IN THE SUPREME COURT OF GUAM

ROBERT A. UNDERWOOD and FRANK B. AGUON, JR.,
Petitioners,

vs.

THE GUAM ELECTION COMMISSION,
Respondent,

FELIX P. CAMACHO and MICHAEL CRUZ,
Real Parties in Interest.

Supreme Court Case No.: WRM06-003

OPINION

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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 Robert A. Underwood and Frank B. Aguon, Jr. ("Underwood/Aguon") filed a Verified Petition for a Writ of Mandamus, requesting that this court invoke its original jurisdiction to hear this case. They additionally seek expedited treatment of their petition. Real Parties in Interest Felix P. Camacho and Michael Cruz ("Camacho/Cruz") sought dismissal of the petition and opposed expediting the proceeding.

[2] We do not, in this Opinion, address the underlying merits of the petition; more specifically, we do not decide today whether the issuance of the writ of mandate, an extraordinary remedy, will be appropriate under the facts and the law as presented by the parties to this proceeding. Rather, we first address whether this court has the authority and discretion to assume original jurisdiction to consider the petition for writ of mandate filed by Underwood/Aguon. Second, assuming that we do in fact have such authority and that we will exercise our discretion to consider this matter, we next address whether the disposition of the matters raised by petition should be expedited.[1]

[3] We hold that the issues involved in this matter are of great public importance, and therefore, it is appropriate, not only to exercise our discretion and assume original jurisdiction in this matter, but also to expedite the briefing schedule and oral argument.[2]

I.

[4] On November 7, 2006, the Guam Election Commission conducted the General Election, *inter alia*, so that the voters of Guam could determine who shall be elected to the offices of Governor and

[1] The merits and final disposition of the instant petition can be found at *Benavente v. Taitano*, 2006 Guam 17.

[2] This Opinion supersedes the Order issued on November 17, 2006.

Lieutenant Governor. Petitioners Underwood/Aguon ran on the Democratic ticket for Governor and Lieutenant Governor against the Republican team of Camacho/Cruz, the Real Parties in Interest. Two days later, apparently having determined that the Camacho/Cruz slate garnered the requisite number of votes for certification, the Commission certified Camacho/Cruz as the winners of the gubernatorial race.

[5] On November 13, 2006, Underwood/Aguon filed a Verified Petition for a Writ of Mandamus, which included an Emergency Motion to Expedite Writ Consideration. The following day, Camacho/Cruz filed a Motion to Dismiss and an Opposition to the Motion to Expedite Writ Consideration. After inviting written arguments on both motions, a hearing was held on November 17, 2006, after which the court took these matters under advisement.

II.

[6] We have original jurisdiction over a petition for writ of mandamus pursuant to 7 GCA § 3107(b) (2005) and 48 U.S.C. § 1424-1(a)(1) (Westlaw through Pub. L. 109-394 excluding Pub L. 109-390 (approved Dec. 14, 2006)).

III.

A. Motion to Dismiss for Lack of Jurisdiction

[7] Camacho/Cruz's motion to dismiss the instant petition is grounded in the argument that Underwood/Aguon have failed to meet the threshold requirement for writ relief; specifically, that Underwood/Aguon have failed to establish that there exists "no[] . . . plain, speedy, and adequate remedy at law" as required by 7 GCA § 31302 (2005), and for this reason, this court is without jurisdiction to consider the instant petition. Simply stated, Camacho/Cruz assert that because the issues presented to this court by Underwood/Aguon may be decided by the Superior Court of Guam, we should dismiss the petition without prejudice and allow the matter to proceed in the first instance in the lower court.

[8] In response, Underwood/Aguon argue that because the issues presented in their petition are of great public importance, this court should exercise its discretion and assume jurisdiction under the circumstances of this case. We agree.

[9] To begin with, there is no question that this court is cloaked with the authority to exercise original jurisdiction over a petition for extraordinary relief, and in this case, a writ of mandamus. First, section 1424-1(a)(1) of the Organic Act of Guam provides that the Supreme Court of Guam shall have "original jurisdiction . . . as the laws of Guam may provide." 48 U.S.C. § 1424-1(a)(1). Second, section 1424-1(a)(3) of the Organic Act further provides that the Supreme Court of Guam shall have "jurisdiction to issue all orders and writs in aid of its . . . original jurisdiction . . . ." Third, local law grants this court jurisdiction to issue such extraordinary writs. *See* Chapter 31 of Title 7 GCA. Particularly with respect to a petition for a writ of mandate, section 31202 provides that a writ of mandate "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 . . . ." 7 GCA § 31202 (2005).

[10] Nonetheless, while the court has the *authority* to exercise original jurisdiction over petitions for extraordinary writ relief, the *decision* to exercise such authority and assume jurisdiction in a particular case lies within the sound discretion of the court. *See e.g.*, *People v. Super. Ct. (Laxamana)*, 2001 Guam 26 ¶ 5.

[11] We have on numerous occasions held, as Camacho/Cruz have correctly observed, that any petitioner who seeks extraordinary relief must demonstrate, as a threshold requirement, that he or she has no "plain, speedy, and adequate remedy available in the ordinary course of law."[3] *Perez v. Judicial Council of Guam*, 2002 Guam 12 ¶ 4; *see Camacho v. Super. Ct. (Moylan)*, Supreme Court Case No. WRP03-005 (Order, Mar. 23, 2004) ("In determining whether either an alternative writ of

[3] The threshold requirement as observed by this court is found in 7 GCA § 31203 (2005), which states that a writ of mandate shall "be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law."

prohibition or mandate should issue in this matter, the court must first decide whether the threshold statutory requirement for writ relief has been met; namely, whether the [petitioner] has an adequate remedy at law."); *see also Moylan v. Super. Ct. (People of Guam)*, Supreme Court Case No. WRM04-002 (Order, May 14, 2004); *Nat'l Union Fire Ins. v. Super. Ct. (Xing He)*, Supreme Court Case No. WRP05-001 (Order, April 10, 2006).

[12] In the instant petition, Underwood/Aguon claim that the Guam Election Commission improperly excluded overvotes in its determination of whether the votes garnered by the Camacho/Cruz team received the "majority of the votes cast" as this phrase is used in the Organic Act. 48 U.S.C. § 1422. With respect to the threshold requirement of a lack of plain, speedy, and adequate remedy at law, Underwood/Aguon assert that to be required to proceed in the Superior Court in the first instance would not be a plain, speedy, and adequte remedy because "time is of the essence in an election dispute." Opp'n Mot. at 9. Underwood/Aguon further argue that jurisdiction is proper because "the issues presented are of great importance and must be resolved promptly." Opp'n Mot. at 5.

[13] Preliminarily, we note that we have previously recognized that because Guam's mandamus statute is rooted in California statutory law,[4] California case law regarding the application of the writ

[4] Title 7 GCA § 31202 nearly mirrors California Code of Civil Procedure § 1085, which states in similar language:

> A writ of mandate 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, or to compel the admission of a party to the use and enjoyment of a right of office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person.

Cal. Civ. P. § 1085 (Westlaw through Ch. 910 of 2006 Reg. Sess. urgency legislation and all propositions appearing on the Nov. 7, 2006 ballot (2006)). In addition, 7 GCA § 31203 mirrors California Code of Civil Procedure § 1086, which states in identical language: "The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested." Cal. Civ. P. § 1086 (Westlaw through Ch. 910 of 2006 Reg. Sess. urgency legislation and all propositions appearing on the Nov. 7, 2006 ballot (2006)).

standards and the exercise of writ jurisdiction is persuasive authority. *See Holmes v. Terr. Land Use Comm'n*, 1998 Guam 8 ¶ 6 (observing that "since Guam's mandamus statutes were adopted from the California Civil Code, California cases applying the mandamus standard are persuasive authority"); *see Ueda v. Bank of Guam*, 2005 Guam 23 ¶ 16 n.7 (finding "California case law [is] persuasive authority in the interpretation of Title 21 GCA § 1254, as that section was derived from California Civil Code § 711"); *see also People v. Agualo*, 948 F.2d 1116, 1118 (9th Cir. 1991) (noting that they have previously held that "decisions of California courts are persuasive on issues of statutory construction and the effect of laws which predate the enactment of the territorial laws of Guam and which precisely follow California statutes").

[14] California courts, similarly requiring that a petitioner meet the threshold statutory requirements, "generally are not willing to entertain writs when relief could have been granted in [the] lower court." Cal. Civ. Writ Prac. § 5.2 (3d ed. 1998). In fact, where writ relief may be granted by the lower court, relief requested of the higher court in the first instance should be granted "only in very unusual cases." *Id.* One such "very unusual" case is found where the issue raised is one of "public importance." *Id.*

[15] For instance, in *Brosnahan v. Brown*, the petitioners filed a petition for writ relief, raising multiple constitutional challenges to an initiative measure that was adopted by voters in a primary election that was already held. 651 P.2d 274, 276 (Cal. 1982). The California Supreme Court, finding it appropriate to exercise original jurisdiction, observed that "[i]t is uniformly agreed that the issues are of great public importance and should be resolved promptly." *Id.*

[16] The California Supreme Court, in other contexts deemed to be of great public importance, has similarly exercised original jurisdiction upon the determination that the matter at issue involves great public importance. Thus, the court exercised original jurisdiction in a challenge to the constitutionality of a city charter provision which required a two-year durational residence

requirement for candidates for city councilman. *Thompson v. Mellon*, 507 P.2d 628 (Cal. 1973). The court stated: "[W]e briefly observe that since this case involves substantial issues of great public importance involving the right to be a candidate for public office which must be resolved promptly, we deem it proper to exercise original jurisdiction." *Id.* at 630. Similarly, the court found that questions of maintenance and improvement of facilities of higher education to be of clear public concern, and further found that the validity of a new statutory program to assist institutions of higher education to be a matter deserving of prompt judicial attention. *Cal. Educ. Facilities Auth. v. Priest*, 526 P.2d 513, 516 (Cal. 1974). Accordingly, the court held that it would "exercise its original jurisdiction to grant such a writ when 'the issues presented are of great public importance and must be resolved promptly.'" *Id.* at 516 (quoting *County of Sacramento v. Hickman*, 428 P.2d 593, 595 (Cal. 1967)). The court, faced with a petition for a writ of mandate seeking to prevent the implementation of an initiative statute purporting to authorize various forms of gaming in tribal casinos, "determined to decide the matter [itself], instead of allowing lower courts, in accordance with [its] custom, to address it in the first instance, because we concluded the underlying questions were of 'great public importance and must be resolved promptly." *Hotel Employees & Rest. Employees Int'l Union v. Davis*, 981 P.2d 990, 995 (Cal. 1999) (citations omitted). *See also Clean Air Constituency v. Cal. State Air Res. Bd.*, 523 P.2d 617, 621 (Cal. 1974); *Curtis v. Bd. of Supervisors*, 501 P.2d 537, 542 (Cal. 1972); *State Bd. of Equalization v. Watson*, 437 P.2d 761, 762-763 (Cal. 1968).

[17] We adopt the above California authority which in effect acts as an exception to the threshold requirement that petitioners demonstrate the lack of a plain, speedy, and adequate remedy at law.[5]

[5] We note that while courts have characterized and treated the "great public importance" concept as an exception to the threshold requirement that a petitioner must demonstrate the lack of a plain, speedy and adequate remedy in the ordinary course of law, the rationale behind the exception appears to be consistent with the threshold requirement. The case of *Jolicoeur v. Mihaly*, 488 P.2d 1 (Cal. 1971) illustrates this, where the California Supreme Court took original jurisdiction under California writ statutes. The court concluded that it would take original jurisdiction of an election case

Cf. Clean Air Constituency, 523 P.2d at 620-21 (recognizing that where the issue is determined to be one of great public importance and must be resolved promptly, "the existence of an alternative appellate remedy will not preclude [the] court's original jurisdiction."); *Acton v. Henderson*, 309 P.2d 482, 483 (Cal. Dist. Ct. App. 1957) ("[W]hile the appellate court will not ordinarily entertain an original proceeding in mandamus . . . that rule has no application where the public interest is such as to require a speedy determination of the controversy.").

[18] Applying this principle to the case at bar, the substantive issue for our consideration is whether Camacho/Cruz, who were certified as the winners of the 2006 gubernatorial election, received the requisite "majority of the votes cast," as this phrase is used in the Organic Act of Guam. Such issue, we believe, is of great public importance requiring prompt resolution. Accordingly, we deem it appropriate to exercise our discretion and assume original jurisdiction over the Verified Petition for Writ of Mandamus filed by Underwood/Aguon. Consequently, we deny the Motion to Dismiss.

2. Emergency Motion to Expedite Writ Consideration

[19] We next consider Petitioners' emergency request for an expedited disposition of the writ proceeding. Rule 2 of the Guam Rules of Appellate Procedure states: "In the interest of justice or of expediting a decision or for other good cause shown, the Supreme Court may . . . suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion . . . ." Guam R. App. P. 2.

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because "[n]o less speedy resolution of the issues presented by petitioners would be adequate here." *Id*. at 3 n.1. Noting the inevitability of an appeal if the case were filed in the trial court, the court said that "the inevitable appeals by either side from that decision in time to register for these elections" weighed in favor of the supreme court exercising original jurisdiction. *Id*. The court also said: "The remedy invoked – mandate – is appropriate. Voting registrars are public officers with the ministerial duty of permitting qualified voters to register. Mandamus is clearly the proper remedy for compelling an officer to conduct an election according to law." *Id*. at 3 n.2 (citation omitted). Similarly, in this case, the highest court may exercise jurisdiction because it is of great public importance and requires prompt resolution. *Curtis v. Bd. of Supervisors*, 501 P.2d 537, 542 (Cal. 1972) ("[T]his is a case in which 'the issues presented are of great public importance and must be resolved promptly' . . . . ") (quoting *County of Sacramento v. Hickman*, 428 P.2d 593, 595 (Cal. 1967)).

[20] Having already determined that the issues raised by the petition are of great public importance, we hereby grant Underwood/Aguon's request for an expedited briefing and oral argument schedule.

IV.

[21] We hold that the issues involved in this matter are of great public importance, and therefore, it is appropriate not only to exercise our discretion and assume original jurisdiction in this matter, but also to expedite the briefing schedule and oral argument. Accordingly, the Motion to Dismiss, filed by Real Parties in Interest Camacho/Cruz, is **DENIED**. The Motion to Expedite Writ Consideration, filed by Petitioners Underwood/Aguon, is **GRANTED**.