CONGRESS OF THE FEDERATED STATES OF MICRONESIA
P.O. Box PS 3
Palikir, Sokehs
Pohnpei State, FM 96941
Tel: (691) 320-2324/2325/2326/2327/2337/2338/2707
Fax: (691) 320-5122

COMMITTEE ON
JUDICIARY AND
GOVERNMENTAL OPERATIONS

STANDING COMMITTEE REPORT NO. 21-64

RE: C.R. NO. 21-150/J&GO

SUBJECT: TO CONFIRM THE NOMINATION OF MR. DENNIS L. BELCOURT

JULY 06, 2020

The Honorable Wesley W. Simina
Speaker, Twenty-First Congress
Federated States of Micronesia
Sixth Special Session, 2020

Dear Mr. Speaker:

Your Committee on Judicial and Government Operations to which was referred C.R. 21-150, entitled:

> "A RESOLUTION GIVING ADVICE AND CONSENT, PURSUANT TO ARTICLE XI, SECTION 3, OF THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA, TO THE APPOINTMENT OF MR. DENNIS L. BELCOURT TO SERVE AS AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE FEDERATED STATES OF MICRONESIA.",

begs leave to report as follows:

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

Your Committee held a hearing on July 6, 2020. The witnesses present included the nominee Mr. Dennis L. Belcourt and the General Counsel of the FSM Supreme Court Tammy Davis.

Your Chairman began the hearing by welcoming all witnesses and the public to the hearing. Chairman Romolow then allowed the nominee if he wanted to make a brief statement.

STANDING COMMITTEE REPORT NO. 21-54

RE: C.R. NO. 21-150/J&GO

SUBJECT: TO CONFIRM THE NOMINATION OF MR. DENNIS L. BELCOURT

JULY 08, 2020

The nominee expressed that he was honored to be considered for the positions in Yap. He indicated he has been an attorney for 35 years. He has worked primarily in administrative law and has advised the government in various positions he has held. He expressed gratitude to President Panuelo for his nomination and to the Committee for their consideration of his appointment. He has been in public service for many years of his career and finds this to be very fulfilling. He has expertise and knowledge that he would bring to the position. He is also willing to learn. He lived in Micronesia for 9 years and has been to Yap a couple of times. He has known the Yapese senators for many years. He acknowledged that there would be a learning curve and he is excited about the opportunity. His resume outlines much of his experience and he indicated has spent some time recently researching the current law in the FSM.

Chairman Romolow began the questioning by asking how the nominee came to be nominated for the position. The nominee indicated his daughter is working in Kosrae at the state court and she advised him of the vacant position. She had a discussion with the General Counsel from the Supreme Court regarding the position and the nominee expressed that he would be interested in the appointment. The discussion first began in 2019 and the court then began the vetting process.

Speaker Simina expressed his welcome to the online hearing. He expressed his support for the nominee and gratitude for his willingness to accept the challenge of the nomination process. He noted that there had been 2 previous nominees who were confirmed and both declined the nominations. Speaker inquired if there were any issues that might impact his ability to accept the nomination if he were to be confirmed. The nominee responded that his family is in support of him, his wife is happy with the prospect of returning to the FSM. He indicated he is 60 years old and in good health. His wife has type 2 diabetes but she has it under control. He indicated that they would maintain

their U.S. health insurance to ensure her ability to continue to receive her medication. He indicated that they would be comfortable in Micronesia, although his wife has not been to Yap previously. He feels comfortable that they would be able to make the transition back to the FSM easily. He acknowledged that recruitment is always a problem, but there was no impediment he was aware of to he and his family moving to the FSM.

Speaker noted that the nominee has an impressive resume. He noted that he had been working for the Attorney General in Nevada for quite some time. Speaker asked if the office was run Republican or Democratic and the nominee indicated he had worked under both administrations. He noted that politics should not matter, the law must be applied equally, regardless of politics.

Speaker asked if the nominee felt he would be biased towards one side of a case or another. The nominee noted that fairness as an Attorney General is paramount. He noted that he often works with people who are not represented. He considers his job not to just enforce the law, but to enforce the law fairly. He noted that as a judge he did not feel that he would have any difficulty with being fair and impartial. Most of his work has been in the civil area as opposed to criminal. He has primarily worked in an administrative capacity. He noted that some people think he is their lawyer and he is always very straightforward that is not the case. He feels he would be able to be fair to all sides of litigation.

Speaker asked if there were any potential areas of conflict. The nominee noted that his wife is from Kosrae and her family owns a construction company and a local store. As such if cases involved them, that could be considered to be a conflict. He does not personally own businesses in the FSM. He noted that he would have to look at the code of judicial conduct to determine if he needed to recuse himself on a case by case basis. Speaker asked if he felt his relationship with Congress could be

problematic and the nominee indicated that he would have to evaluate on a case by case basis. He noted that he has worked with the members of the Yap delegation and other members of Congress. He noted that Chief Justice Yamase worked for Congress previously and he is not sure if the issue has come up for him. He noted that he cannot make the analysis currently. Speaker asked if the President brought at case against Congress based on a Constitutional issue, would he be swayed towards one side. The nominee indicated he would apply the law fairly, not based on who he knows in Congress. He noted that he did not feel that he would not be able to render fair judgments because of his past relationships. He noted that although he had worked for the Kosrae legislature and after he had moved to the FSM Congress, he filed an amicus brief in the case on behalf of Congress that was contrary to position of Kosrae, nothing that his job was to represent Congress at that time and that is what he did.

Speaker noted that there is a new law banning discrimination within the National Government, including sexual orientation. Speaker asked his position regarding this and abortion. The nominee noted that he can only respond philosophically because he could be prejudging a matter without knowing the facts of litigation. He noted that he cannot give the appearance that he has already prejudged these matters in advance. He noted the process he would follow would be that he would have to look at the constitution and the law, his personal opinion is not relevant for his decision.

Speaker then asked about customs and traditions in Micronesia. He noted that this is an important consideration in the FSM. He asked what the nominee's thoughts were about the impact of the customs and traditions and the laws. The nominee noted that there are protections within the law, his job would be to determine how these intersect with the law. He noted that he would have to consider the protections of culture and tradition as required when he was making his rulings. The question

is what is the result. He noted that he has not had a direct experience with this in his past roles. He noted that when he took the bar, he had read all of the cases up to the time he took the bar. He said he does not know if there have been any cases addressing this since then. He expressed his understanding of the need for these protections, however, he cannot give an example at this time.

Chairman Welly noted that he has an FSM passport, but he is stuck in Guam. He asked about individual rights. The nominee noted that it would not be prudent for him to respond to the current situation, noting that if he were confirmed, this could in fact become a case in front of him. He expressed understanding to the situation, however, he noted he would need to hear arguments from both sides.

Chairman Romolow then asked if the nominee was aware of the salary and was comfortable. The nominee noted that he is able to retire from his current position, so he will receive supplemental income from his retirement.

Chairman Romolow then asked about possible conflict cases from when the nominee was in the FSM. The nominee indicated he would have to look at the code of judicial conduct states and make a case by case determination. He noted that it's been a long time since he's been the in the FSM. He does not anticipate that there would be any conflicts.

Chairman Romolow noted that the position for the nomination is in Yap. He noted that Yap has a strong pull towards custom and tradition. He expressed that there is a class system in Yap. He noted that there could be a murder case between the classes that is settled out of court because of the class system. Chairman asked how the nominee would deal with a situation like this. The nominee noted how difficult this situation is. Technically, even if parties agree, the judge must also agree to case dismissal. The prosecutor decides whether or not his office wishes to

proceed. He noted that the law must be applied as written, noting that he does not know if he has authority to order cases to proceed.

Speaker asked if there were any staff of the Judicial branch that he has had any conflicts with, personally or professionally. He noted that he knows some of the expats from his previous time in the FSM and he did not think there would be any issues.

Speaker noted that there was a very contentious case several years back, regarding the approval of fishing permits by congress. Speaker asked if there was another case with similar facts, if the nominee would consider over-ruling the previous case. The nominee noted that a precedent can be re-examined, however, he could be bound by the decision at the appellate level. He indicated he did not know if there was a precedent regarding overruling an appellate case. He noted that again, he did not want to respond to the specifics as there was always a possibility that a similar case could come before him.

Chairman Figir joined the hearing to show his support of the nominee.

Chairman Romolow next noted that the FSM is a sovereign nation. He noted that they decided to run their own government with their own people. He noted that there are 2 expat associate justices on the Supreme Court. He asked the nominee to convince him that he should be con firmed over a local attorney for the position. The nominee responded that he had considered this himself. He noted that he hoped the best person would be appointed and he was expressing what he would do to be the best justice he could be. He would do his best to understand the culture of the FSM, noting there are multiple cultures. He expressed that he would do his best to serve the people and be a good public servant. He shared that he is not perfect, he has strengths and weaknesses and all he can do is promise to work hard, to be fair, to hear cases in a fair manner,

empathically. He noted the courts can try to ensure unrepresented parties understand court processes, etc. He suggested he would engender support for the court. He remembered working in Kosrae trying to help people learn about the law, he taught a business law course. He noted that he would do his best for the court.

Chairman Figir noted that he has no doubt that the nominee would be an excellent fit in the position.

Chairman Romolow asked the nominees position regarding the public defender representing people in civil cases. The nominee asked if it was part of their position as a public defender or pro bono. The nominee noted that would be a policy/legislative decision. He indicated that there could be conflicts that would arise and would need to be addressed on a case by case basis. The nominee noted he could not give a concrete answer.

Chairman Welly noted that the public defender's office is run at the national level and he inquired as to the nominee's thoughts regarding making the public defender run on the state level. The Attorney General has a state office, but the Public Defender does not. The nominee noted that there was not an inherent problem, the goal is to ensure everyone has representation. He noted the determination would have to be made on a case by case basis after each party presented their case.

Speaker then brought up the important issue regarding the relationship between the national government and the 4 states. The nominee noted that the starting point is the Constitution. He noted that the issue of succession could be a case that could come before the court, so he cannot provide a specific answer under the circumstances. He noted that he believes the Constitution is the starting point, if it were silent, he would then determine if it was a justiciable issue. Speaker noted that there is a clause in the Constitution that the states support national unity. The nominee suggested some clauses may require legislation

to be enforceable. He noted that he would look at the terms within the Constitution to determine if the intent was to execute the term without further legislation, he suggested he would look at the intent of the framers.

Tammy Davis, general counsel for the Supreme Court noted that the Supreme Court supports the nomination, noting the Chief Justice sent his regards and a statement. In the statement, the Chief Justice expressed the full support for the nomination by the Supreme Court. He noted that the nominee was married to a Kosraean, with family in Kosrae. He is admitted in state and federal court in Nevada and California.

The court noted that the nominee knows Micronesia after having lived here for several years. He has been employed by the FSM government. He understands the need to consider customs and tradition. The nominee has worked for several law firms and has broad experience. Most recently, he has been working for 15 years as a deputy attorney general. He has actively engaged in civil litigation. The court would welcome the nominee as a fellow justice.

The nominee has demonstrated that he has extensive legal experience, including many years of experience in the FSM. He comes highly recommended by the court. Mr. Belcourt is dedicated, competent and has great integrity. The court and the Committee have confidence in his ability.

The Committee notes that historically, when nominees have been vetted and nominated, letters of recommendation have been included in their nomination packet to Congress for review. The packet submitted to Congress for this nominee only included his resume, with no references or letters of recommendation.

The Committee was impressed with the nominee's testimony and endorsement by the Court during the hearing. In light of the positive comments by the witnesses and the lack of any negative comments regarding this individual, your

STANDING COMMITTEE REPORT NO. 21-54

RE: C.R. NO. 21-150/J&GO

SUBJECT: TO CONFIRM THE NOMINATION OF MR. DENNIS L. BELCOURT

JULY 06, 2020

Committee requests that this nominee be confirmed as an Associate Justice of the Supreme Court of the Federated States of Micronesia.

Your Committee would like to offer the following technical amendment, to read as follows:

1. Page 1, line 15, delete "Fourth Regular" and insert "Sixth Special" in lieu thereof.

Your Committee on Judicial and Governmental Operations is in accord with the intent and purpose of C.R. No. 21-150, C.D.1 and recommends its adoption.

Respectfully submitted,

Robson U. Romolow, chairman

Peter M. Christan, vice chairman

Isaac V. Figir, member

Tiwiter Aritos, member

Wesley W. Simina, member

Paliknoa K. Welly, member

Ferny S. Perman, member

STANDING COMMITTEE REPORT NO. 21-54

RE: C.R. NO. 21-150/J&GO

SUBJECT: TO CONFIRM THE NOMINATION OF MR. DENNIS L. BELCOURT

JULY 06, 2020

Committee requests that this nominee be confirmed as an Associate Justice of the Supreme Court of the Federated States of Micronesia.

Your Committee would like to offer the following technical amendment, to read as follows:

1. Page 1, line 15, delete "Fourth Regular" and insert "Sixth Special" in lieu thereof.

Your Committee on Judicial and Governmental Operations is in accord with the intent and purpose of C.R. No. 21-150, C.D.1 and recommends its adoption.

Respectfully submitted,

Robson U. Romolow, chairman

Peter M. Christan, vice chairman

Isaac V. Figir, member

Tiwiter Aritos, member

Wesley W. Simina, member

Paliknoa K. Welly, member

Ferny S. Perman, member

TWENTY-FIRST CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FOURTH REGULAR SESSION, 2020 C.R. NO. 21-150, C.D.1

A RESOLUTION

Giving advice and consent, pursuant to Article XI, Section 3, of the Constitution of the Federated States of Micronesia, to the appointment of Mr. Dennis L. Belcourt, to serve as an Associate Justice of the Supreme Court of the Federated States of Micronesia.

WHEREAS, the President of the Federated of Micronesia has nominated Mr. Dennis L. Belcourt to serve as an Associate Justice of the Federated States of Micronesia Supreme Court; and

WHEREAS, the nomination and appointment is subject to the advice and consent of Congress pursuant to section 3 of Article XI of the Constitution of the Federated States of Micronesia; and

WHEREAS, Mr. Belcourt has extensive experience in public service both in the United States and in the Federated States of Micronesia, including his service as Deputy Attorney General in Nevada, USA, Legislative Counsel of the FSM Congress, and as legal counsel of the Kosrae State Legislature; and

WHEREAS, Mr. Belcourt is qualified to serve as an Associate Justice of the Supreme Court; now, therefore,

BE IT RESOLVED by the Twenty-First Congress of the Federated States of Micronesia, [~~Fourth Regular~~] Sixth Special Session, 2020, that Congress hereby gives its advice and consent to the nomination and appointment of Mr. Dennis L. Belcourt to serve as an Associate Justice of the Supreme Court of the Federated States of Micronesia; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the Federated States of Micronesia, the Governor of each state of the Nation, and to Mr. Dennis L. Belcourt.

Dated: 5/27/20

Introduced by: /s/ Florencio S. Harper
Florencio S. Harper
(by request)