

STANDING COMMITTEE REPORT NO. 16-95

RE: C.R. NO. 16-75/J&GO

SUBJECT: NOMINATION OF MARTIN YINUG TO SERVE AS AN ASSOCIATE JUSTICE
FOR FSM SUPREME COURT

AUGUST 02, 2010

The Honorable Isaac V. Figir
Speaker, Sixteenth Congress
Federated States of Micronesia
Fifth Special Session, 2010

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.R. No. 16-75, entitled:

"A RESOLUTION TO CONFIRM THE NOMINATION OF ASSOCIATE JUSTICE MARTIN G. YINUG TO SERVE AS CHIEF JUSTICE OF THE SUPREME COURT OF THE FEDERATED STATES OF MICRONESIA, PURSUANT TO SECTION 207 OF TITLE 2 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA, AS AMENDED.",

begs leave to report as follows:

The intent and purpose of the resolution is expressed in its title.

The subject nomination was transmitted to Congress on March 22, 2010 through Presidential Communication No. 16-181. Attached with P.C. No. 16-181 is the nominee's resume. The nominee attended San Francisco State University in San Francisco, California and graduated with a BA degree in Political Science. He went on to attend Law School at the Catholic University of America in Washington, D.C. and graduated with a J.D. on June 1980.

The nominee has been a public servant all his life starting from 1972 to 2010. He was an Administrative Assistant for the Yap Delegation, Congress of Micronesia (1972-1976), a Directing Attorney for Micronesian Legal Services Corporation, Yap Branch Office (1980-1982), a Legislative Counsel for the Yap State Legislature (1982-1988), Associate Justice for the Yap State Court (1988-1992), and currently

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an Associate Justice of the FSM Supreme Court.

Your committee visited the four FSM states and conducted several public hearings to hear testimonies on the nominee from each of the state leaderships. The fact that the position is a lifetime position, the Committee has undertaken a thorough fact-finding mission on the nomination and canvasses every detail of information about the nominee. Your committee even requested the nominee to personally appear in front of the committee for an interview.

First hearing on the nomination was held on June 28, 2010 with both the Executive and Legislative branches of Chuuk State Government. At the hearing, the witnesses present at the hearing spoke highly about the nominee. There were questions raised regarding the extent of the nominee's management experience; testimony indicated that the general consensus was that the nominee would learn quickly in developing his management style.

There were also questions raised regarding Court orders that have directed money belonging to Chuuk State from the FSM Treasury to third parties. For example, a 1997 Court opinion of the nominee, Louis v. Kutta, et al. The Plaintiff in this case had an outstanding judgment against the State of Chuuk, part of which was for violations under the civil rights laws of the FSM and Chuuk State. Chuuk had not satisfied the judgment, and Associate Justice Yinug directed the FSM Department of Finance to withhold the amount of the judgment (\$150,000) from any money it held in benefit for Chuuk State, and to pay such sum directly to the Plaintiff. Questions were raised regarding Justice Yinug's opinion on that matter and whether he stood by that 1997 Court Order. Chuuk State expressed concerns regarding the use of State funds absent appropriation by the State Legislature. Justice Yinug was not there to address the concerns, but the concerns were recognized and noted by your Committee.

Overall, the testimonies in Chuuk State revealed that the nominee is no doubt qualified for the position given his past working experience as an Associate Justice. In addition, he is a good judge and administrator and also possesses the proper judicial temperament.

Second hearing on the nomination was held on July 1, 2010 with the

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Kosrae Executive branch. At the public hearing on the nomination, there was a consensus decision reached, in which the Kosrae leadership will forward a position paper about the nomination to the committee prior to the September session. However, discussions about the nomination revealed that the nominee is more than qualified to sit as Chief Justice of the Federated States of Micronesia, because of his current position as an Associate Justice and experience in the field of law.

Third hearing on the nomination was held on July 2, 2010 with the Kosrae Legislative branch. At the hearing, testimonies revealed that the nominee is fully qualified for the job; however, there is a need to have an equality of leadership at the national level, which consists of fair representatives from the four states. In addition, several testimonies indicated that the nominee possesses the management skills and the judicial temperament.

Fourth hearing on the nomination was held on July 6, 2010 with both the Yap Executive and Legislative branches. Testimonies from Yap State revealed that the nominee is old and very sensible to every issue in front of him. This is a determining factor, which substantiates the fact that the nominee possesses the judicial temperament. In conclusion, the Yap leadership has no doubt that the nominee possesses the qualifications for the job and hopes that Congress confirms the nominee.

Fifth hearing on the nomination was held on July 27, 2010 with the Pohnpei Executive and Legislative branches. Testimonies revealed that the leadership of Pohnpei favors the nominee because he is an indigenous individual who is being selected. Therefore, Congress should confirm the nominee because a judge that is culturally oriented could render decisions that may compliment custom and tradition. In addition, the leadership affirms that the nominee is also an excellent judge, done a very good job as an Associate Justice, possesses the judicial temperament and a very well respected judge in his current capacity as an Associate Justice for the Supreme Court of the Federated States of Micronesia. The leadership of Pohnpei State has no doubt that the nominee is qualified for the post, and fully supports the nominee.

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Sixth hearing on the nomination was held on July 28, 2010 with the nominee himself. During the opening of the hearing, the nominee explained that it is best to have other people comment on his nomination. As for him, he is ready to answer questions, and he really appreciates the effort and work done on his nomination. Personally, the nominee had asked Justice Yamase to be the acting Chief Justice since he is here in Pohnpei. Yamase's response was in the negative because the nominee is the most senior amongst the FSM justices so the nominee has been acting since January 2010. Your committee inquired with the nominee whether he eagerly or reluctantly accepted the call by the President for the Chief Justice position. The nominee indicated that he had thought about the offer for about two weeks. Your committee also inquired whether there is any condition to accept the position. The nominee answered in the negative. The nominee further commented that it is time for him to accomplish more for our people before he quits. He indicated that if he is confirmed, his goal is to decide cases. The nominee notes that a Chief Justice is slightly different than an Associate Justice because of more responsibility and the responsibility to improve the court for attorneys and to bring the court technologies up to standard.

Your committee also inquired on the nominee's current position as an Associate Justice and to a Chief Justice position if he is confirmed. The nominee indicated that some little things will change, for instance, more innovative, modern ways of handling cases. Administratively, much will remain the same like day to day administrative decisions.

Your committee also inquired with the nominee instances whereby the Chief Justice will be required to testify in front of Congress during budget hearing. First question is whether the nominee will come or will be sending his staff to the budget hearings. The nominee has indicated that it would be preferable if he and the administrative officer of the court can attend budget hearings. The nominee indicated that a Chief Justice may not know all little details of the court's budget, the administrative officer for the court should be present to answer those questions that the Chief Justice cannot provide answers for or vice versa. Your committee also inquired with the nominee whether the court needs a 5th justice at this time. The nominee indicated that currently the court does not need a 5th justice.

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The only time that a 5th justice is needed is because of recusal of all four justices. The nominee commented that the court need the 4th justice whether a man or a woman. The nominee commented that it is better to have a woman because it is good to have diversity of justices.

Your committee also inquired with the nominee whether he will establish a real Micronesian jurisprudence based on custom and tradition. The nominee stated that the decisions rendered on the bench were hard to talk about in abstract. The nominee if confirm would like to see Micronesian jurisprudence; however, the way it will grow and what shape it takes he cannot predict. Your committee further inquired with the nominee whether the court when rendering decisions puts more emphasis on customs and tradition or United States case law. The nominee explained that the court is an independent branch of the government and vested with a judicial independence. Your committee also inquired with the nominee on the six year term limitation of justices in Kosrae, whether this practice is a good idea or not. The nominee indicated that there are arguments against and for the time limitation for the justices' tenure. Good judges tend to have independence. Some justices are getting lazy; therefore the legislative branch can always impeach justices according to their performances.

Your committee also inquired with the nominee on how heavily he relies on the law clerks. The nominee indicated that the law clerks do not render decisions. The justices basically rely on the law clerks for research; however, law clerks assist justices in identifying issues in which they will research on the points and authorities that support a specific case.

In addition, your committee inquired with the nominee on the subject of same sex marriage, and asked the nominee whether he will allow same sex marriage in the FSM. The nominee respectfully indicated that in the absence of a statute allowing same sex marriage, the recourse is to fall back on custom and tradition. The nominee justifies that some issues, such as abortion and same sex marriage are not just legal issues, but are moral and religious issues. First thing to do is to look to FSM law. If the language of the law would take care of the problem, then he would look to other things, like moral or religions.

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Your committee also inquired with the nominee how many times he had been reversed. The nominee informed the committee that his decisions on the bench were reversed a number of times. He indicated that judges are not supposed to worry about getting decisions reversed. A judge must do the best he can without worrying about getting reversed. A judge must issue opinion that he feels it is correct. In addition your committee inquired with the nominee on the subject of dissenting opinion. The nominee indicated that dissenting opinion is not welcomed, but the justices on the bench have done it. The nominee indicated that he had issued separate statements before when he agrees with an opinion but want to say more.

Another crucial question that your committee asked the nominee is his willingness to stay in Pohnpei. The nominee indicated that he is willing to stay in Pohnpei for a while, and would also like to go back to Yap. The nominee plans to go back and forth; however it is better to have all justices in Pohnpei in the courts. If he is needed in Pohnpei, he will be here. Administratively, the nominee commented that he needs to be her more often than for judicial reasons.

Your committee also inquired with the nominee on the caseloads of the court, and whether there is an urgent need for another justice. The nominee stated that there is no need for another justice; however, it will be good to have another justice in case all the justices are disqualified to hear a case.

Your committee received several supporting letters from various justices in the FSM. These letters contain convincing evidence that the nominee is well suited for the position and that Congress must confirm him. One of the letters explicitly stated that "because the nominee is a legal citizen of the FSM, a resident of FSM, and an Associate Justice of the FSM Supreme court, there is no doubt that he is qualified for the Chief Justice position." In another convincing letter, a Justice clarifies that the FSM Supreme Court is in need of additional justices, especially a Chief Justice. Another Justice wrote and explained that Acting Justice Yinug was the first FSM citizen to be appointed and confirmed as an Associate Justice for the FSM Supreme Court in 1992, he has served on the Court for over 18 years, he is the justice most familiar with the Court, its history, its operations, its

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staff, and he knows the role of the Court in the framework of the nation's constitutional government; the nominee is the best qualified to take over the Chief Justice position. Another justice indicated that he had the privilege of working alongside the nominee on various judiciary conferences and he had always respected and admired the nominee's views and opinions about our jurisprudence in Micronesia. Thus, he fully supports the nominee because of the nominee's credentials, character and poise, which is required for a Chief Justice.

Witnesses at the hearing indicated their full support for the nomination. Therefore, your Committee on Judiciary and Governmental Operations having reviewed the proposed resolution, is in accord with the intent and purpose of C.R. No. 16-75, and recommends its adoption.

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Respectfully submitted,

/s/ Peter Sitan
Peter Sitan, chairman

/s/ Isaac V. Figir
Isaac V. Figir, vice chairman

/s/ Dohsis Halbert
Dohsis Halbert, member

Setiro Paul, member

/s/ Fredrico O. Primo
Fredrico O. Primo, member

/s/ Roger S. Mori
Roger S. Mori, member

Paliknoa K. Welly, member