







1 jurisdiction in accordance with Section 1423c(b) of Title 48 of the United States  
2 Code. (Hereinafter “Speech and Debate Clause.”). As shown below, the Appellant  
3 is entitled to absolute immunity from answering before any court for matters  
4 related to her legislative speech and debate.

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6 **I.**

7 **SUMMARY OF FACTS AND OF ARGUMENT**

8 This matter concerns the obligation of Appellant to answer in this or any  
9 Court for anything related to her Speech and Debate on the floor of the Guam  
10 Legislature regarding the bill that ultimately became Public Law 37-105. The  
11 undisputed facts show that on June 28, 2024, on the floor of the Legislature,  
12 during debate of the 37<sup>th</sup> Guam Legislature over Bill 175-37, Appellee made a  
13 request under the Sunshine Act of Guam for certain documents pertaining to  
14 Appellant’s Speech and Debate related to, and as an integral part of, the  
15 Legislature’s consideration of Bill 175-37. (Hereinafter referred to as  
16 “Appellant’s Speech and Debate Documents” or simply “Speech and Debate  
17 Documents.”). On July 9, 2024, Appellee filed an *Ex Parte* Petition for an Order  
18 to Show Cause or Alternative Writ of Mandate. (Hereinafter “Show Cause  
19 Petition.”). Appellant provided Appellant’s Speech and Debate Documents per the  
20 Appellee’s Records Request prior to the hearing on the Show Cause Petition.

1 Judge Dana Gutierrez, in her January 6, 2025, Decision and Order  
2 (“D&O”), analyzed the requirements of the Sunshine Act as applied to the Show  
3 Cause Petition but did not consider the impact or significance of the Speech and  
4 Debate Clause. The trial court held that because Appellant had provided the  
5 Speech and Debate Documents to Appellee before the hearing, the Show Cause  
6 Petition was moot, and, on mootness grounds, denied Appellee’s Show Cause  
7 Petition. However, Judge Gutierrez further held that “Notwithstanding mootness,  
8 as noted above, Senator Fisher may still pursue penalties provided by 5 GCA §  
9 10112.”.

10 The Speech and Debate Clause of the Organic Act directs that this Court,  
11 and all other courts, to leave complaints about the conduct of legislative debate to  
12 the Legislature itself. This directive applies to Appellant’s Speech and Debate as  
13 well as to Appellant’s Speech and Debate Documents. The Speech and Debate  
14 Clause bars the Judiciary from even inquiring into Appellee’s Speech and Debate,  
15 i.e., the Judiciary has no jurisdiction over Appellee as to her Speech and Debate or  
16 Documents related thereto. Consequently, this Court should dismiss this appeal  
17 with an order requiring the trial court to dismiss the Show Cause Petition and any  
18 proceedings related thereto.

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1 II.

2 THE GUAM JUDICIARY LACKS SUBJECT MATTER JURISDICTION  
3 OVER THE SHOW CAUSE PETITION AND ALL RELATED  
4 PROCEEDINGS

5 Appellant moves this Court for Dismissal of the Appeal and the Superior  
6 Court case for lack of jurisdiction. Admittedly, Appellant did not raise this  
7 jurisdictional concern below, as this Court has recently confirmed, jurisdictional  
8 issues may be raised at any time. *Story-Bernardo v. Government of Guam*, 2023  
9 Guam 27, ¶ 13 (Guam 2023) (“Because sovereign immunity implicates a court’s  
10 subject matter jurisdiction, it ‘can be raised at any time, either by a party or by the  
11 court.’ *Sumitomo Constr., Co. v. Gov’t of Guam*, 2001 Guam 23 ¶ 22.”).

12 The undisputed facts, i.e., those alleged in the Appellee’s Show Cause  
13 Petition and the Superior Court’s order on mootness, demonstrate undeniably, that  
14 the Speech and Debate Documents requested by Appellee originated from the  
15 legislative debate on the senate floor during session. See, Show Cause Petition at  
16 paragraphs 4.3 through 4.6. The only analysis to be undertaken by the Court is to  
17 determine that the conduct at issue concerned legislative debate upon a legislative  
18 bill on the floor of the senate. In that regard, the trial court found that, “during the  
19 debate, Senator Taitague read certain text messages into the legislative record”.  
20 (D&O at pages 1-2). Since those facts are not in dispute, the Speech and Debate  
Clause prevails over the Sunshine Act. Appellee’s Show Cause Petition fails to

1 state a cause of action upon which relief can be granted. The Superior Court  
2 lacked, and this court lacks, jurisdiction over Appellant or to Order any relief and  
3 any further action for attorney's fees. This Appeal should be dismissed, and the  
4 underlying case should also be dismissed, for lack of jurisdiction.

5 **A. APPELLANT'S DUTY TO PRODUCE RECORDS IS EXEMPT**  
6 **FROM 5 GCA § 10103(c).**

7 The United States Constitution and the Guam Organic Act impose checks  
8 and balances among the three branches of government. Although very few powers  
9 assigned to any one branch are immune from a check by another branch. Even  
10 more rare is the immunity of individuals of one branch from a check by another.  
11 As our Supreme Court has acknowledged, the Speech and Debate Clause of the  
12 Guam Organic Act is one of those unique grants of immunity, protecting the  
13 legislative branch from any oversight by another. This legislative immunity  
14 protects the Legislature's independence and integrity. *Hamlet v. Charfauros*, 1999  
15 Guam 18, ¶8, *Wilkinson v. O'Neil*, DC Civ. App. No 81-0100A, 1983 WL 30230  
16 at \*2 (D. Guam App. Div. April 6, 1983).

17 In the underlying case Judge Gutierrez' Decision and Order has asserted  
18 continuing jurisdiction over Appellant's Speech and Debate as well as her Speech  
19 and Debate Document. Appellee, relying on the Sunshine Law, seeks legal fees  
20 and penalties for Appellant's Speech and Debate. Appellant had and has no duty

1 under the Sunshine Law to produce her Speech and Debate Documents inasmuch  
2 as the Sunshine Law itself mandates that Speech and Debate Documents are  
3 exempt from disclosure. 5 G.C.A. § 10103 includes multiple references to  
4 exempting from the Sunshine Law records which are exempt by law. The Organic  
5 Act is law.

6       The Speech and Debate Clause of the Organic Act provides that "no  
7 member of the legislature shall be held to answer before any tribunal other than  
8 the legislature itself for any speech or debate in the Legislature." 48 U.S.C. §§  
9 1423c(b) (1950). The Guam Supreme Court has previously stated that "the Speech  
10 or Debate Clause bestows immunity upon lawmakers for speech or debate  
11 occurring during session. If found to apply, it serves as an absolute bar to  
12 interference. . . ". However, such actions must first fall into the 'sphere of  
13 legitimate legislative activity' before the privilege shields a legislator." *Gutierrez*  
14 *v. Charfauros*, 2002 Guam 7, ¶20, citing *Hamlet*, supra at ¶¶10, 12. The Speech or  
15 Debate Clause at Section 6, clause 1, provides immunity to members of the Guam  
16 Legislature by the "express provisions of the law" which provides the exemption  
17 from disclosure. 48 USC 1423c(b). With the exemption in place Appellant has not  
18 stated a claim and is not entitled to any relief.

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1           **B. APPELLANT’S ACTIVITIES ARE PROTECTED LEGISLATIVE**  
2           **ACTIVITY.**

3           Although Appellant complied with Appellee’s request for records, Appellant  
4 neither unequivocally or explicitly waived her immunity. The Speech or Debate  
5 Clause bestows immunity upon lawmakers for speech or debate occurring during  
6 session. If found to apply, it serves as an absolute bar to interference. *Eastland v.*  
7 *U.S. Servicemen’s Fund*, 421 U.S. 491 at 503, 95 S.Ct. at 1821 (1975). Such  
8 protection extends not only to the consequences of litigation, but also to the  
9 burden of defending a suit. *Id.*, 95 S.Ct. at 1821. The privilege will thus prevent  
10 both criminal and civil suits, whether brought by the Executive branch or by  
11 private individuals. *Id.* at 502–503, 95 S.Ct. at 1821; See *Gravel v. United States*,  
12 408 U.S. 606, 92 S.Ct. 2614, 33 L.Ed.2d 583 (1972) (concluding that a U.S.  
13 Senator, in the context of a grand jury investigation, could not be made to answer  
14 questions to defend himself from prosecution); *Doe v McMillan*, 412 U.S. 306, at  
15 312, 93 S.Ct. 2018 at 2024 (1973) (holding, in the context of a private civil suit,  
16 that placing the names of children into the record by a lawmaker was privileged).  
17 This proposition was made especially clear when it was written that the Speech or  
18 Debate Clause immunizes both Congressmen and their aides although “their  
19 conduct, if performed in other than legislative contexts, would in itself be  
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1 unconstitutional or otherwise contrary to criminal or civil statutes.” *Hamlet*, supra  
2 at ¶10 citing *Doe v. McMillan*. at 312–313, 93 S.Ct. 2025.

3       The Organic Act incorporates the Speech and Debate Clause from the  
4 United States Constitution. The Organic Act version says: “[n]o member of the  
5 legislature shall be held to answer before any tribunal other than the legislature  
6 itself for any speech or debate in the Legislature.” 48 USC 1423c(b) (1950). “This  
7 provision is similar in both language and underlying policy to the United States  
8 Constitution's Speech or Debate Clause (Article I, Section 6).” *Wilkinson*, supra at  
9 \*2. Accordingly, case authority interpreting the Constitution's provision guides us  
10 in our interpretation of this statute. *Hamlet*, supra. Guam Court extends the  
11 Immunity privilege to “acts that are an integral part of the deliberative and  
12 communicative process by which Members participate in committee and  
13 [Legislative] proceedings with respect to matters before [the body].” *Hamlet* ¶13,  
14 citing *Gravel v. United States*, 408 US 606 (1972). Courts read “speech and  
15 debate” very broadly. *Hamlet* ¶12, citing *Doe v. McMillian*, 412 US 306 (1973).  
16 The Court only needs to decide whether Respondent’s activity was within the  
17 “ambit of legislative activity.”

1 In *Wilkinson*, supra, the Guam Court defined immune proceedings as those  
2 activities that are “integral to the consideration of proposed legislation . . .”

3 *Wilkinson*, *Op. cit.* The Court adopted the rationale that:

4 The acquisition of knowledge through informal sources is a  
5 necessary concomitant of legislative conduct and this be  
6 within the ambit of the [speech and debate] privilege so that . .  
7 . (legislators) are able to discharge their duties properly.

8 *Wilkinson* citing *Tavoulaareas v. Piro*, 527 F. Supp. 676 (DDC 1981).

9 Analysis of the facts in *Wilkinson* and *Hamlet* support Respondent’s  
10 position. In *Wilkinson* a legislator contacted a source to obtain information for a  
11 legislative hearing. This was deemed protected activity, and the court quashed a  
12 subpoena that required the legislator to be deposed as to the source of their  
13 information. *Wilkinson*, *op. cit.* In *Hamlet*, the legislator played a tape on the floor  
14 of the Guam legislature during legislative debate and the content of the tape was  
15 protected. *Hamlet* ¶23. Senator Charfauros made other statements concerning the  
16 subject matter of his tape to the Guam Attorney General and to the media. There  
17 the Court found these statements not subject to the Speech and Debate immunity  
18 as they were not made in relation to any legislative hearings or floor action and  
19 the statements to the press and Attorney General did not address any pending bills.  
20 *Gutierrez v. Charfauros*, supra.

1           The Speech and Debate Clause provides substantial protections against the  
2 compelled production of documents related to legislative activities. This immunity  
3 extends to documents that are an integral part of the legislative process. *Gravel*,  
4 *supra*. In this matter, the information gathered by the Appellant concerned a bill  
5 being debated by the legislature at the exact moment she obtained the information  
6 while she was on the floor of the legislature. There can not be any more protected  
7 activity than Respondent's actions.

8           Appellant's assertion of Speech and Debate Immunity goes to the Court's  
9 subject matter jurisdiction to consider Appellee's requests, like an assertion of  
10 sovereign immunity. The immunity protects the Legislative Branch from  
11 intimidation from the Executive Branch and hostility from the Judicial Branch.  
12 *Hamlet v Charfauros*, at ¶8. The immunity protects both the consequences of  
13 litigation but also against the burden of defending a suit, whether brought by the  
14 Executive or a private individual. *Hamlet* ¶10<sup>1</sup>. As a product of the immunity,  
15 there is no relief that the Court may grant.

16           The present matter before the Superior Court is whether the Appellant owes  
17 Appellee any legal fees and/or whether the Appellant is liable for any penalties  
18 associated with her voluntary production of records to Appellee. On this matter

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20 <sup>1</sup> Appellant and now former Thomas J. Fisher has filed another virtually identical suit, in his personal capacity,  
against Appellant Senator Telo Taitague, (SP0018-25). That proceeding should also be dismissed.

1 the law is clear - the Court is entirely divorced of jurisdiction to impose any  
2 penalty on Appellant for her legislative activities. Being able to engage in speech  
3 and debate on the floor of the Guam legislature without fear of answering to a  
4 “hostile judiciary” is the most fundamental protection of the Speech and Debate  
5 Immunity. *Hamlet* ¶8.

6 Like Guam statutes and caselaw, the United States Constitution also  
7 provides legislative immunity for Members of Congress. The United States  
8 Constitution mandates that “for any Speech or Debate in either House, [Members  
9 of Congress] shall not be questioned in any other Place.” U.S. Const. art. I, § 6.  
10 This clause grants Members of Congress absolute immunity from suit for any civil  
11 actions, whether for declaration, injunction, or damages, that “fall within the  
12 ‘sphere of legitimate legislative activity.’” *Eastland, supra* at 501. Thus, “once it is  
13 determined that Members are acting within the ‘legitimate legislative sphere’ the  
14 Speech or Debate Clause is an absolute bar” to any suit against Members based on  
15 such activity. *Id.* at 503. When the Speech or Debate Clause applies to a claim, a  
16 federal court lacks subject matter jurisdiction. See *Freedom from Religion Found.*  
17 *v. Cong. Of the U.S.*, No. 07-cv-356-SM, 2008 WL 3287225, at 4 (D. N.H. Aug.  
18 7, 2008) (dismissing Congress for lack of subject matter jurisdiction on Speech or  
19 Debate Clause grounds).


1 **CONCLUSION**

2 The product of the immunity is that the Superior Court lacked subject  
3 matter jurisdiction over the matter and it can not grant the relief Appellee sought  
4 and seeks. Both the Guam Supreme Court and the United States Supreme Court  
5 have analyzed various fact patterns to determine whether a legislator's activities  
6 were legislative or not. That debate would have been appropriate for the first  
7 consideration of this case. The information Appellee sought was obtained by the  
8 Appellant amid a legislative debate and concerned the very matter that was being  
9 debated. The idea that the Appellant can be penalized as demanded by the  
10 Appellee must be the textbook example of exactly what the Organic Act and the  
11 Constitution seek to protect members of the Legislature from. The facts are not in  
12 dispute and do not support jurisdiction for any requested relief by the Superior  
13 Court or the Guam Supreme Court. Based on the analysis by both Guam Courts  
14 and Courts interpreting the Speech or Debate Clause of the United States  
15 Constitution, Appellant respectfully requests that Appellee's Superior Court case  
16 and Appellant's Appeal be dismissed as there exists no subject matter jurisdiction  
17 in any Court for the activity complained about.

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Respectfully submitted this 9<sup>th</sup> day of May, 2025.

**OFFICE OF THE ATTORNEY GENERAL**  
**Douglas B. Moylan, Attorney General of Guam**



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**N. LEE MILLER, JR.**  
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**Certificate of Service**

I, N. Lee Miller, Jr., certify that I caused one (1) copy of our *Respondent-Appellant's Motion to Dismiss for Lack of Subject Matter Jurisdiction 48 USC 1423c(b)*, herein filed, to be electronically served upon counsel of record on May 9, 2025 using the Supreme Court of Guam's e-filing service:

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