

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

JENNIFER NGIRAIWET,
Appellant,
v.
ELEVENTH KELULUL NGARDMAU,
Appellee.

Cite as: 2026 Palau 12
Civil Appeal No. 26-017
Appeal from Civil Action No. 26-117

Decided: September 16, 2026

Counsel for Appellant	Johnson Toribiong
Counsel for Appellee	James Kennedy

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
M. TODD OSTERLOH, Associate Justice

Appeal from the Trial Division, the Honorable Peter Huffman, Associate Justice, presiding.

OPINION¹

OSTERLOH, Associate Justice

[¶ 1] *Kelulul Ngardmau*, the State’s legislature, attempted to impeach and remove Governor Jennifer Ngiraiwet from office for bribery and personal enrichment. Ngiraiwet challenged the constitutionality of actions taken by the legislature. The legislature did not inform Ngiraiwet that it would consider impeachment and removal at a legislative meeting, thereby treating her unfairly in the context of a legislative investigation. Because this violates the

¹ We dispense with oral argument inasmuch as we find the parties’ briefs and the trial record sufficient to address the issues presented on appeal. ROP R. App. P. 34(a). Given the expedited nature of this matter and resolution of the issues, the Court acknowledges it is issuing its decision prior to the filing of a reply brief from the Appellant.

Fair Treatment Clause found in Article IV, Section 5 of the Constitution, we **REVERSE** the trial court’s contrary decision, and **REMAND** for further proceedings consistent with this Opinion.

BACKGROUND

[¶ 2] Governor Jennifer Ngiraiwet was elected governor of Ngardmau and began serving a four-year term in January 2025. In March and April 2026, several individuals identifying themselves as *el chad er a beluu er a Ngardmau*—the people of Ngardmau—signed a petition seeking to have the legislature impeach and remove Ngiraiwet from her official position.

[¶ 3] On July 16, 2026, the Speaker of the *Kelulul* informed Ngiraiwet about the “citizens’ petition” calling for Ngiraiwet’s impeachment. Ngiraiwet was invited to a meeting on July 17 in the *Kelulul* Chamber, where they could “discuss the issues raised and hear [her] perspective.” The Speaker did not, however, share the citizens’ petition with Ngiraiwet in advance of the meeting.

[¶ 4] At Ngiraiwet’s request, the meeting was moved to Koror. When she arrived, she was provided with a copy of the petition. She answered questions from the legislators about the issues raised in the petition. During this meeting, the legislators did not inform Ngiraiwet that the legislature would draft and consider a resolution that would impeach and remove her from office.

[¶ 5] After the July 17 meeting, Ngiraiwet traveled to Taiwan on a prearranged trip on State business. On July 21, 2026, seven legislators introduced a resolution to impeach Ngiraiwet. Critical to this case, at no point in time between the July 17 meeting with Ngiraiwet and the general session on July 21 did the legislature inform her about the draft resolution or that it would be considered for adoption at that meeting.

[¶ 6] The resolution was not identical to the citizens’ petition; it raised similar issues but was more expansive than the petition. It was adopted seven votes to zero. After returning from Taiwan, Ngiraiwet received a copy of the resolution for the first time.

[¶ 7] Ngiraiwet filed the underlying action, alleging *inter alia* that “all state actions must conform to constitutional guarantees of due process and fundamental fairness.” As a part of the action, Ngiraiwet filed a motion for

temporary restraining order to temporarily restore her to her office. The trial court held an evidentiary hearing on the motion, at which the parties’ stipulated that the evidence introduced at the hearing could be used in resolving the merits of the case.

[¶ 8] The parties subsequently cross-moved for summary judgment. At the hearing on the motion, the parties agreed that no additional evidence needed to be introduced. The trial court granted the legislature’s motion and denied Ngiraiwet’s motion. This appeal followed.

STANDARD OF REVIEW

[¶ 9] The appellate court’s review of the granting of summary judgment “is plenary, considering both whether there is no genuine issue of material fact and whether the substantive law was correctly applied.” *PNCC v. Wally*, 2026 Palau 3 at ¶ 7. We review *de novo* an appeal from summary judgment. *Id.*

[¶ 10] “We review matters of law *de novo*.” *Obechou Lineage v. Ngeruangel Lineage of Mochourang Clan*, 2024 Palau 2 at ¶ 5. “Because the facts in this case are undisputed and the legal framework is relatively well-defined, the issue is a mixed question of law and fact.” *Ngiralmu v. ROP*, 16 ROP 167, 169 (2009). “We review mixed questions of law and fact *de novo*.” *Id.* (citing *In re Kemaitelong*, 7 ROP Intrm. 94, 95 (1998)).

DISCUSSION

I. Issues on Appeal

[¶ 11] In her Brief to this Court and in trial court filings, Ngiraiwet has woven arguments related to the Fair Treatment Clause (“No person shall be treated unfairly in legislative or executive investigations.”) found in Article IV, Section 5 of the Constitution with concepts of “due process.” Despite the muddling of due process and fairness, the Court concludes that Ngiraiwet is making two distinct legal arguments involving the Due Process Clause found in Article IV, Section 6 of the Constitution and the Fair Treatment Clause.

[¶ 12] Judicial restraint often requires avoiding constitutional questions when it is possible to decide the case on other grounds. *Senate v. Nakamura*, 7 ROP Intrm. 212, 218 (1999). Because the Court resolves this appeal on the

issue of whether the *Kelulul*'s actions adhered to the constitutional requirements found in the Fair Treatment Clause, we need not and do not address the Due Process Clause and make no ruling regarding the merits of any argument concerning the applicability vel non of the Due Process Clause to any claim of a liberty or property interest in an elective government office.

II. Justiciability

[¶ 13] Having identified the issue on appeal, an appellate court must ordinarily determine whether the issue is justiciable—that is, whether it is proper for the Court to resolve the issue. *PCSPP v. Udui*, 22 ROP 11, 14 (2014). Ngiraiwet is not asking us to review the substantive basis for her impeachment. She is only arguing that the procedure leading up to the impeachment violated her constitutional rights. Accordingly, we need not consider whether the basis for the impeachment is a justiciable question, as that question is not before the Court. *KSPLA v. PPLA*, 22 ROP 30, 34 n. 1 (2015).

[¶ 14] Under the Ngardmau constitution Article VI, Section 3, impeachment is a power reserved to the legislature. Normally, when there is a “textually demonstrable constitutional commitment” delegation of power to another branch of government, courts will not interfere with the exercise of that power. *Salii v. House of Delegates*, 3 ROP Intrm. 351, 357 (Tr. Div. 1988). Nevertheless, it is appropriate for this Court to review the procedures used to determine if constitutional violations occurred even when the merits of the underlying decision are not otherwise reviewable. *Llecholch v. ROP*, 21 ROP 70, 73 (2014). Because Ngiraiwet alleges a violation of constitutional requirements, we may review consider the issue.

III. Fair Treatment Clause

[¶ 15] The Constitution's Fair Treatment Clause provides, “No person shall be treated unfairly in legislative or executive investigations.” ROP Constitution Art IV. Sec. 5. Ngiraiwet maintains she was treated unfairly in the legislative investigation that resulted in a resolution impeaching and removing her from office.

[¶ 16] Because this appeal involves a question of constitutional interpretation, our focus is on the language of the applicable provision. *See*

Otobed v. Palau Election Comm’n, 20 ROP 4, 8 (2012). In doing so, we must address two issues discussed in the trial court’s decision.

[¶ 17] First, the trial court concluded that the Fair Treatment Clause provided no additional protections beyond those afforded by the Due Process Clause. The “unfairness” protection, however, is listed separately from the due-process right. ROP Constitution Art IV. Sec. 6. A core principle of statutory construction is that all words and phrases “should be construed to give effect to every word.” *Tulmau v. R.P. Calma & Co.*, 6 ROP Intrm. 54, 55 (1997). As this is a question of statutory interpretation, we are not bound by the trial court’s determination that the two provisions provide identical protections. Instead, because the phrase “due process of law” is listed separately from “treated unfairly,” we construe these sections as having similar, but not identical, meanings; and by extension that they afford similar, but not identical, protections.

[¶ 18] Second, the trial court addressed the legislature’s argument related to *Tulop v. ROP*, 2021 ROP 9 at ¶ 13, by explaining that “Tulop held that the [Fair Treatment C]lause at least prohibits the Republic ‘from bringing a prosecution it would not otherwise have brought but for personal animus on the part of the prosecutor toward the defendant.’” By using the phrase “at least,” the trial court signaled that the Fair Treatment Clause could provide protections beyond issues of personal animus. We agree. Any contrary conclusion would inappropriately limit the reach of the term “unfair” in the provision.

[¶ 19] When interpreting a constitutional provision, courts begin with the plain meaning of the law. *Ngiraterang v. Ngarchelong State Assembly*, 2021 Palau 18 at ¶ 16. The Fair Treatment Clause plainly prohibits unfair treatment in legislative investigations. Therefore, we must determine what is constitutionally fair and unfair in the context of legislative investigations.

[¶ 20] The underlying facts of this case confirm that impeachment proceedings are legislative investigations. The Speaker of the *Kelulul* invited Ngiraiwet to “discuss the issues raised and to hear [her] perspective” on the citizens’ petition that requested the legislature to impeach and remove Ngiraiwet from office. The legislators interviewed Ngiraiwet on July 17, 2026,

regarding the issues raised in the citizens' position. They later drafted and took action on a resolution in a general session meeting.

[¶ 21] The Fair Treatment Clause limits governmental action, rather than dictating a prescriptive way the government must act. The simple question is, therefore, whether the legislature treated Ngiraiwet unfairly leading up to its adoption of a resolution impeaching and removing her from office.

[¶ 22] Palauan caselaw is silent on what constitutes unfairness in the context of legislative investigations.² Nevertheless, numerous legal authorities and principles point us to holding that fundamental fairness—and by extension, the Fair Treatment Clause—requires a legislature to provide notice to a public official that the legislature will consider an impeachment resolution or other action removing the official from office and an opportunity to attend the session where such action is considered.

[¶ 23] First, impeachment and removal of a public official is most commonly known as a two-step process. “Strictly speaking, ‘impeachment’ means ‘accusation’ or ‘charge.’” *IMPEACHMENT*, Black’s Law Dictionary (12th ed. 2024) (quoting Charles L. Black Jr. & Philip Bobbitt, *Impeachment: A Handbook* 7 (new ed. 2018)). In that context, following the impeachment by one legislative body, the official who is the subject of impeachment may be convicted of the accusations and removed from office. *See Nixon v. United States*, 506 U.S. 224 (1993).

[¶ 24] This procedure is not new. Centuries before our Constitution was adopted, the British adopted this procedure whereby the House of Commons would charge a public official with an impeachable offense and the House of Lords would have power to render a verdict. 2 Blackstone, *Commentaries on the Laws of England*, Book 4 at 213-14 (Chitty 1842). Americans established a similar procedure in their constitution. *See* U.S. Const. art I, § 2, cl. 5 & 6. Even Nebraska, which has the only unicameral legislature in the United States, provides a two-step process for removal of a public official through impeachment. Neb. Const. Art. III, § 17; *see also State v. Douglas*, 349 N.W.2d 870, 873 (Neb. 1984).

² An executive investigation, not legislative, was at issue in *Tulop*.

[¶ 25] This two-step process ensures that the public official who is subject to impeachment has notice that the legislature may take action to remove him or her and knowledge of when that may occur.³

[¶ 26] Second, our trial court has signaled on multiple occasions that public officials should receive notice from the legislative bodies in advance of a vote on removal. In *Salii v. House of Delegates*, the trial court declared a legislative resolution to be null and void because the legislature did not provide the public official with notice that the resolution would be the subject of legislative discussion. *Salii v. House of Delegates*, 3 ROP Intrm. 351, 353 (Tr. Div. 1988). In his decision, Chief Justice Ngiraklesong noted that it would have taken “the smallest of efforts” to deliver a copy of the draft resolution to the public official or make a telephone call. *Id.*

[¶ 27] In *Ngirmekur v. Office of Palau Election Comm’n*, the trial court considered whether a Ngardmau governor received adequate notice of an impeachment resolution and was afforded an opportunity to be heard. *Ngirmekur v. Office of Palau Election Comm’n*, 9 ROP 295 (Tr. Div. 2002). In finding that the procedures were not “fundamentally unfair,” Justice Miller explained that the legislature provided a copy of the impeachment resolution to the governor and offered him an opportunity to present evidence at a subsequent hearing. *Id.* at 299.

[¶ 28] In *Ngiraingas v. Eighth Peleliu State Legislature*, the trial court voided a resolution attempting to remove a Peleliu governor after finding that the governor was not given a proper opportunity to respond to the potential legislative action. *Ngiraingas v. Eighth Peleliu State Legislature*, 13 ROP 261 (Tr. Div. 2006) (Miller, J.).

[¶ 29] Although each of these cases was decided in the context of the Due Process Clause, due-process analysis is ultimately aimed at considering what “fundamental fairness” requires in a given circumstance. *See Lassiter v. Dep’t of Soc. Servs. of Durham Cnty.*, 452 U.S. 18, 25 (1981); *Memphis Light, Gas*

³ This Opinion should not be interpreted as constitutionally requiring two legislative steps for impeachment and removal of a public official. It may be constitutionally “fair” for such action to occur in a single event.

& *Water Div. v. Craft*, 436 U.S. 1, 16 (1978). These decisions are persuasive that it would be unfair not to provide such notice to a public official.

[¶ 30] Third, similar principles have been articulated in other contexts in Palauan law. The Land Court Rules of Procedure state that the rules “shall be construed to ensure fairness in the conduct of hearings and presentation of claims.” This Court further explained that fairness in the Land Court setting demands that “interested parties should know a case is happening and have the chance to get involved if they so choose.” *Baules v. Toribiong*, 2016 Palau 5 at ¶ 29.

[¶ 31] In criminal law, Palauan courts have noted that to “be able to intelligently prepare a defense,” the defendant must “know the nature and cause of the accusation.” *Pamintuan v. ROP*, 16 ROP 32, 44 (2008) (citing *Franz v. ROP*, 8 ROP Intrm. 52, 54-55 (1999)). The government must provide the defendant with enough information to “enable Defendant to adequately prepare a defense against the charges.” *ROP v. Kasiano*, 13 ROP 289, 291 (Tr. Div. 2006). This does not require the Republic to make its full case in the charging document, but there must be a sufficient description of facts to give the defendant reasonable notice of the charges. *ROP v. Suzuki*, 22 ROP 202, 206 (Tr. Div. 2014). A conviction will be reversed if the charges brought at trial do not match the charges in the information, if the two charges require the State to prove different elements. *Franz v. ROP*, 8 ROP Intrm. 52, 54-55 (1999).⁴

[¶ 32] Fourth, although the United States constitution does not articulate the same explicit protection against unfairness in legislative investigations as our Constitution, American courts have established rules to ensure a degree of fairness to witnesses during legislative investigations.

[¶ 33] “Investigations, whether by standing or special committees, are an established part of representative government.” *Tenney v. Brandhove*, 341 U.S.

⁴ The Court acknowledges that impeachment proceedings are not criminal in nature. There are distinctions between the two types of proceedings, but that does not mean there are no overlapping principles. “The Senate cannot lawfully find the president guilty of something not charged by the House, any more than a trial jury can find a defendant guilty of something not charged in the indictment. This follows from elementary principles of fair notice.” Charles L. Black Jr. & Philip Bobbitt, *Impeachment: A Handbook* 13-14 (1974).

367 (1951). "[L]egislative bodies necessarily have the authority and power to conduct legislative investigations in order to acquire the expertise that is needed to legislate knowledgeably and effectively." *Murphy v. Collins*, 312 N.E.2d 772, 785 (1st Dist. 1974) (citing *McGrain v. Daugherty*, 273 U.S. 135, 161-66 (1927)). But as the scope of these investigations shifted and started to involve "broad-scale intrusion[s] into the lives and affairs of private citizens," American courts began looking at how to restrain the government to protect the fundamental rights in the American Bill of Rights. *Watkins v. U.S.*, 354 U.S. 178, 195 (1957).

[¶ 34] "Fundamental fairness demands that no witness be compelled to make such a determination [of whether to answer such a question] with so little guidance." *Watkins* at 214.⁵ It is "only fair, that the witness be apprised of the particular matter under inquiry by the Committee . . . and, on objection, of the pertinency of the questions involved in the inquiry." *Barenblatt v. United States*, 252 F.2d 129, 132 (D.C. Cir. 1958), *aff'd*, 360 U.S. 109 (1959).

[¶ 35] Standing alone, any one of these supporting factors may be insufficient to direct the Court to its conclusion. But the collective volume of legal authorities and principles weigh in favor of holding that fundamental fairness requires legislature to provide notice to a public official that the legislature will consider an impeachment resolution or other action removing the official from office and an opportunity to attend the session where such action is considered.

[¶ 36] Pointing to the legislature's July 17 interview at which Ngiraiwet was first presented with the citizens' petition and afforded an opportunity to respond to questions from legislators regarding it, the trial court indicated that the legislature satisfied any applicable due process or fundamental fairness requirements found in the Constitution. But this position fails to acknowledge the difference between the citizens' petition asking for legislative action and the resolution that was legislative action.

⁵ While the court in *Watkins* ultimately found the contempt conviction was invalid under the Due Process Clause of the Fifth Amendment to the American constitution, it is relevant that the court still invoked notions of "fundamental fairness" to the witness even though the law only recognizes due process rights. *Id.* at 215. Unlike the United States, Palau explicitly recognizes the fundamental right to fairness in legislative investigations. ROP Constitution Art IV. § 5.

[¶ 37] The citizens' petition is an act of the people. It is one they are entitled to take. They are not entitled to impeach and remove the governor; that is expressly left to the Kelulul by the Ngardmau constitution.

[¶ 38] The trial court noted that "if the legislature had simply voted out of the blue on previously unannounced accusations," it "would likely conclude that Plaintiff lacked meaningful notice and opportunity to be heard." We agree, and that is what occurred in this case. The legislature voted to impeach and remove the governor without giving her notice that it was considering such action. Presenting the citizens' petition asking for her impeachment was insufficient to provide fair notice to her of a potential resolution and legislative action because it was the legislature, and not the citizens, that had the power of impeachment.

CONCLUSION

[¶ 39] In summary, we hold that fundamental fairness requires a legislature to provide notice to a public official that the legislature will consider an impeachment resolution or other action removing the official from office and an opportunity to attend the session where such action is considered. In this case, the *Kelulul* did not inform Ngiraiwet that it would be considering the impeachment resolution at the July 21, 2026, general session meeting. Because the impeachment resolution was the product of a constitutionally deficient process, it is void. *See Ngiraingas v. Eighth Peleliu State Legislature*, 13 ROP 261, 266 (Tr. Div. 2006).

[¶ 40] We **REVERSE** the trial court's decision and **REMAND** for further proceedings consistent with this opinion.