FSM SUPREME COURT APPELLATE DIVISION

HIS EXCELLENCY JOSEPH J. URUSEMAL, in his official capacity as President of the Federated States of Micronesia, Petitioner, vs. KAPILLY CAPELLE, as Court Administrator for the Supreme Court of the Federated States of Micronesia, Respondent, THIRTEENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA, Real Party in Interest.	)	APPEAL CASE NO. P1-2004

OPINION

Argued: March 23, 2004
Decided: August 4, 2004

BEFORE:

Hon. Andon L. Amaraich, Chief Justice, FSM Supreme Court;
Hon. Martin G. Yinug, Associate Justice, FSM Supreme Court;
Hon. Judah C. Johnny, Specially Assigned Justice, FSM Supreme Court*

*Chief Justice, Pohnpei Supreme Court, Kolonia, Pohnpei

APPEARANCES:

For the Petitioner: Matthew Crabtree, Esq.
Assistant Attorney General
Department of Justice
P.O. Box PS-105
Palikir, Pohnpei FM 96941

For the Real Party in Interest: Craig D. Reffner, Esq.
Law Office of Fredrick Ramp
P.O. Box 1480
Kolonia, Pohnpei FM 96941

For the named Respondent: no one

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HEADNOTES

Appellate Review – Decisions Reviewable

The FSM Supreme Court has exclusive jurisdiction when all parties are agents of the national government and no issue involving land is presented. When the court of first instance is the appellate division, and not the trial division, the appellate division's jurisdiction is necessarily derivative of the trial division's since the Supreme Court appellate division may review cases heard in the national courts. Whether the case is in a proper procedural posture is different from the question of the appellate division's subject matter jurisdiction, so the threshold question is whether the appellate division may exercise that jurisdiction as the court of first instance. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Appellate Review – Decisions Reviewable

The FSM Supreme Court has in the past permitted direct appeals from administrative decisions to the FSM Supreme Court appellate division. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Appellate Review – Decisions Reviewable

When no development of a trial record is required since there is no factual dispute and the issue for determination is one of law, when the case is time sensitive because of the effect on pending cases, and when the issue is one of significant national importance since it bears on the fundamental relationship between all three branches of government, the appellate division has subject matter jurisdiction over the matter and may hear the case. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute – Standing

The two concepts of standing and justiciability interrelate, since standing is a prerequisite to a justiciable "case or dispute" under Article XI, Section 6(a) and (b) of the Constitution. There can be no case or dispute if a party lacks standing to bring suit in the first place. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute – Standing

While the requirement of standing is not set forth in so many words in the Constitution, it is implicit in the "case or dispute" requirement found in Article XI, Section 6 of the Constitution. A party has standing sufficient to allow him to sue when that party has a sufficient stake or interest in an otherwise justiciable case or dispute to obtain judicial resolution of the controversy. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute – Standing

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Separation of Powers – Executive Powers

The power to faithfully execute and implement the Constitution's provisions and all national laws is expressly delegated to the President. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute – Standing

Since the President, as the country's Chief Executive and by virtue of that office the chief law enforcement officer, has a stake or interest in insuring that disruption of the judicial process does not occur from the delay in the administration of justice resulting from a specially assigned justice's disapproval, when he has suffered actual injury resulting from an allegedly illegal action, which can be traced to the challenged action and can be redressed by a court decision (that is to say by a judicial determination that both the resolution and the statute on which it is based are unconstitutional), he thus has a sufficient stake in the controversy's outcome to have standing. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute – Standing

When the President is contesting, not the manner in which the special justice was assigned, but the manner in which he was removed, the delay resulting from a specially assigned justice's removal pursuant to 4 F.S.M.C. 104(2) is a real injury sufficient to bestow standing on the President to contest the constitutionality of that statute. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute

In order for a case to be "justiciable," or one over which the court has jurisdiction for purposes of rendering a decision, it must be one that is concrete and definite, and not abstract or hypothetical in nature. A case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Case or Dispute

Although the extent and depth of either party's commitment to its view does not resolve the question of whether a justiciable dispute exists, the very divergence of those views highlights the fact that the important issues presented in the case bear in a fundamental way on the relationships between parties who have adverse legal interests. The issues resulting from these differing positions present a justiciable dispute. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Mandamus and Prohibition

The statutory basis for Appellate Procedure Rule 21(a), which provides for application for a writ of prohibition, is 4 F.S.M.C. 117, which provides that the Supreme Court and each division thereof will have power to issue all writs. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Separation of Powers – Judicial Powers

The Constitution contemplates that administrative duties are an integral part of the Chief Justice's role, and in this regard they are manifestly judicial. He may delegate those duties pursuant to express constitutional authority, and they do not become nonjudicial because they are performed by the Chief Justice's designee. The contrary is the case, especially in light of the fact that the office of court administrator is one of only a handful of public offices specifically referred to in the Constitution. The administration of the court is an essential activity without which the court cannot function. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Mandamus and Prohibition

A writ of prohibition may issue when a court or court officer is about to engage in judicial or quasi-judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Mandamus and Prohibition

The FSM Supreme Court Director of Court Administration is a court officer who may properly be the subject of a writ of prohibition when no other adequate remedy presents itself since a specially assigned justice's handling of cases specially assigned to him is not possible in the absence of certain administrative steps on the Director's part. Accordingly, the Court Director can properly be named a respondent. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Statutes – Construction

Statutes are presumptively constitutional. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Interpretation

In the important process of construing the nation's formative document, we must first pay heed to the language of the Constitution itself. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Courts – Judges

The Constitution provides that a Supreme Court justice may be removed from office for treason, bribery, or conduct involving corruption in office by a ⅔ vote of the members of Congress. When a justice of the Supreme Court is removed, the decision must be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive. The Constitution draws no distinction between permanent justices or specially assigned justices for purposes of removal. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Interpretation

When the Constitution's words themselves are not determinative of a question, the court may look to the Micronesian Constitutional Convention journal to locate any discussion about the provision in question. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Constitutional Law – Interpretation;

It is plain from the framers' discussions at the time of the Constitution's creation that in order to insure the judiciary's independence, there should be only one removal process for justices, and that that process should be the one specified in the Constitution. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Courts – Judges

Litigants in a case presided over by a specially assigned justice are entitled to a justice who is no less independent than a permanent justice. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Courts – Judges; Separation of Powers – Legislative Powers

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the

legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

Courts – Judges; Separation of Powers – Legislative Powers

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM Intrm. ---, --- (App. 2004).

* * * *

COURT'S OPINION

PER CURIAM:

On January 19, 2004, the Thirteenth Congress of the Federated States of Micronesia adopted Congressional Resolution No. 13-69, which "disapprove[d] of the continued service of temporary Justice Richard H. Benson, such that he shall hereafter be ineligible for further service as a temporary Justice for one year, unless Congress shall sooner revoke its disapproval." The resolution was passed pursuant to 4 F.S.M.C. 104(2), which provides in part that "[t]he Congress may by resolution disapprove of the continued service of any temporary justice whose cumulative service exceeds 3 months, and the disapproved person shall thereafter be ineligible for further service as a temporary justice for 1 year, unless the Congress shall sooner revoke its disapproval." The resolution specifies no reason for the removal. At the time the resolution was passed, six specially assigned cases were pending before the Hon. Richard H. Benson, a retired justice of this court. The Chief Justice had appointed Judge Benson pursuant to Article XI, Section 9(b) of the FSM Constitution, which provides that the Chief Justice may "give special assignments to retired Supreme Court justices." The passage of the resolution effectively stayed any further action by Judge Benson in the cases specially assigned to him. On January 20, 2004, the President filed the instant action, which is a petition for writ of prohibition that seeks to prevent the Director of Administration of the FSM Supreme Court, Mr. Kapilly Capelle, from giving any effect to the resolution by prohibiting him from terminating any contractual relationship with Judge Benson for his services as a specially assigned justice. The President contends that Congressional Resolution No. 13-69, and the statute upon which it is based, 4 F.S.M.C. 104(2), are unconstitutional.

All issues have been fully briefed by the President and the Congress. Mr. Capelle notified the court that he would not be filing a response, as he may elect to do under Rule 21(b) of the FSM Rules of Appellate Procedure, since he is not the real party in interest. Oral argument was heard on March 23, 2004.

I

The President's claim that both Congressional Resolution No. 13-69 and 4 F.S.M.C. 104(2) are unconstitutional is based on the doctrine of separation of powers, the time-hallowed idea that each branch of government – the legislative, the executive, and the judicial – has certain integral functions assigned to it under the Constitution, and that no branch may interfere in the areas committed to the

care of one of the others. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630 (Pon. 2002); ***see also*** Udot Municipality v. FSM, 10 FSM Intrm. 354, 357 (Chk. 2001); In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985); Suldan v. FSM (II), 1 FSM Intrm. 339, 343 (Pon. 1983). The President urges that the Chief Justice's power to specially assign a retired justice to a case under Article XI, Section 9(b) of the FSM Constitution lies within the Chief Justice's province alone. According to the President, Congress may not interfere with that power by removing a specially assigned judge by simple resolution, but may only do so for cause, and in the same way that it would remove a permanent justice. That procedure is specified in Article IX, Section 7, and provides that a Supreme Court justice may only be removed from office by a 2/3 vote of the members of Congress for treason, bribery, or conduct involving corruption in office.

In response, Congress raises four issues, the first two of which are jurisdictional. It contends that the President lacks standing to bring the petition, and that no actual case or controversy is present over which the court may exercise jurisdiction. As its third issue, Congress asserts that a writ of prohibition may not issue on the facts as they are now before the court. Finally, Congress contends that 4 F.S.M.C. 104(2), pursuant to which it acted in passing Congressional Resolution No. 13-69, is constitutional.

A

Subject matter jurisdiction over this case falls under Article XI, Section 6(a) of the FSM Constitution, which provides in part that "[t]he trial division of the Supreme Court has original and exclusive jurisdiction in cases . . . in which the national government is a party except where an interest in land is at issue." All parties are agents of the national government, and no issue involving land is presented. While the court of first instance in this matter is the appellate division, and not the trial division, the appellate division's jurisdiction is necessarily derivative of the trial division's: Section 7 of Article XI provides that "[t]he appellate division of the Supreme Court may ***review*** cases heard in the national courts" (emphasis added). Congress raises a procedural concern surrounding the fact that this case was filed as a petition for a writ of prohibition under Rule 21(a) of the FSM Rules of Appellate Procedure, and we address this point below. But whether the case is in a proper procedural posture is different from the question of the appellate division's subject matter jurisdiction. The threshold question is whether the appellate division may exercise that jurisdiction as the court of first instance.

This court has in the past permitted direct appeals from administrative decisions to the FSM Supreme Court appellate division. Olter v. National Election Commissioner, 3 FSM Intrm. 123 (App. 1987), was such an appeal. The appeal was allowed because of its national importance and extreme time sensitivity, involving as it did the election of one of the Congressmen who would be a candidate for the offices of President and Vice-President, and where the election for those two high office was to occur in less than a month's time. Id. at 128. In Michelsen v. FSM, 5 FSM Intrm. 249, 252 (App. 1991), a direct appeal was permitted without discussion pursuant to the agreement of the parties where there was no further evidence to be submitted for consideration. Two other cases, Semes v. FSM, 4 FSM Intrm. 66, 71 (App. 1989), and Carlos v. FSM, 4 FSM Intrm. 17, 22 (App. 1989), were brought first in the trial division but transferred to the appellate division by agreement and stipulation of the parties. For purposes of the appeal, Carlos was consolidated with another case which had been appealed directly to the appellate division from an adverse determination of an administrative agency. Id. at 19, 22. In Aten v. National Election Commissioner (II), 6 FSM Intrm. 74, 76 (App. 1993), an appeal of an agency determination was brought directly to the appellate division pursuant to 9

F.S.M.C. 903, which codifies the procedure set out in Olter. The last direct appeal to the appellate division was Robert v. Mori, 6 FSM Intrm. 394 (App. 1994). That matter was originally filed in the trial division, but two days thereafter a petition for direct appellate review, with the opposing party's agreement, was filed in the appellate division. Id. at 397. The appellate division granted the petition since the issue presented was one of time sensitivity and national importance, and to do so was consistent with the court's past practice. Id.

Similar to the case at bar is Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990), in which we determined that the appellate division may accept the direct filing of a case and establish an expedited briefing schedule where there is limited time available and prompt resolution of the cases' issues is decidedly in the national interest. In that case the Convention sought a declaratory judgment as to the constitutionality of section 6(4) of Public Law No. 6-24 with respect to the way it related to the Convention's power to set its own voting requirements for proposing constitutional amendments. Id. at 324. As we discuss below at part I.B., the instant case is properly brought as a petition for writ of prohibition. At the same time, we see no impediment that would have prevented this case from having been brought as one for declaratory judgment. In that event, this matter would have been identical to Constitutional Convention both in terms of its procedural posture and the nature of the issue presented, since we are asked here to determine the constitutionality of Congressional Resolution No. 13-69, and the statute upon which it is based, 4 F.S.M.C. 104(2). Just as in Constitutional Convention, no development of a trial record is required, since there is no factual dispute and the issue for determination is one of law. This case is also time sensitive because of the effect that the resolution has had on the pending cases to which Judge Benson has been specially assigned, particularly the criminal matters which take priority over civil cases. Further, the issue is one of significant national importance, since it bears on the fundamental relationship between all three branches of government. Accordingly, we hold that the appellate division has subject matter jurisdiction over this matter.

Congress raises two specific jurisdictional points, those of standing and justiciability. These two concepts interrelate, since standing is a prerequisite to a justiciable "case or dispute" under Article XI, Section 6(a) and (b) of the Constitution. There can be no case or dispute if a party lacks standing to bring suit in the first place. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 51 (Chk. 2001). While the requirement of standing is not set forth in so many words in the Constitution, it is implicit in the "case or dispute" requirement found in Article XI, Section 6 of the Constitution. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003). A party has standing sufficient to allow him to sue when that party has "a sufficient stake or interest in an otherwise justiciable [case or dispute] to obtain judicial resolution of the controversy." Id. at 40. Furthermore,

> Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision.

Id. We have held that business people have standing to litigate the constitutionality of an "excise" tax on goods they import, Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986) (holding that the tax was actually an import tax), and that a judgment debtor has standing to contest the distribution of

funds collected under a judgment where the distribution will have a substantial financial impact on the judgment debtor. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 669 (App. 1996). Most recently, we held that allottees of public funds had standing to challenge the proper administration of those funds; and that a municipality had standing to challenge both the legality of the process involved in applying for public funds, and the FSM's and the allottees' compliance with relevant regulations regarding that process, to the extent that the compliance affected the relief sought by the municipality. Udot, 12 FSM Intrm. at 44-46.

The Constitution provides that the power to "faithfully execute and implement the provisions of this Constitution and all national laws" is "expressly delegated to the President." FSM Const. art. X, § 2(a). Congressional Resolution No. 13-69, and the statute upon which it is based, interfere with the execution of FSM laws. By enacting the resolution, Congress intervened on a discretionary basis in a case to remove the specially assigned judge. The President, as the country's Chief Executive – and by virtue of that office the chief law enforcement officer, although the attorney general is in the usual case the President's designee for that purpose – has a stake or interest in insuring that disruption of this type does not occur. Applying the Udot factors, the President has suffered "actual injury resulting from the allegedly illegal action," and thus has a "sufficient stake in the outcome of the controversy." Udot, 12 FSM Intrm. at 40. Further, the delay in the administration of justice resulting from the disapproval can be "traced to the challenged action" and can be "redressed by a decision of this court," id., which is to say by a judicial determination that both the resolution and the statute on which it is based are unconstitutional.

We are not convinced, as Congress contends, that the President's ability to enforce the laws is unaffected by Congress's removal of Judge Benson. Congress does not identify any harm or injury to the President resulting from the removal and reassignment required because of the removal. Instead, Congress asserts that the President cannot complain about the removal of Judge Benson, because the President has no authority to select the judge who presides in any case filed in this court. This contention misses the point. The issue here is not the selection or appointment of a specially assigned judge, but his removal. The President had no role in the special assignment of Judge Benson to this case in the first instance. Nor did he have a role in any case in the past, nor would he have in the future. The special assignment in this case was made by the Chief Justice alone, acting pursuant to the authority granted to him under Article XI, Section 9(b). The President is contesting, not the manner in which the special justice was assigned, but the manner in which he was removed.

The removal has undeniably led to a delay in the handling of the cases specially assigned, which has affected the President's ability, as the nation's chief law enforcement officer, to enforce those laws. Moreover, at least some delay in any case where the specially assigned judge is removed would be unavoidable, even if the removal were not contested, since it would require the Chief Justice to find a judge both willing and able to undertake the new assignment. That judge would then have to be reassigned to the case, and the file transmitted to him. Under 4 F.S.M.C. 104(2), this cycle could repeat itself after every specially assigned judge had served 90 days on the case. Indeed, since the 90 days specified in F.S.M.C. 104(2) is cumulative, this cycle could be much shorter. For example, if a newly assigned judge had already accrued 90 days service in another case, he could be removed at Congress's discretion the very day of his appointment – the fact that he had served 90 days in another case would not disqualify the judge from service but only subject him to discretionary removal by Congress after appointment. Moreover, in the small communities of the FSM, it is on occasion difficult to locate a candidate from the pool of judges and justices specified in Article XI,

Section 9(b) who does not have a conflict of interest. Once that hurdle is overcome and a candidate without a conflict is identified and agrees to serve, yet further delay results if that candidate is subsequently removed at Congress's discretion. In the case at bar, the delay resulting from the removal of a specially assigned justice pursuant to 4 F.S.M.C. 104(2) is a real injury sufficient to bestow standing on the President to contest the constitutionality of that statute. Udot, 12 FSM Intrm. at 40.

Congress also claims that the petition does not present a justiciable controversy. In order for a case to be "justiciable," or one over which the court has jurisdiction for purposes of rendering a decision, it must be one that is concrete and definite, and not abstract or hypothetical in nature. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000). A case may not present questions that are moot or hypothetical, but rather must put forth issues that bear on the relationships of parties who have adverse legal interests. Id. at 482. Congress asserts that no justiciable controversy exists in the case at bar because both 4 F.S.M.C. 104(2) and Congressional Resolution No. 13-69 "fall squarely within the constitutional authority granted to Congress," and that the court can grant no effective relief, because even if the court found 4 F.S.M.C. 104(2) to be unconstitutional, the Constitution, which Congress claims authorized the manner in which Congress acted in the first place, would remain in place. Br. of the Real Party in Interest at 13, 14. Since the Constitution must control, Congress urges that "there is absolutely no relief that this Court can issue that will in any way touch upon the constitutionally defined relationships that exist between the President, the Congress and the Court." Id. at 14. Congress concludes that the petition merely presents the President's own "negative opinion" of the way in which Congress has acted. Id.

Congress is committed to its view that it acted constitutionally both in enacting 4 F.S.M.C. 104 and in passing Congressional Resolution No. 13-69. On the other hand, the President takes the position that the actions of Congress were unconstitutional. But the extent and depth of either party's commitment to its view does not resolve the question of whether a justiciable dispute exists. The very divergence of those views highlights the fact that the important issues presented in this case bear in a fundamental way on the relationships between parties who have adverse legal interests. Louis, 9 FSM Intrm. at 482. The issues resulting from these differing positions present a justiciable dispute.

Accordingly, the appellate division has subject matter jurisdiction over this justiciable dispute in which the President has standing to raise the constitutionality of Congressional Resolution No. 13-69, and the statute on which it is based, 4 F.S.M.C. 104(2).

B

Congress next urges that a writ of prohibition may not properly issue on the facts of this case. The President seeks to prohibit the Director of Administration of the FSM Supreme Court from recognizing Congressional Resolution No. 13-69, by preventing him from discontinuing the administrative actions required to obtain Judge Benson's services as a specially assigned justice. Congress asserts that a writ of prohibition may apply only to judicial or quasi-judicial action, and that the functions of the court administrator to which the writ is directed are neither.

The President has brought his petition pursuant to FSM Rule of Appellate Procedure 21(a), which provides that the application for a writ of prohibition "directed to a judge or justice shall be made by filing a petition therefor with the clerk of the Supreme Court appellate division." The statutory basis

for this rule is 4 F.S.M.C. 117, which provides that "[t]he Supreme Court and each division thereof shall have power to issue all writs." The petition in this case does not name a judge or justice, but rather the Director of Court Administration of the FSM Supreme Court, Kapilly Capelle. However, the Constitution itself provides that "the Chief Justice is the chief administrator of the national judicial system and may appoint an administrative officer." FSM Const. art. XI, § 9. Thus the Constitution contemplates that administrative duties are an integral part of the Chief Justice's role, and in this regard they are manifestly judicial. He may delegate those duties pursuant to express constitutional authority, and they do not become nonjudicial because they are performed by the Chief Justice's designee. The contrary is the case, especially in light of the fact that the office of court administrator is one of only a handful of public offices specifically referred to in the Constitution. The administration of the court is an essential activity without which the court cannot function.

A writ of prohibition may issue where a court or court officer is about to engage in judicial or quasi-judicial action that is unauthorized and where there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 497 (Chk. S. Ct. App. 1994). Kapilly Capelle, as the Director of Court Administration of the FSM Supreme Court, is a court officer who properly may be the subject of a writ of prohibition. No other adequate remedy presents itself in light of the fact that Judge Benson's handling of the cases specially assigned to him is not possible in the absence of certain administrative steps on the part of Mr. Capelle. Accordingly, Mr. Capelle is properly the named respondent in the instant proceeding.

C

We turn now to the substantive issue presented, whether Congressional Resolution No. 13-69, and the statute upon which it is based, 4 F.S.M.C. 104(2), are unconstitutional. The President contends that both the resolution and the statute are unconstitutional because the legislative disapproval interferes in an area that is committed to the judicial branch, and because a specially assigned justice may be removed only for cause by the removal procedures specified in Article IX, Section 7. In response, Congress asserts its constitutional power to amend the rules governing the appointment of special justices pursuant to Article XI, Section 9(f) as its constitutional authority for 4 F.S.M.C. 104(2). Article XI, Section 9(f) provides in pertinent part that "[j]udicial rules may be amended by statute," while 4 F.S.M.C. 104(2) provides in pertinent part that "[t]he Congress may by resolution disapprove of the continued service of any special justice whose cumulative service exceeds 3 months, and the disapproved person shall thereafter be ineligible for further service as a temporary justice for 1 year, unless the Congress shall sooner revoke its disapproval." Congress urges that taken together, Article XI, Section 9(f), and 4 F.S.M.C. 104(2) "reflect the lawful level of Congressional oversight and action that may be taken in connection with the Chief Justice's appointment of temporary justices to the Court." Br. of the Real Party in Interest at 23.

The question before us is not whether Congress can legislate amendments to court rules, but whether it can enact a statute granting itself the power to remove by resolution or otherwise a special justice who has already been appointed. Congressional Resolution No. 13-69 does not purport to amend or even create rules under Article XI, Section 9(f) that apply to cases in which a special justice is assigned. Rather, in reliance upon 4 F.S.M.C. 104(2) it "disapproves" Judge Benson from further service for a period of one year. It is self-evident that to "disapprove" Judge Benson is to remove him from the cases now assigned to him.

Statutes are presumptively constitutional. Mackenzie v. Tuuth, 7 FSM Intrm. 78, 82 (Chk. 1991). In the important process of construing the nation's formative document, we must first pay heed to the language of the Constitution itself. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 362-3 (Pon. 1998). Absent from Article XI, Section 9(f), under which Congress has acted to remove Judge Benson, is any reference to the removal of a specially assigned judge. At the same time, the removal of justices is not a subject upon which the Constitution is silent. Article IX, Section 7 of the FSM Constitution provides that

> a justice of the Supreme Court may be removed from office for treason, bribery, or conduct involving corruption in office by a 2/3 vote of the members of Congress. . . . When a justice of the Supreme Court is removed, the decision shall be reviewed by a special tribunal composed of one state court judge from each state appointed by the state chief executive.

This section draws no distinction between permanent justices or specially assigned justices for purposes of removal. Where the words of the Constitution themselves are not determinative of a question, the court may look to the Journal of the Micronesian Constitutional Convention to locate any discussion about the provision in question. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982). What is plain from the Framers' discussions at the time of the Constitution's creation is their concern that in order to insure the independence of the judiciary, there should be only one removal process for justices, and that that process should be the one specified in the Constitution:

> [Y]our Committee feels that the judiciary should receive more detailed treatment than may ordinarily be the rule, for several reasons. First, ***it is important that all provisions assuring the independence of the judiciary from the other two branches of government be given constitutional status*** rather than be left to the legislature for later provisions. ***If the legislature by regular enactment can later change how judges are selected or removed, for example, then independence from the legislative branch is undermined***.

SCREP No. 36, II J. of Micro. Con. Con. 848 (emphasis added).

It is not open to argument that the litigants in a case presided over by a specially assigned justice are entitled to a justice who is no less independent than a permanent justice. Yet, if a specially assigned justice may be removed for any reason at the discretion of Congress after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to supervision by the legislative branch. The Framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Thus we are unable to conclude that Congress may at its discretion remove a justice temporarily assigned to a case any time after that justice has served 90 days in the matter.

Congress asserts a specific rationale for 4 F.S.M.C. 104(2). It contends if the Chief Justice is permitted to temporarily assign justices at his discretion alone, then he may circumvent the Constitution's requirement that all permanent justices of this court be approved by two-thirds of the members of Congress after nomination by the President as required by Article XI, Section 3 of the FSM Constitution. According to Congress, 4 F.S.M.C. 104(2) acts as a salutary check on the Chief Justice's power to appoint special justices, because it is designed "to insure that temporarily appointed justices do not serve indefinitely on the Court." Br. of the Real Party in Interest at 22. However,

Congress does not contend that the special assignments at issue here were made to circumvent the Constitution's requirement that permanent appointments to this court be approved by Congress. Indeed, Congress cites no reason for the resolution disapproving the continued service of Judge Benson. Thus we find unpersuasive Congress's contention that 4 F.S.M.C. 104(2) insures the selection of permanent members of this court in accordance with Article XI, Section 3. It does not advance its argument that the statute and Congressional Resolution No. 13-69, which is based on it, are constitutional.

II

We hold that Congressional Resolution No. 13-69, and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the FSM Constitution. The President's petition for writ of prohibition is granted. The writ issues herewith.

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