CONGRESS OF THE FEDERATED STATES OF MICRONESIA
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COMMITTEE ON
JUDICIARY AND
GOVERNMENTAL OPERATIONS

STANDING COMMITTEE REPORT NO. 21-76

RE: C.B. NO. 21-355/J&GO

SUBJECT: ALLOWING STAFF AT EMBASSIES OR CONSULATES TO RECEIVE AND COUNTY ABSENTEE BALLOTS

JANUARY 19, 2020

The Honorable Wesley W. Simina
Speaker, Twenty-First Congress
Federated States of Micronesia
Sixth Regular Session, 2021

Dear Mr. Speaker:

Your Committee on Judiciary and Governmental Operations, to which was referred C.B. No. 21-355, entitled:

> "A BILL FOR AN ACT TO AMEND THE REVISED NATIONAL ELECTION ACT OF 2005 BY AMENDING SECTION 602 OF TITLE 9 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), TO ALLOW STAFF AT THE EMBASSY OR CONSULATE TO RECEIVE AND COUNT ABSENTEE BALLOTS, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of the bill are expressed in its title.

Department of Foreign Affairs was represented by Deputy Secretary Cantero. He noted that elections have historically been off limits to embassy and consulate staff. He pointed out that staff in the US have to be registered with the Department of State. He is not sure if staff would be able to receive and count ballots. The Department of Foreign Affairs oversea missions have always had a role in the elections. There has always been a fine line between what foreign

affairs staff can do as outlined in their procedural manual. They help with elections, but remain cautious as to what they can and cannot do. Not sure if they need to contact the US Embassy to find out if the Department of State would have a position regarding this issue. Would be prudent to get their perspective. This has never been done before, but they have had different roles in past elections. With regards to staff being able to count ballots they would need input from the elections office as to whether this is acceptable. In the past they have provided help, within strict parameters. Foreign affairs are willing to do their part as requested by the elections office. Seeking clarification from the Department of State should be a priority.

Chairman Romolow's follow up was that when he worked at the consulate, they were not allowed to be part of the counting of ballots in order to avoid having staff potentially put in a position of a conflict. They were able to facilitate and assist as requested. He noted that the Vienna Convention limits their ability to assist. He expressed concern about not following the Vienna Convention, especially during the Amended Compact negotiations.

Deputy Secretary Cantero clarified if there was a request to get clarification from the US State Department as to whether the embassies and consulates can receive and count ballots? Chairman noted that he wanted Foreign Affairs to provide their own input as to whether the department finds this to be allowable. Deputy Secretary noted that if the foreign service agents are needed to assist with the election, they will do so, with complete impartiality during the process. He noted that it would be preferred to not use them in order to stick with status quo. He noted that they would need the elections office to give clear and concise directions and expectations.

Chairman Romolow noted that his concern is for the consulate and staff. He noted that there are often court cases after elections and

he would like to keep the staff out of this situation. There are often concerns regarding the reporting of irregularities and mis-tabulating.

The Acting Elections Director noted that the consulate offices are not the main people utilized during elections. He noted that they have an election board and tabulators who then report to the Elections Commission. Chairman Romolow noted that the bill is specifically addressing the issue that there will be no special polling places. It requires the consulate office to receive and tabulate the ballots, which would be different than previous years. The Acting Election Director noted that they would appreciate the assistance of the consular offices.

Speaker Simina inquired about the absentee voting at embassies and consular offices, the receiving and tabulating of ballots, does the staff have the skills and experience needed? Deputy Secretary Cantero noted that in term of actual counting, foreign services officers have not done this previously. He noted that this has been discouraged in the past. Regarding whether there is the capacity, he believes there is, however, the question is whether this is acceptable. Most of the people who are outside the FSM are working from home, this would require foreign service workers to go into the embassy, which could expose them to the virus. He noted that the safety of staff is a primary concern. He noted that they would like to get step by step instructions from the elections office. Speaker clarified if there would be sufficient staff at the embassies and consulate offices, but Deputy Secretary Cantero would need to consult with them in order to get their input. Chairman is requesting consultation from the department and with foreign service workers to ensure they are able to take on this role. Chairman Romolow also inquired as to being able to have poll watchers. Chairman asked when absentee ballots can begin to be received. Acting Election Director noted that they have sent out many ballots already.

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There was a concern that the foreign affairs staff would have no way to verify the signatures, they will not be able to match the affidavit and the signature.

The Deputy Director noted that this is an issue because this is a new process. Usually when an absentee request is made, they cross check the signature on file. They would have to send all the signatures to each office. She also wondered about the offices being able to accommodate the poll watchers. She also asked if the staff would be compensated additionally as tabulators. She thinks that there is a prohibition against paying them extra, since they will be working on this during the work day.

Chairman Romolow also inquired if this would create an overload for the elections office, to receive the absentee ballot, then forward the signatures on, etc. Would this create a burden for elections office staff? It was noted that January 21st is the last day to request absentee ballot, so they would have time to collect the data and forward to the consulate offices. Chairman noted that there have been a lot of people missing from the list historically. He noted that there will be thousands of ballots being sent to the consulate offices and he feels it will be a lot of additional work. The Acting Elections Director noted that they hire temporary staff and they can adjust that based on the volume of the requests.

Assistant Attorney General Jun Bacalondo responded to the question regarding the signatures. The special polling places have the signature list sent to them, to verify the signatures, they are on the list and able to be verified. He noted that this is contained within the regulations. He noted that the signature list is usually generated in February. He noted that the bill is changing the embassies into polling places and the election director would need to establish the tabulating and committees, etc. The bill covers all the consulates and embassies, not just in the US.

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Chairman Romolow also questioned that the special polling places were cancelled because of COVID, so how will that affect utilizing the consulate offices? Will this not also violate the lockdowns and curfews, etc. Will they not be able to go to the consular office, will poll watchers not be able to attend?

Deputy Secretary Cantero noted we are short on time. There are a lot of uncertainties as to what is expected from the foreign service workers. He noted that he cannot ask them to violate the quarantine requirements. He again requested that he be able to consult with them about the many issues, signature verification, ensuring their safety due to the pandemic, etc. He noted that they may not have the time to set into place what would be needed to ensure their safety. He noted they want to help, but they also have to be realistic as to what they can do. He noted that all of the consular offices are stressed now dealing with stranded citizens, etc. He suggested that adding this additional burden may not be advisable at this time. He also noted the question and concern regarding the liability for foreign service staff. He noted that it may be unfair to burden them with these additional responsibilities with such a short time available.

Chairman Romolow noted that foreign affairs are willing to help, but notes the extreme circumstances.

Chairman Konman inquired regarding the requirement for the signature to be notarized. The Acting Election Director noted that the signature does not need to be notarized pursuant to their regulations.

Mr. Bacalondo supplemented Deputy Secretary, noting section 707 and 710 of the elections Act. 707 refers to each candidate is subject to 2 poll watchers. 710 requires the counting be conducted publicly. This may be a challenge due to COVID restrictions. He noted that if there are disputes or challenges, those who are part of the

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tabulating will become witnesses.

Chairman Romolow noted that there is additional clarification needed, and little time to resolve. He does not feel that the embassies and consulate offices have the manpower to deal with thousands of absentee requests.

Speaker inquired as to the outlook on receiving absentee requests. Has there been an increase this year? The Acting Election Director noted that the office has received a lot of requests. He noted that there are requests from Guam, Hawaii and the mainland, as well as Fiji. The only Special Polling Place will be in Pohnpei, all others have to request absentee ballot by mail.

Your Committee on Judiciary and Governmental Operations is in accord with the intent and purpose of C.B. No. 21-355, however, due to the testimony received by the Department of Foreign Affairs and the numerous outstanding concerns and potential issues regarding this situation, the Committee does not support the passage of the bill at this time.

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JANUARY 17, 2020

Respectfully submitted,

Robson U. Romolow, Chairman

Peter M. Christian, Vice Chairman

Tiwiter Aritos, member

Isaac V. Figir, member

Ferny S. Perman, member

Paliknoa K. Welly, member

Wesley W. Simina, Member

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STANDING COMMITTEE REPORT NO. 21-74

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Peter M. Christian, Vice Chairman

Tiwiter Aritos, member

Isaac V. Figir, member

From Yap w/Love!

Ferny S. Perman, member

Paliknoa K. Welly, member

Wesley W. Simina, Member