

COMMITTEE ON CREDENTIALS REPORT

RE: 23rd Congress Members-Elect
Credentials

SUBJECT: MEMBERS-ELECT CREDENTIALS OF THE
SPECIAL ELECTION HELD ON JULY 4,
2023

September 28, 2023

The Honorable Esmond B. Moses
Speaker
Twenty-Third Congress of the Federated States of Micronesia
Palikir, Pohnpei FM 96941

Dear Speaker:

Your Committee on Credentials to which was referred the review of credentials of two members-elect of the Twenty-Third Congress from the 2023 Special Election, begs leave to report as follows:

Your Committee on Credentials has carefully reviewed the qualifications and eligibility of the members-elect as certified by our National Election Director for the Special Election held on July 4, 2023. A copy of the National Election Director's premature certification is contained in the communication dated July 10, 2023 and official certification is contained in the communication dated September 12, 2023 as attached hereto and made part of this report.

Your Committee issues this report after the National Election Director issued his final certification of the Special Election on September 12, 2023. The Committee also had to take into consideration the FSM Supreme Court civil

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case filings and Court decisions in Civ. No. 2023-1004 and Appeal Case No. C2-2023; with the understanding that a Court decision to count and tabulate the ballots at five (5) polling locations in Chuuk could potentially impact the candidate results of the special election, and petition for recount and/or revote for the at-large Chuuk Congressional seat could impact the National Election Director's certification of the member-elect for the at-large Chuuk Congressional seat.

The members-elect are as follows:

Representing the State of Chuuk:

1. Senator-elect, the Honorable Fabian Nimea

Representing the State of Kosrae:

1. Senator-elect, the Honorable Yoslyn Sigrah

On July 10, 2023, the National Election Director partially certified the results of the Special Election and reported member-elect Fabian Sitan Nimea as the winning candidate for the Chuuk at-large seat and Yoslyn Sigrah as the winning candidate for the Kosrae at-large seat. The National Election Director partially certified the Special Election results despite the fact that voter ballots at five (5) polling locations in Chuuk were not counted due to the ballot boxes being locked prior to the ballot counting. By law, the locked ballot boxes could not be unlocked without a court order.

On July 10, 2023, a civil case was filed in the FSM Supreme Court Trial Division challenging the constitutional referendum results in Chuuk.¹ The Petitioners in the case sought a temporary restraining order to prohibit the National Election Director from certifying the results of

¹ Civ. No. 2023-1004.

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the Special Election on the nine proposed constitutional amendments.

On July 11, 2023, the FSM Supreme Court issued an Court Order in *Saimon v. Lambert*² holding, namely prohibiting the National Election Director from certifying the nation-wide results of the constitutional amendment referendum until Chuuk votes were counted, tabulated, and reported in a certification.

Your Committee considered the legal implications of the FSM Supreme Court's July 11, 2023 Order. Voters file their ballots for the member-at-large candidates and the constitutional amendments at the same time. Based on this fact, the uncounted ballots at five (5) Chuuk polling locations include both uncounted votes for both the Chuuk at-large member seat and the constitutional amendments.

Further, the FSM Supreme Court appellate division in its September 8, 2023 decision in *Asor v. Lambert, App. No. C2-2023* stated the National Election Director committed error in issuing a certification for the member-elect for the Chuuk Congressional seat results, identifying it as a premature certification.³

On July 25, 2023, a civil case was filed in the FSM Supreme Court Appellate Division appealing the National Election Director's decision to deny a petition for a recount and/or revote for the at-large Chuuk Congressional seat, *Asor v.*

² *Saimon v. Lambert, Civ. No. 2023-1004*. The Court Order decision effectively nullified the Election Director partial certification of the election results. The nullified July 10, 2023 partial certification from the National Election Director certified both the candidates and referendum. The partial certification was in one document. The Committee did not receive a separate certification for the member-elect of Kosrae nor separate certification for member-elect of Chuuk. Thus, effective July 11, 2023, there was no valid certification of the Special Election results on the at-large member seats for Kosrae and Chuuk.

³ *Asor v. Lambert, App. No. C2-2023, Opinion*, at 12-13 (FSM S. Ct. App. 2024) ("The National Election Director did commit an error in certifying the election results for the Chuuk at-large congressional seat before the ballot boxes from all 112 Chuuk polling places had been counted, tabulated, and reported.").

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*Lambert.*⁴ The petitioner challenged the unofficial results declaring Fabian Nimaea the member-elect on the grounds that the National Election Director decision was arbitrary, capricious and an abuse of discretion, alleged the office did not comply with procedures and decision was not warranted by the facts.⁵ The petitioner alleged election fraud and ballot stuffing due to irregularities from comparing the numbers on signature lists to the Chuuk polling place certified vote counts.

On September 8, 2023, the FSM Supreme Court Appellate Division issued a final decision in the case, affirming the National Election Directors July 21, 2023 decision to deny the petition for recount and/or revote. The Court denied the appeal based on insufficient evidence to support a recount and/or revote. The Court explained the petitioner did not timely submit evidence to the National Election Director for consideration and any new evidence the Court cannot consider under appellate review because outside the administrative record, and the few affidavits the petitioner did timely submit to the National Election Director were unsigned. The Court also noted that the recount sought by petitioner did not have the likelihood of changing the election results because of the 200 vote margin.

Review of Members-elect Qualifications

Article 9, Section 9 of the FSM Constitution dictates that "A person is ineligible to be a member of Congress unless he is at least 30 years of age on the day of election and has been a citizen of the Federated States of Micronesia

⁴ *Asor v. Lamber, App. No. C2-2023.*

⁵ The National Election Director denied fraud and irregularities but claimed there was errors in counting or marks in the signature list. The National Election Office claimed the petitioner did not comply with the law's strict requirements that a petition for revote and/or recount include evidence or affidavits to support the petition. The petitioner sought to introduce new evidence and exhibits for consideration by the Court that was not part of the administrative record nor submitted to the National Election Office in its petition.

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for at least 15 years, and a resident of the state from which he is elected for at least 5 years. A person convicted of a felony by a state or national government court is ineligible to be a member of Congress. **The Congress may modify this provision or prescribe additional qualifications;** knowledge of the English language may not be a qualification."

In addition, Article 9, Section 17 of the FSM Constitution dictates that "**Congress shall be the sole judge of the elections and qualifications of its members,** may discipline a member, and, by 2/3 vote, may suspend or expel a member."

The Office of National Election certified that both members-elect met the requirements under Art. IX, § 9. The Office of National Election requested criminal background checks on all candidates with the FSM Department of Justice, FSM Supreme Court, state attorney generals and state supreme courts. The Office of National Election requested a mental competency check for each candidate from the FSM Department of Health, whom certified the mental competency of all candidates.

The Committee requested criminal background checks, including arrest and conviction records for all members-elect from the FSM Department of Justice - National Police, FSM Supreme Court, and each state police chief, attorney general, and supreme court.

The National Police and FSM Department of Justice certified that both members-elect did not have any felony convictions.

All State Police Chiefs certified that both members-elect did not have any felony convictions. However, the State of Pohnpei found a criminal record for Yoslyn Sigrah, which detailed an March 2021 misdemeanor offense for Malicious Mischief. The Committee also obtained a copy of a Pohnpei Supreme Court subpoena issued against Yoslyn G. Sigrah for

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on January 13, 2016 involving an alleged assault for biting a police officer.

The FSM Supreme Court certified that both members-elect did not have any felony convictions and no pardons for felony convictions. However, on April 20, 2022, the FSM Supreme Court suspended Yoslyn Sigrah from the practice of law before the FSM Supreme Court. As of today, Yoslyn Sigrah is not permitted to practice law before the FSM Supreme Court and the FSM Supreme Court has not reinstated her FSM Supreme Court bar licensure. The FSM Supreme Court also found the Court issued several public admonishments and/or censures against Yoslyn Sigrah.

All State Supreme Courts certified that both members-elect do not have any felony convictions. However, the Kosrae State Court reported that the court suspended Yoslyn Sigrah license to practice law in Kosrae for 1 year citing Sigrah violated Civil Rules of Procedure 11 by "ghostwriting" legal briefs for other attorneys to sign and file in court. The FSM Supreme Court vacated the sanctions against Sigrah upon appeal.⁶

Your Committee reaffirms Congress exclusive authority as the sole judge of the elections and qualifications of its members.⁷ As the sole judge, Congress must ascertain the character and fitness of members-elect to serve in Congress and uphold their obligations to abide by the law and oath of office. The oath of office bestows a serious responsibility that must be upheld in the utmost regard as

⁶ In re Sanction of Sigrah, 19 FSM R. 305 (App. 2014).

⁷ The Committee raises serious concern with the improper actions of third-parties and their attempts to influence and/or interfere with the Committee's decision-making. In a letter dated July 14, 2023, Yoslyn Sigrah addressed a letter to the Credentials Committee and on July 17, 2023, Mrs. Sigrah's attorney, Salomon M. Saimon, submitted a letter to the Committee Chairman seeking to have the Committee issue a favorable recommendation and making baseless accusations. The Committee does not approve of these actions, which borderline harassment and intimidation, to attempt to interfere and/or influence the Committee's decision-making.

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the legislative branch of the national government that writes the laws of the nation.

Your Committee on Credentials finds, based on our careful review and deliberations, that member-elect Fabian Nimea possess all of the qualifications to be eligible to serve and be seated as a member of the Twenty-Third Congress of the Federated States of Micronesia.

Your Committee on Credentials finds, based on our careful review and deliberations of the qualifications of member-elect Yoslyn Sigrah, does not recommend the credentials of Yoslyn Sigrah to be accepted. Yoslyn Sigrah should not be seated as a member of the Twenty-Third Congress of the Federated States of Micronesia due to the character and fitness concerns raised from the background checks conducted.

Your Committee's careful review of the FSM Supreme Court, and state criminal background checks on Yoslyn Sigrah reveal that Yoslyn Sigrah in her professional capacity as an attorney, whom sworn an oath to uphold and defend the FSM Constitution and laws, engaged in fraudulent filings with the FSM Supreme Court and serious ethical misconduct in violation of the FSM Rules of Professional Conduct for attorneys that resulted in the FSM Supreme Court suspending Yoslyn Sigrah from the practice of law before the Court on April 20, 2022, sanction, and public admonishment for her conduct as an attorney before the Court.

Importantly, the FSM Supreme Court decision to suspend Yoslyn Sigrah from the practice of law per its April 20, 2022 Decision on Imposing Discipline, DPA No. 003-2018, was based on Yoslyn Sigrah willfully violating a Court order (FSM MRPC R. 3.4), mishandling of third party funds owed by client (FSM MRPC R. 1.15), and creating conflict of interest between her clients (FSM MRPC R. 1.7).⁸ Notably,

⁸ In the Matter of Attorney Yoslyn Sigrah, FSM DPA No. 003-2018 (2022).

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the FSM Supreme Court Order of Public Admonishment of
Yoslyn Sigrah on December 2, 2020,⁹ the order stated:

"A false statement (such as the certificate of
service) to a tribunal does not display the candor
that is required of counsel. See FSM MRPC R. 3.3. It
is a lapse that cannot be tolerated."

According to the public admonishment, Yoslyn Sigrah:

- 1) falsely purported in documents submitted to the FSM
Supreme Court that a draft 2015 FSM congressional
resolution calling for temporary moratorium on mortgage
foreclosures was an actual adopted resolution by the FSM
Congress, but it was not; and
- 2) falsely submitted a certificate of service to the FSM
Supreme Court claiming to have served the petition for
rehearing on opposing counsel, but did not.

The actions of Yoslyn Sigrah raise serious concerns on her
qualification to serve a member and Senator of Congress.
The fact that the Yoslyn Sigrah engaged in conduct,
including but not limited to filed misleading and false
documents with the FSM Supreme Court, willfully violating a
FSM Supreme Court order, and the allegations of biting a
police officer in her professional capacity as an attorney;
sworn to uphold the FSM Constitution and the laws of the
nation, an oath analogous to the oath of office taken by
members of Congress, draws into question her capacity to
abide by the oath of office and responsibilities as a
member of Congress. Your Committee finds that Yoslyn Sigrah
is not qualified to be seated as a member of the 23rd
Congress.

Thus, your Committee on Credentials recommends that only
the credentials of member-elect Fabian Nimea be accepted

⁹ FSM Dev. Bank v. Materne and FSM Supreme Court Trial Division, FSM App. No. P10-2019
(App. 2020).

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and permitted to take the oath of office as a member of the Twenty-Third Congress of the Federated States of Micronesia in accordance with the Constitution and laws of the Federated States of Micronesia. The Committee does not recommend the credentials of member-elect Yoslyn Sigrah be accepted and the member-elect is not permitted to take the Oath of Office.

CONCLUSION

Your Committee on Credentials is in full accord with the credentials of member-elect Fabian Nimea and recommends that, pursuant to Article IX Section 7 of the FSM Constitution, Congress find that only member-elect Fabian Nimea eligible to serve and allow him to receive the oath of office to serve as Senator and Member of the Twenty-Third Congress of the Federated States of Micronesia.

Respectfully submitted,

/s/ Joseph J. Urusemal
Joseph J. Urusemal, Chairman

/s/ Tiwiter Aritos
Tiwiter Aritos, member

Paliknoa W. Welly, member

/s/ Quincy Lawrence
Quincy Lawrence, member