

# Pacific Sunday News

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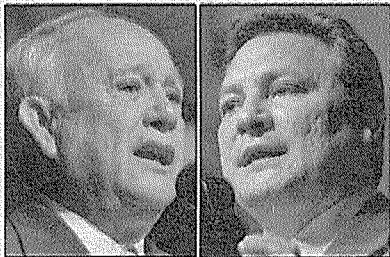
■ Don't forget to vote in today's Pacific Daily News poll. Today's question:

**Grade the performance of Gov. Felix Camacho in 2010.**

■ Results from yesterday's PDN poll are on **PAGE 2**

## Inauguration will go on

### High court rejects Dems' case, affirms certification



Gutierrez

Calvo

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Gov.-elect Eddie Calvo and Lt. Gov.-elect Ray Tenorio will be inaugurated tomorrow as planned, now that an election lawsuit that challenged the certification of their win

has been settled by the Supreme Court of Guam.

Yesterday, the Supreme Court released an order denying the claims made by the defeated Democratic gubernatorial team of former

Gov. Carl Gutierrez and his running mate Sen.

Frank Aguon Jr. The Democrats had alleged certification of the results of the November election were invalid because members of the

Guam Election Commission weren't serving valid terms, and thus not authorized to certify the results.

Specifically, three members — Republicans Joe Mesa and Martha Ruth and independent

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▲ See **High court**. Page 3

# High court: 'Bad faith' assertion stretches facts

▲ Continued from Page 1

Robert Cruz — were allegedly serving expired terms, according to the Democratic team. The other members' terms were invalid because their respective political parties didn't pass resolutions nominating them, Gutierrez-Aguon alleged.

However, according to the order signed yesterday by Chief Justice Robert Torres, Justice Pro Tempore Miguel S. Demapan and Associate Justice Katherine Maraman, the actions taken by the GEC board members to certify the election results and to issue certificates of election were actions taken "pursuant to the color of the law."

The order stated that even if there were irregularities in the nomination and appointment process of the GEC board members, "a well-founded common law doctrine applies to up-

## ON THE NET

▲ Download a copy of the Supreme Court's of Guam's order at [www.GuamPDN.com](http://www.GuamPDN.com).

hold the actions taken by the GEC."

The doctrine defines a de facto officer as a person who is found openly in the occupation of a public officer, whose not legally given the title, but who is in fact performing duties in full view of the public such that the public may safely act upon the assumption that the person is a rightful officer.

One exception to the doctrine is that it be applied only if there exists a 'good-faith misunderstanding of facts or reasonable uncertainty as to the state of the law.

And according to the justices, the burden to prove the GEC board members acted in "bad faith" by certifying the results even when they

knew their terms had expired, fell on Gutierrez-Aguon. Instead, "(Gutierrez-Aguon) alleged bad faith should be presumed, because the court should impute to the GEC members the knowledge that their terms had expired or their appointments were deficient," the order states.

As their evidence, Gutierrez-Aguon used:

▲ Letters to two of the members stating exactly when their terms began and ended;

▲ That the appointment statute had been in existence for years and discussed extensively;

▲ The fact that the GEC board members include "various learned professional(s) ... some of whom have previously served on the GEC for many years";

▲ The fact that party officials were asked to submit their nominations; and

▲ That "the appointments of all seven GEC members are allegedly defective and therefore the pervasiveness creates bad faith."

"Gutierrez-Aguon assert that a good faith misunderstanding cannot be attributed to the GEC members," the order states. "In doing so, they mischaracterize the law and stretch the facts too far."

Thus the court concluded the Democrat team failed to provide sufficient grounds for invalidating the results' certification, and that the actions taken by the board members were within the scope of their authority.

For the Republican team of Calvo-Tenorio, yesterday's order represents yet another hurdle conquered on the road to Adelup.

Because the results of the Nov. 2 election were close, a recount of the ballots was held Nov. 6, deeming Calvo the winner. Furthermore, the

Gutierrez-Aguon team has filed lawsuits in federal and local courts alleging illegal voting and tampering with ballot boxes in the November election. Both the GEC and Calvo-Tenorio have requested the lawsuits be dismissed, and in December, Superior Court of Guam Judge Vernio Perez recused himself from the local lawsuit, citing family connections to the Calvo-Tenorio campaign.

Calvo said yesterday — just days before taking office — there was still a lot of work ahead for his team. "We've been preparing to start the work on Monday. Justice has taken its course and we are prepared to lead," Calvo said.

Democrat GEC board member Josh Tenorio, Sen. Frank Aguon could not be reached for comment as of press time yesterday.

*Pacific Sunday News reporter Laura Matthews contributed to this report.*

**Election  
2010**