We agree.

[35] The determination of whether the Petitioners' remedy is available in a primary election contest requires this court to construe several provisions of Chapters 12 and 16 of Title 3 GCA. "It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself." *Sumitomo Constr. Co., Ltd. v. Gov't of Guam*, 2001 Guam 23 ¶ 17. It is a "rudimentary principle[ ] of construction" that "statutes dealing with similar subjects should be interpreted harmoniously." *Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 739 (1989) (Scalia, J., concurring).

[36] "Laws providing for election contests are liberally construed so that doubtful questions of election will be expeditiously settled." 3A Norman J. Singer, *Sutherland Statutory Constr.* § 73:8 (6th ed. 2006) ("Statutes regulating public elections"). Courts have held that an election code is to be liberally construed so that candidates are not deprived of their right to office, and voters are not deprived of their vote to elect the candidate of their choice. *Id.*

> In carefully construing an election contest statute, no single statutory provision would be construed in such a way as to render meaningless or absurd and [sic] other statutory provision. If more than one statute applies, they shall be considered in *pari materia*. . . . Where statutes relate to the same subject matter they must be read together and applied harmoniously and consistently.

Id. (footnotes omitted).

[37] In this case, under Guam's Elections Law, an election contest may be brought under Chapter 12 or Chapter 16 of Title 3 GCA. At the time of the enactment, Chapter 16, addressing primary elections, did not exist. Rather, Chapter 16 entitled "Conduct of Primary Elections" was added by Guam Public Law 10-151 on June 24, 1970. Guam Gov't Code Supp. § 2900 (1974) (codified at 3 GCA §16101 (2005)).

[38] The remedy provided in 3 GCA § 12115 (2005) states in its entirety:

> The Court shall continue in special session to hear and determine *all issues* arising in contested elections. After hearing the proofs and allegations of the parties and within ten (10) days after the submission thereof the Superior Court shall file its findings of fact and conclusions of law, and immediately thereafter shall announce judgment in the case, either *confirming or annulling and setting aside the election.* The judgment shall be entered immediately thereafter.

(Emphases added).

[39] The remedy provided in 16 GCA § 16504 states in its entirety:

> The Court shall hear the contest in a summary manner, and at the hearing, the Court shall cause the evidence to be reduced to writing, and shall within eight (8) days following the return, give judgment, fully stating all the findings of fact and of law. The judgment shall decide what candidate was nominated or elected, as the case may be, in the matter presented by the petition, and a certified copy of the judgment shall forthwith be served on the Commission, which shall place the name of the candidate declared to be nominated on the ballot for the forthcoming general election, and the judgment shall be conclusive of the right of the candidate so declared to be nominated.

[40] Chapter 16 "shall be liberally construed in favor of the primary voter." 3 GCA § 16102 (2005). Moreover, 3 GCA § 16103 (2005) provides that "the laws relating to elections shall apply to a primary insofar as they are consistent with this Chapter, the intent of this being to place the primary under the regulation and protection of the election laws, as far as possible, consistently with this Chapter."

> It is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter. In the absence of any express repeal or amendment, the new provision is presumed in accord with the legislative policy embodied in those prior statutes. Thus, they all should be construed together.

2B Norman J. Singer, *Sutherland Statutory Constr.* § 51:2 (6th ed. 2006).

[41] We presume that the Legislature, in enacting Chapter 16, was mindful of the election contest provisions in Chapter 12. Additionally, when Chapter 16 was enacted – although entitled "Conduct of Primary Elections" – the Legislature could have limited an election contest for a primary election to the provisions of Chapter 16. But instead, the Legislature's intent was to apply all election laws, not inconsistent with Chapter 16 of Title 3 GCA, to primary elections. 3 GCA § 16103 (2005).

[42] The election contest provisions in Chapters 12 and 16 of Title 3 GCA relate to the same subject matter and are aimed at the same situation. As such, they should be construed together and applied harmoniously and consistently. Even considering the Commission's argument that both chapters have distinct provisions for an election contest, and the relief in Chapter 12 does not extend to Chapter 16, we find it problematic and unreasonable that a petitioner contesting a primary election "for any cause or causes" is limited to the relief in 3 GCA § 16504, their only relief being to submit to the court the names of the candidates that they believe should be declared nominated for placement on the ballot to the general election.

[43] In the instant case, Petitioners allege that because of constitutional violations, substantial irregularities in the election process, and the Commission's failure to follow the law, the 2006 Primary Election results cannot be upheld. They claim that because of the extent of irregularities and illegalities, the names of those who should have rightfully proceeded to the general election cannot be determined. Petitioners simply challenge, *inter alia*, the primary election process, and do not challenge any one person's nomination. Depending on the extent of the irregularities with the election process, it may be difficult for the court to ascertain who really should be nominated as stated under section 16504. Applying the Commission's theory and argument that Petitioners have no relief under Chapter 12 because they filed a Chapter 16 action, thereby construes section 16504 in such a way as to render section 12115 meaningless or absurd.

[44] We construe Chapter 12 and Chapter 16 together, as they both relate to the same subject matter, keeping in mind the intent of the Guam Legislature when it enacted Chapter 16. Neither

chapter has been repealed or amended. The Legislature's approach in enacting Chapter 16 clearly evidences an intent that a petitioner filing suit under Chapter 16 is not limited to the relief provided in this chapter. This conclusion is buttressed by section 16103. To further support our conclusion, the relief provided in 3 GCA § 12115 states that the court shall determine "all issues arising in contested elections" and is not limited to an action brought under Chapter 12.

[45] After construing both chapters together, we find that the remedy allowed in Chapter 12 is also available for actions brought under Chapter 16. We further find that a petitioner need not file a Chapter 12 action to obtain the relief of annulling, voiding, or setting aside an election. Thus, the trial court erred in dismissing the Petition for failure to state a claim upon which relief may be granted.

C. Rule 19 – Necessary and Indispensable Parties

[46] The final issue we consider is whether the trial court erred in dismissing the underlying action for failure to join the absentee nominees, pursuant to Rule 19(b) of the Guam Rules of Civil Procedure.

[47] Rule 19, entitled "Joinder of Persons Needed for Just Adjudication," states in full:

> (a) Persons to be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (I) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in the proper case, an involuntary plaintiff.
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> (b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1) – (2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent persons thus being regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or

> those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Guam R. Civ. P. 19.

[48] Guam's Rule 19(a) and (b) are virtually identical to Rule 19(a) and (b) of the Federal Rules of Civil Procedure ("the federal rule"), and therefore, we look to cases which interpret and apply the principles of the federal rule for guidance.

[49] The leading federal Rule 19 case is *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102 (1968). As a preliminary matter, the Court observed that four different interests must be examined to determine whether, "in equity and good conscience, the court should proceed without a party whose absence from the litigation is compelled." *Id.* at 109.

> First, the plaintiff has an interest in having a forum. . . . Second, the defendant may properly wish to avoid multiple litigation, or inconsistent relief, or sole responsibility for a liability he shares with another. . . . Third, there is the interest of the outsider whom it would have been desirable to join. . . . Fourth, there remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies.

Id. at 109-11 (footnotes omitted). In short, in conducting an analysis under Rule 19, the court must take into consideration the interests of the plaintiff, defendant, absentee, the court, and the public.

1. Standard of Review

[50] The circuit courts of appeal vary with respect to the standard of review to apply to a trial court's Rule 19 determination.

[51] The Fourth, Ninth, and Tenth Circuits apply an abuse of discretion standard to the trial court's determination under both Rule 19(a) and Rule 19(b). *See Nat'l Union Fire Ins. Co. v. Rite Aid*, 210 F.3d 246, 250 (4th Cir. 2000); *Wash. v. Daley*, 173 F.3d 1158, 1165 (9th Cir. 1999); *Davis v. United States*, 192 F.3d 951, 957 (10th Cir. 1999).

[52] The Sixth Circuit applies an abuse of discretion standard to the trial court's analysis under Rule 19(a) and a *de novo* standard to its analysis under Rule 19(b). *See Keweenaw Bay Indian Cmty. v. Mich.*, 11 F.3d 1341, 1346 (6th Cir. 1993).

[53] The First, Second, Third, Fifth, Eighth, Eleventh, and D.C. Circuits do not appear to have decided on a standard for a district court's determination under Rule 19(a) and apply an abuse of discretion standard to its determination under Rule 19(b). *See Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 635 (1st Cir. 1989); *Jota v. Texaco, Inc.*, 157 F.3d 153, 161-62 (2nd Cir. 1998); *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 403 (3rd Cir. 1993); *Pulitzer-Polster v. Pulitzer*, 784 F.2d 1305, 1309 (5th Cir. 1986); *United States ex rel. Steele v. Turn Key Gaming, Inc.*, 135 F.3d 1249, 1251 (8th Cir. 1998); *Kickapoo Tribe of Indians v. Babbitt*, 43 F.3d 1491, 1495 (D.C. Cir.1995).

[55] The Seventh Circuit has expressly declined to adopt a standard of review at all. *See Thomas v. United States*, 189 F.3d 662, 666 (7th Cir. 1999).

[56] We find that because Rule 19(a) and (b) inquiries are fact-specific and involve the exercise of discretion, the abuse of discretion standard of review will apply to a trial court's Rule 19(a) and (b) determinations. *Provident*, 390 U.S. at 118 n.14.

[57] In reviewing a trial court's decision on whether an absent party is indispensable, we "must consider 'whether the decision maker failed to consider a relevant factor, whether he [or she] relied on an improper factor, and whether the reasons given reasonably support the conclusion.'" *Rishell*, 94 F.3d at 1410 (quoting *Kickapoo Tribe of Indians in Kansas v. Babbitt*, 43 F.3d 1491, 1497 (D.C. Cir. 1995)). Furthermore, "[t]he standards set out in Rule 19 for assessing whether an absent party is indispensable are to be applied "in a practical and pragmatic but equitable manner." *Id.* at 1411 (quoting *Francis Oil & Gas, Inc. v. Exxon Corp.*, 661 F.2d 873, 878 (10th Cir. 1981)); *see also Provident*, 390 U.S. at 106-07. We also take into consideration that "[t]he moving party has the

burden of persuasion in arguing for dismissal." *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990).

2. Analysis

a. Subsection (a)[10]

(1) Persons who are needed for just adjudication

[58] Subsection (a) of Rule 19 sets forth the standards for determining whether an absent person shall be joined, if feasible. An absentee is needed for just adjudication when one of the following three circumstances exists:

> (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person"s absence may (I) as a practical matter impair or impede the person's ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest.

[59] ***Subsection (a)(1).*** An absentee's presence is required under subsection (a)(1) when "complete relief cannot be accorded among those already parties." Guam R. Civ. P. 19(a)(1). Under the express terms of the rule, the focus is on the relief between the parties to the present action, and not on the possibility of further litigation between a party and the absentee. *Morgan Guar. Trust Co. v. Martin*, 466 F.2d 593, 598 (7th Cir. 1972). The trial court, in applying this factor, found:

> It is indisputable that any of the three types of relief requested by the Petitioners in their First Amended Petition will result in some, if not all, of the winning candidates being removed from the general election ballot. At the very least, the relief requested would subject all of the Republican nominees for the Guam legislature to removal,

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[10] The federal rule was completely amended in 1966, but such amendment "was not intended as a change in principles. Rather, the Committee found that the old text was defective in its phrasing and did not point clearly to the proper basis of decision." *Provident Tradesmens Bank & Trust Co. v. Patterson,* 390 U.S. 102, 116 n.12 (1968) (internal quotation marks omitted). Thus, the 1966 version of the federal rule, which is virtually identical to Guam's rule, "emphasizes the pragmatic consideration of the effects of the alternatives of proceeding or dismissing, the older version tended to emphasize classification of parties as 'necessary' or 'indispensable.'" *Id.* While the term "necessary party" was removed from the language of section (a) (again, to resolve confusion between terms "necessary party" and "indispensable party"), many courts continue to use the term "necessary party" in analyzing whether an absentee's presence in the case is required for just adjudication under subsection (a).

> and for the other prayers, every candidate for every office would be removed from the general election ballot. Thus, the relief requested by the Petitioners could not be accorded among only the parties present . . . .

ER at 104 (Decision and Order).

[60] In short, the trial court held that the absentees were necessary parties under section (a) because the relief requested would not only affect the present parties, but also the absentees. The problem with such holding is that subsection (a)(1) is not an inquiry into the effect of relief on the absentees. Rather, the rule focuses only on the present parties to the litigation. *See* Rule 19(a)(1) (stating that "in the person's absence complete relief cannot be accorded among those already parties"). Thus, the trial court erred in its application of subsection (a)(1) when it considered the effect of the relief on the nominees, who are persons outside of the present parties to the litigation. *Arkwright-Boston Mfrs. Mut. Ins. Co. v. City of New York*, 762 F.2d 205, 209 (2nd Cir.1985) (stating that complete relief under Rule 19(a)(1) only refers to relief between those already parties to the suit; it does not refer to relief for the person sought to be joined). *Makah Indian Tribe*, 910 F.2d at 558 ("This [Rule 19(a)(1)] analysis is independent of the question whether relief is available to the absent party.").

[61] Contrary to the trial court's finding, in applying the subsection 19(a)(1) to the case *sub judice*, we find that complete relief can be accorded between Petitioners and the Commission, who are the parties to the suit. That is, should judgment be handed down by the court, whether such relief is in favor of Petitioners or of the Commission, the relief will be complete as between the current parties, even if the absentees are not joined. This is so, because if Petitioners' requested relief is granted, it will solely be the duty of the Commission to cancel the primary election and conduct a new election. If relief is granted to the Commission, the case will be dismissed and no further action is necessary. *See Hoblock v. Albany County Bd. of Elections*,341 F. Supp. 2d 169, 175(N.D.N.Y. 2004) (applying Rule 19 (a)(1) and finding that the court "is able to provide Plaintiff voters with

complete relief (namely, ordering the Board to count the absentee votes) even if Plaintiff candidates are not joined as parties.").

[62] ***Subsection (a)(2)(I).*** Under Rule 19(a)(2)(I), an absentee's presence is required for just adjudication when the absentee "claims an interest relating to the subject of the action," and a disposition of the action, without the absentee, "may (I) as a practical matter impair or impede the person's ability to protect that interest." Thus, our inquiry with respect to subsection (a)(2)(I) is twofold: first, what are the absentee's interests, if any; and second, as a practical matter, will a judgment impair or impede the absentee's ability to protect that interest. The purpose of Rule 19(a)(2)(I) "is to protect the legitimate interests of absent parties . . . ." *United States ex rel. Morongo Band of Mission Indians v. Rose*, 34 F.3d 901, 908 (9th Cir. 1994).

[63] We recognize that with respect to the nature of an absentee's interest, some courts hold that such interest must be a "legally protected interest." *Liberty Mut. Ins. Co. v. Treesdale, Inc.*, 419 F.3d 216, 230 (3rd Cir. 2005); *Makah Indian Tribe*, 910 F.2d at 558(observing that under Rule 19(a)(2)(I), "the court must determine whether the absent party has a *legally protected interest* in the suit."); *United States v. San Juan Bay Marina*, 239 F.3d 400, 406 (1st Cir. 2001) ("[A] party is necessary under Rule 19(a) only if they claim a "legally protected interest" relating to the subject matter of the action."); *see also Moore's Federal Practice* § 19.03[3][b] (3rd ed. 2006) ("This interest must be 'legally protected, not merely a financial interest or interest of convenience'").

[64] We also recognize, however, that other courts hold that the absentees need only "claim an interest" in the subject matter of the litigation. *See Davis*, 192 F.3d at 958 (observing that the term "legally protected interest" as used by the Ninth Circuit should be construed to exclude only patently frivolous claims because "Rule 19, by its plain language, does not require the absent party to actually possess an interest; it only requires the movant to show that the absent party 'claims an interest relating to the subject of the action . . . . '"); *Lopez v. Martin Luther King, Jr. Hosp.*, 97 F.R.D. 24,

29 (C.D. Cal. 1983) (holding that the "interest" requirement is not limited to "legal" interest, but rather, interest is to be "determined from a practical perspective, not through the adoption of strict legal definitions and technicalities.").

[65] Moreover, some courts have held in various contexts that no vested right arises through the mere nomination to office. The court in *Lahart v. Thompson*, 118 N.W. 398 (Iowa 1908), stated that: "The nomination at a primary election gives the person receiving it no vested interest in the office for which he is named or in any place upon the official ballot which may not be taken away by the . . . Legislature or [a] . . . body to whom the power has been delegated." *Id.* at 398; *see also State ex rel. Pecyk v. Greene*, 114 N.E.2d 922, 927 (Ohio Ct. App. 1953) (positing that because there is no vested right in public office, there can be no vested right in the mere nomination to such office). It has been recognized, however, that a nominee has a vested property right to the nomination and its attendant statutory rights. The Texas Supreme Court in *Taylor v. Nealon*, 120 S.W.2d 586 (Tex. 1938), has held:

> It is the settled law of this State that in a primary election the person receiving a majority of the votes on the face of the election returns is entitled to the nomination, together with all its attendant statutory rights, unless it can and shall be finally adjudged otherwise by some tribunal authorized so to do. Also, such right is a valuable vested property right. . . .

Id. at 587. *Cf. Rowe ex rel. Schwartz v. Lloyd*, 36 A.2d 317 (Pa. 1944) (recognizing that "[a]s to a nomination vote being a 'vested' right, it is a right subject to reasonable regulations imposed by Legislature.").

[66] Turning to our Guam statutes, a "nominee" is defined as "a candidate who has become *entitled* under the provisions of this Title [3] *to a place on the ballot*." 3 GCA § 1115 (2005) (emphasis added).

[67] Pursuant to 3 GCA § 16110 (2005), a person is "deemed nominated in a primary election" when such person "receives votes at least three (3) times greater than the required number of

signatures needed for a petition for candidacy for such election, or votes equal to four percent (4%) of the total number of persons who obtain ballots to vote in that primary election for all parties, whichever is less."[11]

[68] In addition, when a primary election for a particular party is canceled pursuant to the provisions in 3 GCA § 16108(a), then "the Commission shall certify all candidates who qualified to appear on the ballots in such cancelled primary elections for placement on the general election ballot as candidates of their respective political parties for the general election" pursuant to 3 GCA § 16108(b).

[69] Thus, once the Commission declares the primary election results, and the votes garnered by a candidate meet the minimum votes required, such candidate is deemed "nominated" and has an interest in placement on the general election ballot. In addition, pursuant to 3 GCA § 16108, a candidate who qualified to appear on the ballot for the cancelled primary election is deemed "nominated" and similarly has an interest in placement on the general election ballot.

[70] Moreover, pursuant to Chapters 12 and 16 of Title 3 GCA, the validity of the election results are subject to change by annulment or amendment through judicial review. *See supra*, section B. (discussing Rule 12(b)(6)). Because the court has the authority to change or annul the election results upon review, it may be argued that the right of a candidate to be deemed a "nominee" and therefore appear on the general election ballot does not vest until after the court has issued a

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[11] Moreover, 3 GCA § 16404(a) and (b) (2005) provide, as to the gubernatorial and other offices:

> (a) The Governor and Lieutenant Governor team receiving a plurality of votes cast for a partisan nomination shall be the party nominees. No Governor and Lieutenant Governor team running in the independent column shall be eligible for general election ballot placement unless such team receives at least twenty percent (20%) of the total combined votes cast for the winning teams seeking partisan nomination.
>
> (b) The winner in all other primaries shall be the candidate receiving the greatest number of votes except that no candidate running in the independent column shall be eligible for general election ballot placement unless he receives votes equal to at least ten percent (10%) of the total number of the valid ballots cast for the office for which he is a candidate.

judgment in an election contest, or until the time for filing a contest has expired (in the case of no election contest being timely filed). Such issue, we believe, goes to the merits of the underlying claim, and not to the court's assessment of the practical effect of prejudice on the claimed interest of the absent nominees for purposes of a Rule 19 analysis. *See Davis ex rel. Davis v. United States*, 343 F.3d 1282, 1292 (10th Cir. 2003) (stating, in response to plaintiff's argument that the "any prejudice to the [absentee] is not legally cognizable," that such an argument "goes to the merits of their claim, rather than the potential harm to [absentees]. . . .").

[71] In this case, the trial court was required to consider whether the absentee nominees "claim[] an interest relating to the subject of the action," and whether a disposition of the action, without the absentees, "may (i) as a practical matter impair or impede [their] ability to protect that interest."

[72] The trial court made the following findings with respect to Rule 19(a)(2)(i):

> [The relief requested may result in] the winning candidates being removed from the general election ballot. At the very least, the relief requested would subject all of the Republican nominees for the Guam legislature to removal, and for the other prayers, every candidate for every office would be removed from the general election ballot. . . . As for the second category of necessary parties, the Court finds that the nominees' ability to protect their interests would be seriously impaired by the failure to join them as parties. Were the Court to grant the relief requested by the Petitioners, the nominees would be bound by the Court's decision without ever having appeared before the Court."

ER at 105 (Decision and Order).

[73] The trial court concluded that the absent nominees have an interest in being placed on the general election ballot, and that their ability to protect such interest would be impaired by the failure to join them as parties to the underlying action. We find no abuse of discretion in the trial court's application of Rule 19(a)(2)(i).[12] For purposes of a Rule 19(a) analysis, we agree that the absent

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[12] Petitioners argue that the interests of the absent nominees are advanced by the Commission and thus they suffer no prejudice. In order to determine whether an absentee's interests are "adequately represented," the courts must consider (1) "whether 'the interests of a present party to the suit are such that it will undoubtedly make all the absent party's arguments'"; (2) "whether the existing party is 'capable of and willing to make the arguments'"; and (3) "whether the absent party would 'offer any necessary elements to the proceedings' that the present parties will neglect." *Wash.*

nominees have an interest, created by statute, to a placement on the general election ballot. Because the underlying petition seeks, *inter alia*, to annul the primary election and its results, we find that the nominees have an interest in the subject of this litigation for purposes of Rule 19(a)(2)(i). We also agree that a disposition of this case without the absent nominees may "as a practical matter" impair or impede such interests. Because we find that the absent nominees possess a statutory interest, we need not at this time address the nature of the interest that is required to be claimed by an absentee, under different circumstances, for purposes of a Rule 19 analysis.

[74] ***Subsection (a)(2)(ii).*** Under Rule 19(a)(2)(ii), the court must assess whether a disposition of the action without the absentees may leave "*any of the persons already parties* subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest" of the absentee. (Emphasis added.) Thus, the relevant inquiry under (a)(2)(ii) is whether joinder is necessary to avoid harm to any of the persons already parties, that is, the Petitioners and the Commission.

[75] The trial court, finding that (a)(2)(ii) applied under the facts of this case, held that "the result would leave the Petitioners and perhaps the Respondents open to subsequent suits from the nominees for injunctive relief or possible due process claims." ER at 105 (Decision and Order). Contrary to this particular finding by the trial court, the court in its later assessment of feasibility found that the parties cannot be joined in this case because of the running of the statute of limitations for bringing an action based on the primary election. Because the statute of limitations has run, the risk that those already parties to this lawsuit – the Petitioners and the Commission – will incur multiple or inconsistent obligations, is greatly reduced. Applying (a)(2)(ii) to the facts of this case, particularly in light of the statute of limitations found in Title 3 Chapters 12 and 16, we find that those already

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v. Daley, 173 F.3d 1158, 1167 (9th Cir. 1999) (quoting *Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992)). We are unable to make such determinations based on the limited record before us and as such, Petitioners' argument fails.

parties will not be subject to "a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." ER at 105 (Decision and Order). To the extent that the trial court held otherwise in applying (a)(2)(ii), we find error.

[76] Notwithstanding the trial court's errors in applying Rule 19(a)(1) and (a)(2)(ii), the court properly applied Rule 19(a)(2)(i) when it held that the absent nominees had an interest to be placed on the general election ballot, and further found that the absent nominees' ability to protect that interest may be impaired by a judgment rendered in their absence. Satisfaction of just one of the above three tests is all that is required for an absent party to be considered "needed for just adjudication." We therefore proceed to determine whether, under Rule 19(a), the joinder of the absent nominees is feasible.

(2) Feasibility

[77] Pursuant to Rule 19(a), once an absentee is deemed a necessary party, the court shall order the joinder of such party "if feasible." In this case, the trial court properly held that joinder of the absent nominees was not feasible because under Title 3 Chapters 12 and 16, such time for joinder in an election contest had expired.

[78] The trial court also correctly concluded that the relation-back doctrine is inapplicable under the facts of this case. Rule 15(c) of the Guam Rules of Civil Procedure governs the relation-back doctrine, and states:

> Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied, and, within the period provided by law for commencing the action against the party to be brought in by amendment, that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

Guam R. Civ. P. 15.

[79] The first requirement for application of the relation-back doctrine is that "the claim asserted in the amended complaint arises out of the same conduct, transaction, or occurrence set forth in the original pleading." *Id.* This first requirement appears to be met.

[80] The more difficult issues are whether the nominees in this case received notice of the institution of this action, and whether they knew or should have known that but for the mistake in the identity of the proper party, the action would have been brought against them. There is nothing in the record before us that would support a finding that the absent nominees had notice of the institution of the underlying lawsuit.[13] Moreover, there is nothing in the record before us that would support a finding that the nominees knew or should have known that "but for a mistake concerning the identity of the proper party," the action would have been brought against them. *Id.*

[81] As previously stated, the trial court properly found that the relation-back doctrine does not apply. It follows then that because the statute of limitations bars the joinder of the nominees in this case, the trial court properly concluded that joinder of the absent nominees is not feasible.

b. Subsection (b)

[82] Where a court determines that an absentee is a necessary party, and that joinder of such party

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[13] Furthermore, the laws with respect to constructive notice also do not apply to allow for the joinder of the nominees to relate back to the time of the original filing of the underlying action. Constructive notice has been recognized by the federal courts, in applying the similar federal Rule 15(c), in four circumstances. First, constructive notice may exist where an authorized employee does not reject a summons naming a non-existent party. *Pineda v. Almacenes Pitusa, Inc.*, 982 F. Supp. 88, 97 (D.Puerto Rico 1997). Second, constructive notice may be found if the original complaint alleges that the new defendant committed the alleged acts and is an official of one of the original defendants. *Daily v. Monte*, 26 F. Supp.2d 984, 987 (E.D. Mich. 1998). Third, the new defendant may be found to have constructive notice if he or she retains the same attorney as an original defendant and that attorney should have known that the new defendant would be added to the existing lawsuit. *Gleason v. McBride*, 869 F.2d 688, 693 (2nd Cir. 1989)). *But see Manney v. Monroe*, 151 F. Supp.2d 976, 999 (N.D. Ill. 2001) (citing *Woods v. Indiana Univ.-Purdue Univ. at Indianapolis*, 996 F.2d 880, 889, n.14 (7th Cir.1993) (wherein the Seventh Circuit Court noted that relation back is improper when all defendants, including the newly-added defendants, share the same counsel)). Finally, a court may find constructive notice if the original and newly named defendants share an "identity of interests." *Hernandez Jimenez v. Calero Toledo*, 604 F.2d 99, 102 (1st Cir. 1979). The "identity of interests" test applies only where the original and newly-named defendants are "so closely related in business or other activities that it is fair to presume the added parties learned of the institution of the action shortly after it was commenced." *Id.* at 102-03; *see also Ayala Serrano v. Lebron Gonzalez*, 909 F.2d 12 (1st Cir. 1990) (recognizing the "identity of interests" test in the First Circuit).

is not feasible under Rule 19(a), the court must then apply Rule 19(b) to "determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent persons thus being regarded as indispensable." Guam R. Civ. P. 19(b). Simply stated, once the joinder of a necessary party is found not feasible, the court is then faced with two options: to proceed or dismiss. *Provident*, 390 U.S. at 118 ("Assuming the existence of a person who should be joined if feasible, the only further question arises when joinder is not possible and the court must decide whether to dismiss or to proceed without him").

[83] Subsection (b) involves a comprehensive inquiry of the facts of the litigation and the interests of all parties involved – the plaintiff, the defendant, absentee, the court, and the public. The trial court must engage in meaningful analysis. As stated by the Court in *Provident*:

> To use the familiar but confusing terminology, the decision to proceed is a decision that the absent person is merely 'necessary' while the decision to dismiss is a decision that he is 'indispensable.' The decision whether to dismiss (i.e., the decision whether the person missing is 'indispensable') must be based on factors varying with the different cases, some such factors being substantive, some procedural, some compelling by themselves, and some subject to balancing against opposing interests. Rule 19 does not prevent the assertion of compelling substantive interests; it merely commands the courts to examine each controversy to make certain that the interests really exist. To say that a court 'must' dismiss in the absence of an indispensable party and that it 'cannot proceed' without him puts the matter the wrong way around: *a court does not know whether a particular person is 'indispensable' until it had examined the situation to determine whether it can proceed without him.*

Provident, 390 U.S. at 118-119 (emphasis added, footnote omitted).

(1) Indispensability factors

[84] Subsection (b) of Rule 19 delineates the four factors to be weighed in determining whether a necessary party is "indispensable," thus requiring dismissal: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; [and] fourth, whether the plaintiff will have an adequate remedy

if the action is dismissed for nonjoinder. Guam R. Civ. P. 19(b).

[85] In reviewing the trial court's Rule 19(b) determination, we are tasked to consider whether the trial court "failed to consider a relevant factor, whether [it] relied on an improper factor, and whether the reasons given reasonably support the conclusion." *Rishell*, 94 F.3d at 1411. We discuss each factor in turn.

(i) First Factor: To what extent might a judgment rendered in the nominees' absence be prejudicial to the nominees or to those already parties?

[86] The express terms of this first factor call upon the trial court to assess the prejudicial effect that a judgment might have on both the absentees and the current parties. The trial court found, with respect to the prejudicial effect on the nominees:

> Any judgment rendered in this case granting any of the relief requested by the Petitioners would not only overturn the nominations of the Republican candidates for the Guam legislature, but also the nominations of every winning candidate should the Court void the election as requested. The Court has been presented with no argument that the nominees would not be prejudiced by finding themselves bound by a decision restricting their right of access to the ballot less than one month before the general election, and the Court finds it impossible that these persons would not be substantially harmed by a decision to suddenly remove them from the ballot without giving them a chance to defend themselves.

ER at 106-07 (Decision and Order).

[87] We find that the trial court properly applied the first part of the first factor, that is, the assessment of the extent of prejudice to the absentees, when it found that the nominees' interest is to be placed on the general election ballot, and that any judgment rendered without them in this case will be prejudicial to the nominees.

[88] We next address the extent to which a judgment rendered without the nominees might be prejudicial to those already parties. Under this prong of the first factor, "[t]he possible collateral consequences of the judgment upon the parties already joined are also to be appraised." Fed. R. Civ. P. 19 Advisory Committee's Notes to the 1966 Amendment (further explaining that the court should ask: "Would any party be exposed to a fresh action by the absentee, and if so, how serious is the

threat?"). While this provision appears to overlap with the Rule 19(a)(2)(ii)'s consideration of multiple or inconsistent judgments, "[t]his overlap on bases of inquiry should not mask the fact that the quality of the indispensability analysis is different." *Moore's Federal Practice* § 19.05[2][a] (3rd ed. 2006) As explained in *Moore's*:

> Under the necessary party analysis, the court is concerned essentially with whether nonjoinder *could* have one of the adverse effects addressed by that Rule. The basic possibility of such harm justifies joining the absentee. In contrast, the indispensability analysis takes place when the court is faced with an absentee whose joinder cannot be secured. The court is concerned with whether nonjoinder *actually will* result in the kind of prejudice hypothesized earlier, and if so, the severity of that harm.

Id. (footnote omitted)

[89] In considering the extent to which a judgment rendered without the nominees might be prejudicial to those already parties, we find that because the time has expired under which to join the underlying lawsuit, the extent to which a judgment rendered without the absent nominees might prejudice the Petitioners and the Commission is minimal.

[90] While the trial court properly considered the extent of prejudice to the absent nominees, the court failed to also consider and determine the extent to which a judgment rendered without the absent nominees might be prejudicial to the Petitioners and the Commission.[14]

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[14] We note that in its necessary party analysis under Rule 19(a)(2)(ii), the trial court found that "the [relief requested] would leave the Petitioners and perhaps the Respondents open to subsequent suits from the nominees for injunctive relief or possible due process claims." ER at 105 (Decision and Order). Finding that the trial court erred in its application of subsection (a)(2)(ii), we stated in our analysis, *see supra*, section 2.a.(1), discussing subsection (a)(2)(ii), that in light of the statute of limitations found in Title 3 Chapters 12 and 16, that the risk of the parties incurring multiple or inconsistent obligations was therefore minimal. Moreover, while the considerations under subsection (a)(2)(ii) appear to overlap, the trial court in this case was required under subsection (b) to examine (or re-examine) the extent of the prejudice to the present parties if judgment were rendered without the absentees (along with all other factors in Rule 19(b)), in its determination of whether equity and good conscience required dismissal. *See, e.g., Kamhi v. Cohen*, 512 F.2d 1051, 1054 (2nd Cir. 1975) (observing that the Rule 19 analysis " involves *a balancing of interests* – those of the parties and of the outsider, those of the public and of the court in seeing that the litigation is both effective and expeditious, while taking into account 'equity and good conscience.'") (citation omitted); *Provident*, 390 U.S. at 119 (stating that a trial court "does not *know whether a particular person is* 'indispensable' until it had examined the situation to determine whether it can proceed without him.") (emphasis added).

> *(ii) Second Factor: The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided.*

[91] Assuming that the only prejudice that exists is the prejudice to the nominees, and based on the relief requested by the petitioners, it is doubtful that by protective provisions in the judgment, by the shaping of relief, or other measures can lessen or avoid the prejudice to the nominees. We therefore find that the trial court properly applied this factor when it held:

> This prejudice cannot be lessened or avoided, as the only relief requested by Petitioners is that which will directly affect these persons. Petitioners seek no other outcome than to void the entire primary election or to remove the Republican candidates for the Guam legislature from the general election ballot, thus rendering any judgment which could be fashioned in an attempt to avoid involving the nominees completely ineffectual and inadequate.

ER at 107 (Decision and Order). As such, we concur with the trial court that this second factor weighs in favor of dismissal.

> *(iii) Third Factor: Whether a judgment rendered in the person's absence will be adequate.*

[92] Whether a judgment will be "adequate" is a factor that considers the policy supporting efficient settlement of cases. Such factor "calls attention to the extent of the relief that can be accorded among the parties joined." Fed. R. Civ. P. 19 Advisory Committee's Notes to the 1966 Amendment. As explained by the Supreme Court:

> [T]here remains the interest of the courts and the public in complete, consistent, and efficient settlement of controversies. We read the Rule's third criterion, whether the judgment issued in the absence of the nonjoined person will be "adequate," to refer to this *public stake in settling disputes by wholes*, whenever possible, for clearly the plaintiff, who himself chose both the forum and the parties defendant, will not be heard to complain about the sufficiency of the relief obtainable against them.

Provident, 390 U.S. at 111 (emphasis added); *see also Davis*, 343 F.3d at 1293 (the concern underlying this factor is not the adequacy of judgment from the plaintiff's point of view but adequacy of "dispute resolution").

[93] The trial court failed to properly consider and apply this third factor. That is, nothing in its decision refers to whether a judgment issued in this case would be adequate, in light of the fact that this factor focuses on the public's interest in complete, consistent, and efficient settlement of controversies. Rather, the only discussion of adequacy by the trial court was its holding that: "Petitioners seek no other outcome than to void the entire primary election or to remove the Republican candidates for the Guam legislature from the general election ballot, thus rendering any judgment which could be fashioned in an attempt to avoid involving the nominees completely ineffectual and inadequate." ER at 107.

[94] The trial court's sole focus, again, was whether a judgment rendered could adequately protect the interests of the nominees. The trial court failed to consider "the public stake in settling disputes by wholes, whenever possible." *Provident*, 390 U.S. at 111. The relevant inquiry is similar to the inquiries found in Rule 19(a)(1)'s complete relief clause. *See Moore's Federal Practice* § 19.05[4] (3rd ed. 2006) ("The third factor in the indispensability analysis echoes the complete relief clause."); Jean F. Rydstrom, Annotation, *Validity, construction, and application of Rule 19(b) of Federal Rules of Civil Procedure, as amended in 1966, providing for determination to be made by court to proceed with or dismiss action when joinder of person needed for just adjudication is not feasible*, 21 A.L.R. Fed. 12 § 11[a] (2006) ("This factor evokes the same considerations as to the interests of the public in avoiding repeated lawsuits as does clause (1) of Rule 19(a). . . . that is, the avoidance of partial or hollow rather than complete relief to the parties."). To be sure, the public's interest in complete, consistent, and efficient settlement of disputes is advanced where judgment is unlikely to lead to further litigation and possible inconsistent judgments. *Cf. Davis*, 343 F.3d at 1292-1293 (finding that where a judgment rendered without the absentee would "lead to further litigation and possible inconsistent judgments," such judgment would not be adequate as defined by the third factor in Rule 19(b)).

[95] Applying this factor to the case at bar, we find it highly unlikely that any judgment rendered by the trial court could lead to further litigation and possible inconsistent judgments. The Petitioners seek, *inter alia*, to annul the primary election. Again, because the statute of limitations has run, there is a minimal risk of further litigation based on the subject matter of this case. Moreover, because of the nature of the relief requested by the Petitioners, it is just as unlikely that any of the present parties could be subject to inconsistent judgments. Therefore, even without the participation of the absent nominees in this case, and regardless of whether judgment will be rendered in favor of the Petitioners or in favor of the Commission, a judgment rendered will bring forth complete and consistent relief – an "adequate judgment" – as the phrase is used in Rule 19(b). *Universal Reinsurance Co., Ltd. v. St. Paul Fire and Marine Ins. Co.*, 312 F.3d 82, 88 (2nd. Cir. 2002) ("Relief will also be 'adequate" in the sense implied by Rule 19(b): [plaintiff] will be able to recover complete relief from [the defendants]. Indeed, dismissal of a claim for an inability to join additional parties is not warranted where complete relief is available from a remaining party").

[96] We therefore hold that Rule 19(b)'s third factor, that is, whether a judgment rendered in the absence of the nominees would be adequate, weighs against dismissal. We further hold that the trial court failed to consider and properly apply the third factor in the Rule 19(b).

(iv) Fourth Factor: Whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder

[97] The fourth factor found in Rule 19(b) requires the trial court to consider "whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder." Rule 19(b). Thus, "the court is directed to examine the ramifications of dismissing the pending case." *Moore's Federal Practice* § 19.05[5][a] (3d ed. 2006). This factor goes hand-in-hand with the third factor above, and "reflects the societal and judicial interest in resolving disputes completely, efficiently, and consistently" *Id.* As stated by Seventh Circuit in *Pasco Intern. (London) Ltd. v. Stenograph Corp.* 637 F.2d 496, 500 (7th Cir. 1980):

> A critical consideration under Rule 19(b) is the availability or unavailability of an alternative forum. If the plaintiff's complaint is dismissed and there is no other court having jurisdiction over the parties as well as over the absent person, the plaintiff's interest in having the federal forum would strongly influence a court to find that the absent person was not indispensable.

[98] While the first three factors are considered defendant-oriented, this "last factor considers the case from the standpoint of Plaintiffs: whether failure to go forward with the case will work a greater prejudice to Plaintiffs because an adequate remedy does not otherwise exist." *Bloch v. Sun Oil Corp.*, 335 F. Supp. 190, 196 (W.D. Okl. 1971);*Levin v. Miss. River Corp.*, 289 F. Supp. 353, 361 (S.D.N.Y. 1968) ("The most relevant 'factors' proposed by Rule 19(b) are whether a judgment rendered in the person's absence will be adequate and whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.") (internal quotation marks and ellipses omitted); *Anrig v. Ringsby United*, 603 F.2d 1319, 1326 (9th Cir. 1979) (similarly finding that the most important factors are that a judgment without the absentee will be adequate and whether plaintiff will have an adequate remedy if the case is dismissed for non-joinder).

[99] In *Collins v. General Motors Corp.*, 101 F.R.D. 1 (W.D. Pa. 1982), the court held that where there will be no other forum to bring plaintiff's claim, this alone was enough to deny dismissal on the grounds of Rule 19. The court stated: "Thus, if the Court were to dismiss this action for failure to join [the absent party], [the plaintiff] would have no forum in which to pursue his claim against the [defendant]. This factor alone leads the Court to conclude that plaintiff's action against the government should not be dismissed." *Id.* at 4. Similarly, the court in *Young v. United Steelworkers of America*, 49 F.R.D. 74 (E.D.Pa.1969), assuming that an absent party's joinder was necessary, nonetheless allowed the case to proceed because such absent person could not "effectively be joined because the Statute of Limitations has run on plaintiff's claim against it." *Id.* at 75. The court stated further that "if the present action were to be dismissed for non-joinder of the employer, plaintiff would be left with no remedy, let alone an adequate remedy." *Id.*

[100] In *Bennie v. Pastor*, 393 F.2d 1 (10th Cir. 1968), the court found that the absent party who could not be located would be prejudiced, but nonetheless proceeded with the action because dismissal would "leave the plaintiffs without a remedy." *Id.* at 3; *see also Gulf Ins. Co. v. Lane*, 53 F.R.D. 107, 111 (W.D. Okla. 1971) (holding that although the absent coadministrator was a necessary party, the fact that plaintiff had no other forum, and that the other coadministrator was a party, militated against dismissal).

[101] In this case, we find that the trial court properly applied this last factor insofar as it found that the Petitioners had no other forum to raise the instant election challenges, and that this one factor weighed against dismissal.

3. Whether equity and good conscience require dismissal

[104] Upon review for abuse of discretion, we must determine whether the trial court "failed to consider a relevant factor, . . . relied on an improper factor, and whether the reasons given reasonably support the conclusion." *Rishell*, 94 F.3d at 1411 (quoting *Kickapoo Tribe*, 43 F.3d at 1497). First, the trial court failed to properly consider and determine, under the first factor, whether the current parties would be prejudiced by a judgment without the absentees. Second, the trial court failed to properly consider and apply the third factor, that is, whether a judgment rendered without the absent nominees would be adequate. In our application of these factors that the trial court failed to consider, we find that such factors weigh against dismissal. Thus, contrary to what the trial court concluded, part of the first, and the third and fourth factors weigh against dismissal. This is troublesome in light of the case law that places emphasis on the very two factors that, in this case, weigh against dismissal: adequacy of the judgment without the absentees (focusing on the public's interest in complete resolution of cases) and whether plaintiff would be left without an adequate remedy. Furthermore, we are unpersuaded by the cases cited by the trial court in support of its dismissal pursuant to Rule 19, as they do not address the interests and the factors delineated in Rule

19(b). Accordingly, we hold that in failing to consider relevant factors in its decision to dismiss pursuant to Rule 19(b), the trial court abused its discretion. Upon a proper application of all the relevant factors in Rule 19(b), we conclude that equity and good conscience requires that the underlying action proceed without the absent nominees, and to this extent, we reverse.[15]

V.

[105] We hold first, that Petitioners have statutory standing under 3 GCA § 16501 to contest the Primary Election, and second, that 3 GCA § 12115 provides the remedy sought by Petitioners. Furthermore, we hold that the trial court erred in failing to properly consider the relevant interests and factors required under Rule 19 of the Guam Rules of Civil Procedure before the dismissing the Petition. Accordingly, we **REVERSE** the Decision and Order dismissing the petition, and **REMAND** to the Superior Court with instructions to **VACATE** the Final Judgment and conduct further proceedings consistent with this opinion.

J. BRADLEY KLEMM
Justice *Pro Tempore*

RICHARD H. BENSON
Justice *Pro Tempore*

F. PHILIP CARBULLIDO
Chief Justice

[15] Because of our holding with respect to the Rule 19 dismissal, we need not consider and discuss the public rights exception to joinder, as advocated by the Appellants. Nor do we decide whether, under the proper circumstances, we will adopt such doctrine in the first instance. *See e.g. Moore's Federal Practice* § 19.06[6] (3rd ed. 2006) (observing that the doctrine "finds no support in the language of Rule 19, and has not enjoyed universal support"); *see generally* Carl Tobias, *Rule 19 and the Public Rights Exception to Party Joinder*, 65 N.C. L. Rev. 745 (1987).