



Supreme Court of Guam

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PRESS RELEASE

FOR IMMEDIATE RELEASE – October 31, 2023 – Today, the Supreme Court of Guam, in an opinion authored by Chief Justice Robert J. Torres and joined by Justice *Pro Tempore* John A. Manglona and joined in part by Justice F. Philip Carbullido, decided the certified question of Governor Lourdes A. Leon Guerrero in the case of *In re: Request of Lourdes A. Leon Guerrero, I Maga'hågan Guåhan, Relative to the Validity & Enforceability of Public Law No. 20-134, 2023 Guam 11*. The Governor of Guam, Petitioner, requested that the Supreme Court declare P.L. 20-134 void *ab initio* or that it had been impliedly repealed by subsequent acts of the Guam Legislature. The Supreme Court answered the implied repeal question in the affirmative, finding that Public Law No. 20-134 has been repealed by implication.

In March 1990, the Guam Legislature passed Public Law 20-134, which contained a broad ban on abortion. That same year, the District Court of Guam permanently enjoined the enforcement of P.L. 20-134 and declared it unconstitutional. On appeal, the Ninth Circuit affirmed the permanent injunction. After the Supreme Court of the United States issued its watershed decision in *Dobbs v. Jackson Women's Health Organization*, the Attorney General of Guam moved to dissolve the injunction of Public Law 20-134 in the District Court.

As the Guam Supreme Court has authority to interpret Guam's laws and is "the final arbiter of questions arising through the jurisdiction of the courts of Guam," the Governor filed a Request for Declaratory Judgment under 7 GCA § 4104 on the validity and enforceability of P.L. No. 20-134. The Supreme Court has original jurisdiction under this statute to interpret questions of local law that raise matters of great public importance and affect the powers and duties of the governor and the operation of the Executive Branch. The Governor requested the Supreme Court issue a judgment declaring: (1) that P.L. 20-134 is void forever, such that it cannot be revived following the reversal of *Roe v. Wade*, (2) that the Guam Legislature did not have the authority to pass P.L. 20-134 pursuant to the Organic Act, and P.L. 20-134 is therefore void *ab initio* and invalid, and

(3) that, to the extent P.L. 20-134 is not void or otherwise unenforceable, it has been repealed by implication through subsequent changes in Guam law.

The Supreme Court agreed to hear Questions 2 and 3. The Supreme Court first determined that the Governor had standing and could invoke the court's jurisdiction. The Supreme Court then found that the *ultra vires* and implied-repeal Questions meet the test imposed by section 4104, which requires (1) the issue be a matter of great public importance; (2) resolution through the normal judicial process would cause undue delay; and (3) the subject matter of the inquiry is appropriate for review. The Supreme Court then dismissed the Attorney General's motion to dismiss the declaratory action because the issues were not moot.

After resolving the jurisdictional issues, the Supreme Court turned to the merits of the Governor's request. The Supreme Court explained that an implied repeal occurs when provisions in two acts are in irreconcilable conflict; in such a case, the later statute repeals the earlier statute by implication. The Governor argued that in the years since the District Court of Guam enjoined P.L. 20-134, the Guam Legislature has passed several laws forming a comprehensive statutory scheme covering abortion in Guam, which is irreconcilably in conflict with P.L. 20-134. The Supreme Court found that the near-total ban on abortion imposed by P.L. 20-134 cannot be reconciled with subsequent enactments by the Guam Legislature. The Supreme Court held that because P.L. 20-134 cannot be harmonized with subsequent legislation, P.L. 20-134 has been repealed by implication. Because the Governor presented her Questions in the alternative, the Supreme Court answered only the implied-repeal Question.

Justice F. Philip Carbullido concurred in the judgment and agreed with the jurisdictional analysis and the conclusion that Public Law 20-134 was impliedly repealed. Justice Carbullido wrote separately to state his opinion that the Governor's *ultra vires* Question properly asked the Supreme Court to answer an important question about the scope of the power and authority of the Guam Legislature. Justice Carbullido opined that this question merits an answer, and that because *Roe v. Wade* was the law of the land in 1990, P.L. 20-134 was void *ab initio* (from the beginning), and the Legislature acted *ultra vires* (beyond their legal authority) in passing it.

The Supreme Court entered the following declaratory judgment: "P.L. 20-134 has been impliedly repealed by the Guam Legislature and no longer possesses any force or effect in Guam."

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