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Supreme Court of Guam, Clerk of Court



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Attorneys for the Government of Guam (People of Guam)

IN THE SUPREME COURT OF GUAM

IN RE:

Supreme Court Case No. CRQ23-001

REQUEST OF LOURDES A. LEON

GUERRERO, I MAGA'HĀGAN GUĀHAN,

RELATIVE TO THE VALIDITY AND

ENFORCEABILITY OF PUBLIC LAW NO.

20-134.

**Respondent Government of
Guam's Motion to Dismiss**

Respondent Government of Guam (People of Guam) through the Attorney General of Guam hereby moves pursuant to GRAP Rule 6 to dismiss the above Petition Requesting Declaratory Judgment under 7 G.C.A. § 4104 based upon the lack of subject matter jurisdiction and for other legal and equitable considerations. Guam R. App. P. 6. Simultaneously submitted is the People of Guam's counsel's declaration supporting this motion to dismiss.

On March 24, 2023 the U.S. District Court of Guam in Civil Case 90-00013, entitled *Guam Society of Obstetricians and Gynecologists, et al. v. Attorney General of Guam et al.*, denied the Attorney General's and the Government of Guam's motion to dissolve the injunction placed upon Public Law No. 20-134. In that order, the District Court decided legal issues

Page 1 of 10

Government of Guam's Motion to Dismiss
Guam Case No. CRQ23-001

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covered by Question 2 and arguably Question 3¹ established by this High Court in its February 18, 2023 order. See 4/3/23 Declaration of Counsel, Exhs. 1 and 2.

The Court should dismiss this § 4104 Declaratory Judgment case. 7 GCA § 4104. First because the injunction remains after having been challenged in Federal Court raising subject matter jurisdiction issues in this case, and because the U.S. District Court has now apparently ruled upon Questions 2 and 3² raised by this High Court. See Declaration of Counsel, Exhs. 1 and 2. Even if the High Court finds subject matter jurisdiction, at a minimum, the High Court should abstain exercising its discretion to dismiss this § 4104 Declaratory Judgment action.

To the extent that this motion addresses a jurisdiction issue earlier ruled upon in the High Court's 2/18/23 order, the People of Guam seek reconsideration based upon the recent *changing* underlying events occurring in the related Federal Court civil case.

I.

Subject Matter Jurisdiction and Case or Controversy Requirements Lacking Under the Organic Act of Guam and Local Law Requirements.

This petition was filed under the Supreme Court of Guam's original jurisdiction. 48 USC § 1424-1(3); 7 GCA §§ 3107(a) and 4104. Jurisdiction is not automatic but still must satisfy the 3 part test for § 4104 petitions by the Governor or Legislature. *Request of Gov. Gutierrez for a Declaratory Judgment*, 1996 Guam 4. 7 GCA § 4104. *In re Req. of 24th Guam Legis. re Implementation of Initiative Reducing Members of the 25th Guam Legis.*, 1997 Guam 15 ¶ 7. Subject matter jurisdiction is always at issue. *Hukic v. Aurora Loan Servs.*, 588 F.3d 420, 427 (7th Cir. 2009); *Flannigan v. Jordan*, 871 So.2d 767, 768 (Ala. 2003) (*Supreme Court of*

¹ The District Court order incorporated Plaintiff's and Proposed Intervenors' opposition memorandum that argued both Question 2 and Question 3 identified in the High Court's 2/18/23 Order.

² Exh. 1 of Counsel's Declaration identifies the 2 questions that the Governor's and proposed intervening parties' counsel raised (Question 2, *void ab initio* argument) and 3 (Question 3, implied repealer argument), and which the Dist. Ct. order incorporated as its reasons to deny lifting the injunction upon P.L. No. 20-134.

Alabama confirmed question of jurisdiction is always fundamental even if not raised below); Matter of Adoption of B.B., 417 P.3d 1 (Utah 2017) (Supreme Court of Utah found court has duty to raise jurisdiction sua sponte during pendency of action).

When this Honorable panel issued its February 18, 2023 order, the U.S. District Court had not issued its decision on the AG and Government of Guam's motion to lift the 1990 injunction placed upon P.L. No. 20-134. The injunction now remains upon P.L. No. 20-134 based upon the District Court's March 24, 2023 order, and the Governor lacks subject matter jurisdiction in this case because as there is no longer a case or controversy. *Maeda Pacific Corp. v. GMP Hawaii, Inc.*, 2011 Guam 20 ¶ 19 (defined Guam's justiciable controversy as a "case or controversy" entertaining only matters that are appropriate for judicial determination, and not petitions seeking advisory opinions). See also *In re Req. of 24th Guam Legis. re Implementation of Initiative Reducing Members of the 25th Guam Legis.*, 1997 Guam 15 ¶ 2 (a special legislative statute must exist in order to overcome the case or controversy requirement before a Court will decide actions).

The issues before the Supreme Court of Guam now lack subject matter jurisdiction because the injunction remains, and the questions are not ripe and / or moot at this time. The Court should refrain from issuing advisory opinions considering the procedural posture facing this public law now squarely within the U.S. District Court of Guam and the U.S. Ninth Circuit Court of Appeals. See 4/3/23 Declaration of Counsel, ¶¶ 4 – 7, Exh. 2.

Subject matter jurisdiction no longer exists because the injunction was not lifted. This was addressed by this High Court in its February 18, 2023 order wherein a motion to lift the injunction had been at issue, but now the U.S. District Court of Guam has now decided not to lift it. No case or controversy exists. Moreover, Substantial changed circumstances now exist that the High Court did not have before it when it issued its February 18, 2023 order finding that

jurisdiction existed, and deferred to the D.Ct. for Question 1. The D.Ct. has not only resolved Question 1 by not lifting the injunction, but also addressed Questions 2 and 3 thereby incorporating into its order the plaintiff and proposed intervenors' arguments contained in their opposition memorandum.

In addition, we respectfully contend that "*exceptional circumstances*" exist for the High Court to reconsider in finding that jurisdiction no longer exists. *Request of Gov. Gutierrez For A Declaratory Judgment*, 1996 Guam 4 ¶ 16. *In Request of Gov. Gutierrez For A Declaratory Judgment*, the Supreme Court of Guam decided,

[13] It is unnecessary to resolve here whether this Court could appropriately accept jurisdiction, under 7 GCA § 4104, of an issue that has been litigated to judgment in the court below. Such a procedure threatens a de facto reversal of the trial judge without a review of the proceedings reversed. This may have adverse consequences for our legal community. As the Appellate Division of the District Court of Guam recently observed, "One of the uglier spectacles in any system of jurisprudence is that of two or more courts solemnly deciding questions of law in divergent and inconsistent ways." *Board of Education, et al vs. Rivera, D.C. No. SP0024-96, Order of October 16, 1996, p.4, (D.Guam App. Div.)*. While this Court obviously has the authority to reverse a decision from the inferior courts of Guam, direct appeal provides a mechanism that guards, to some extent, against divergence and inconsistency. *the Justices to the Senate*, 396 Mass. 1211, 486 N.E.2d 1109, 1110 (1985), noting that under their advisory opinion procedure potentially affected persons are not before the court during the determination of such issues and that, in fairness, opinions should not be provided where prejudice may result. While our system provides for interested parties to be heard on the request for Declaratory Judgment, this does not change the fact that the posture of the case is altered and the non-prevailing party given a clean slate to draw upon. See also *Opinion of the Justices*, 431 So.2d 496 (Ala. 1982), where the Supreme Court of Alabama held that it would not render an advisory opinion to their governor, where the issue was being litigated in a pending case, even though the case was filed after the request for opinion -- in large part due to concern for the rights of the litigants. (Emphasis added).

Id. at ¶ 13. What occurred recently with the U.S. District Court of Guam's March 24, 2023 order both creates a lack of case or controversy, and lack of subject matter jurisdiction, but falls

1 squarely within the Gutierrez opinion in that 2 courts are now in a position of potentially issuing
2 conflicting decisions. *Id.* Furthermore, This Attorney General of Guam and my client, the
3 Government of Guam / People of Guam, respectfully contend that we are being prejudiced by
4 having to maintain 2 separate civil actions that are closely related on P.L. No. 20-134. Based
5 upon the limited size of the Guam Bar and scarcity of attorneys, assigning attorneys to litigate 2
6 cases with similar issues depletes the time and money resources at the AG's Office, which is
7 currently recruiting off Island to secure sufficient attorneys to handle all our legal work.
8 Moreover, the two (2) cases addressing P.L. No. 20-134 have overlapping legal issues that are
9 now being decided and have a great potential of court trial and appellate decisions in 2 the local
10 and Federal court systems being in conflict. See 4/3/23 Declaration of Counsel, ¶¶ 4-8.

13 In *Brause v. State, Dept. of Health & Social Services*, the Supreme Court of Alaska
14 found in determining a declaratory judgment question on a statute, that when a case lacked an
15 actual controversy the Court was limited in proceeding. *Brause v. State, Dept. of Health &*
16 *Social Services*, 21 P.3d 357 (Alaska 2001). In that case the issue was *not* ripe since no harm
17 had occurred. *Id.* at 360. The Court's role is to adjudicate an adversarial case brought before
18 it, either by a civil or criminal pleading, not to decide esoteric facts devoid an opposing party
19 with something to loose or gain. Declaratory judgments by government officials are very limited
20 in application. See 7 G.C.A. § 4104 (*limited to the Governor and Legislature, and even then*
21 *under a 3 part test*); *Request of Gov. Gutierrez For A Declaratory Judgment*, 1996 Guam 4,
22 (*Gov's. request for Declaratory Judgment under 7 G.C.A. § 4104 denied for failing to meet test*).

25 The petition now lacks a *case or controversy*, and the High Court is without jurisdiction to
26 proceed based upon the District Court's decision refusing to lift the injunction placed upon P.L.
27 No. 20-134. *People v. Blas*, 2016 Guam 19 ¶ 12 (*exercise of Supreme Court of Guam's power*
28 *premised upon existence of "case or controversy" requirement*). See also 4/3/23 Declaration of

1 Counsel, Exh. 2. At a minimum the issue is not ripe for consideration with the refusal to lift the
2 injunction upon P.L. No. 20-134, or moot.

3 The petition should be dismissed.
4

5 II.

6 **Exercising Abstention, Comity and Other** 7 **Equitable Considerations Appropriate.**

8
9 The Supreme Court of Guam should exercise its inherent power to abstain observing the
10 comity between court systems, and because the case is non-justiciable at this time. Further,
11 the proceedings pose a significant risk of creating conflicting decision with the federal Courts,
12 including if a motion for reconsideration before the D.Ct. or when an appeal is filed with the U.S.
13 Ninth Circuit Court of Appeals. See 4/3/23 Declaration of Counsel, ¶ 7. Justiciability is
14 different than subject matter jurisdiction, it deals with unsuitability of judicial inquiry or
15 adjustment. *Baker v. Carr*, 369 U.S. 186, 196 (1962). This case is non-justiciable issue, and
16 given the nature of the recent 3/24/23 order has a very high likelihood of creating inconsistent
17 decisions from 2 different court systems.
18

19
20 Abstention involves several factors. Matter of Chicago, Milwaukee, St. Paul & Pacific R.
21 Co., 6 F.3d 1184, 1189 (7th Cir. 1993). The most salient factor facing the posture of P.L. No.
22 20-134 is the recent 3/24/23 decision by the D.Ct. that incorporated a legal brief that raised
23 Questions 2 and 3, which questions are pending before this High Court in exercise of its original
24 jurisdiction over declaratory judgments involving the Governor. See 7 GCA § 4104. Abstaining
25 promotes the efficient administration of justice. *Id.* (no one factor is determinative and include
26 the efficient administration of a case, presence of another ongoing legal proceeding an
27 important factor, etc.).
28

1 The present dual local and Federal court proceedings pose a significant chance of
2 creating a multiplicity of conflicting legal issues as they both simultaneously proceed. The
3 District Court of Guam case started in 1990, then ended in the affirmation on appeal in 1992,
4 and restarted when the *Dobbs* decision issued on June 24, 2023. *Dobbs v. Jackson Women's*
5 *Health Organization*, 142 S. Ct. 2228 (2022). We respectfully submit that dismissing the instant
6 Petition is the most judicious and prudent manner to proceed at this time.

8 Under comity the Supreme Court of Guam should defer to the U.S. District Court
9 proceedings. *MH Equity Managing Member, LLC v. Sands*, 938 N.E.2d 750, 756-757 (Ind.
10 2010) (*Courts may dismiss a case in order to respect proceedings pending in another state's*
11 *court out of convenience or courtesy*). Comity promotes uniformity of decisions by discouraging
12 repeated litigation on the same question. *Cloverleaf Enterprises, Inc. v. Centaur Rosecroft,*
13 *LLC*, 815 N.E.2d 513, 519 (Ind. 2004). (*Comity also not a matter of right but of good will*).

15 Moreover, no party should be allowed to forum shop in an attempt to pre-empt another
16 Court's action, especially using the Supreme Court of Guam, which is first and foremost an
17 appellate court. 48 USC §§ 1424-1(a)(1) and (2). Compare 7 GCA § 4101. Arguably, better
18 decisions come from parties filing their action below and allowing the lower court to filter, refine
19 and to develop the issues of law so that the Supreme Court of Guam has the benefit of time
20 and reasoned legal decisions on appeal. Arguably, the Supreme Court of Guam's primary role
21 is to distill and develop the "*final word*" on a legal subject. When a party rushes into the
22 Supreme Court of Guam, not only is the Court's valuable time consumed, but conflicting
23 decisions can occur especially when a brethren court "*across the street*" is duly considering the
24 legal issue in the normal course of a trial court, then appellate court review process. Waiting for
25 the Federal courts to act saves judicial resources and will make for a better decision once that
26 litigation is completed.
27
28

1 Never In Guam's history has this type issue more divided our community. The "right to
2 life" vs. "right of choice" advocates appear equally divided and have litigated, and continue to
3 obtain timely rulings from a brethren Court in the U.S. District Court of Guam and the U.S. Ninth
4 Circuit Court of Appeals. The entire issue was re-opened recently when the Supreme Court of
5 Guam issued its *Dobbs* decision last year. *Dobbs v. Jackson Women's Health Organization*,
6 142 S. Ct. 2228 (2022). However, despite focusing simply upon lifting the injunction in the wake
7 of *Dobbs*, the U.S. District Court of Guam touched on other issues that were argued and raised
8 by the Governor's counsel and other parties, including proposed intervenors in the District Court
9 case.
10

11
12 If the injunction remains, Guam should not interject itself at this time into what might
13 become a non-issue, and risk the danger of conflicting with an interpretation reached by the
14 Federal Courts. As can be seen in this case, the U.S. District Court of Guam already ruled
15 upon Question 2 that was pending briefing, oral argument and decision by Guam's local,
16 Supreme Court of Guam. Principles of comity, abstention and justiciability exist now more than
17 ever with the issuance of the federal court's March 24, 2023 decision. If that decision is
18 appealed, decisions from the Ninth Circuit Court of Appeals as well as potentially Supreme
19 Court of the United States might change the precedent and legal reasoning that this Court
20 might apply. Moreover, the facts are constantly changing and the Guam Legislature might
21 simply pass another law repealing P.L. No. 20-134.
22
23

24 Dismissing or staying this discretionary declaratory judgment case is consistent with
25 judicial prudence, the orderly administration of justice, and saving the Court's valuable time and
26 resources until such time as the issues are more developed and other appellate courts act. No
27 urgency exists with the injunction remaining in place, and the risks to the administration of
28 justice in proceeding outweigh the benefits. Moreover, dismissing the case to allow the Judges

1 in the lower court to analyze, define and distill the important legal questions, so that the
2 Supreme Court of Guam can dispassionately and prudentially considers the legal issues, local
3 and Federal laws and render a good decision should take precedence over quickly in a matter
4 of weeks briefing, arguing and not allowing the Justices the benefit of a refined analysis of the
5 issues (which are still changing and developing).
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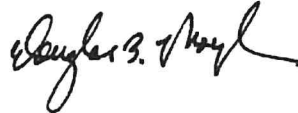
7 The petition should be dismissed.

8
9 **Conclusion.**

10 For the foregoing reasons the declaratory judgment petition should be dismissed.

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12 Respectfully submitted this 3rd day of April, 2023.

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

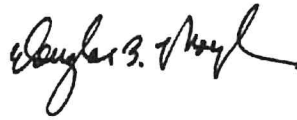
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18 **Douglas B. Moylan**
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Certificate of Service.

I, **Douglas B. Moylan**, certify that I caused one (1) copy of the above document, herein simultaneously e-filed, to be electronically served upon counsel of record in the above case on April 3, 2023 utilizing the Supreme Court of Guam's e-filing service and procedures.

Respectfully submitted this 3rd day of April, 2023.



Douglas B. Moylan



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IN RE:

Supreme Court Case No. CRQ23-001

REQUEST OF LOURDES A. LEON
GUERRERO, I MAGA'HÅGAN GUÅHAN,
RELATIVE TO THE VALIDITY AND
ENFORCEABILITY OF PUBLIC LAW NO.
20-134.

**Declaration of Counsel
Supporting Motion to Dismiss**

I, Douglas B. Moylan, declare:

1. I make this Declaration based upon my personal knowledge and would so testify if asked.

2. I am a member of the Guam Bar and an officer of this Court. I was elected to represent the Government of Guam (People of Guam). I respectfully submit my declaration in support of our concurrently filed Motion to Dismiss.

3. I am a named defendant in U.S. District Court of Guam Civil Case 90-00013, entitled *Guam Society of Obstetricians and Gynecologists, et al. v. Attorney General of Guam et al.* I and my client are also named interested parties in the above petition brought by the Governor of Guam.

Page 1 of 2

E-Received

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Counsel Supporting Motion to Dismiss
Guam Case No. CRQ23-001

1 4. On March 8, 2023 the Governor's, Plaintiff's and proposed intervening parties'
2 counsels filed the attached opposition memorandum in the before identified civil case. A copy of
3 that memorandum is attached hereto and identified as **Exhibit 1**.

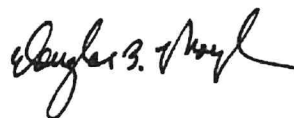
4 5. On March 24, 2023 the U.S. District Court of Guam Judge issued an order denying
5 our Motion to Vacate the Permanent Injunction placed upon Public Law Number 20-134 in 1990.
6 A copy of that order is attached hereto and identified as **Exhibit 2**.

7 6. We respectfully contend that both this AG and my client are prejudiced by now
8 defending two legal actions before two (2) court systems with overlapping legal issues. The
9 recent 3/24/23 decision in the U.S. District Court in the related case Civil Case 90-00013
10 seemingly now touches upon Questions 2 and 3 of this Court.

11 7. We intend to seek reconsideration or appeal of the District Court's 3/24/23 order,
12 on behalf of myself and the People of Guam (Govt. of Guam) because we believe errors of law
13 occurred.

14 8. The Government of Guam and this AG are being prejudiced by having to
15 duplicate and needlessly expend legal time and resources in having to analyze and defend
16 against 2 separate but related actions before the local and Federal Courts as described in the
17 accompanying motion. The Office of the Attorney General and our client the Government of
18 Guam do not have the legal resources to maintain these related cases.

19 I declare, under penalty of perjury, this 3rd day of April, 2023 that the foregoing is true and
20 correct to the best of my knowledge.
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Douglas B. Moylan