



Filed

Supreme Court of Guam, Clerk of Court



LESLIE A. TRAVIS, Legal Counsel

leslie.travis@guam.gov

JEFFREY A. MOOTS, Legal Counsel

jeffrey.moots@guam.gov

OFFICE OF THE GOVERNOR OF GUAM

Ricardo J. Bordallo Governor's Complex

Adelup, Guam 96910

P.O. Box 2950, Hagåtña, Guam 96932

Office: (671) 473-1118 | Fax: (671) 477-4826

Attorneys for the

Honorable Lourdes A. Leon Guerrero

Governor of Guam

IN THE SUPREME COURT OF GUAM

IN RE:

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

SUPREME COURT CASE NO.

CRQ23-001

**OPPOSITION TO ATTORNEY
GENERAL OF GUAM'S
MOTION TO DISMISS**

E-Received

4/10/2023 4:17:39 PM

I. INTRODUCTION

On April 3, 2023, Respondent Douglas B. Moylan¹ filed a Motion to Dismiss (“Moylan Mot. Dismiss”) this matter, “based upon the lack of subject matter jurisdiction and for other legal and equitable considerations.” Moylan Mot. Dismiss at 1. Respondent Moylan’s motion is based on the Order Denying Defendant Attorney General of Guam’s Motion to Vacate Permanent Injunction the District Court of Guam issued on March 24, 2023 (“3/24/2023 Order”) in *Guam Soc. of Obstetricians & Gynecologists v. Leon Guerrero*, Civil Case No. 90-00013 (“the District Court Case”). See Declaration of Counsel Supporting Motion to Dismiss (April 3, 2023) (“Moylan Decl.”) at Exhibit 2. In its 3/24/2023 Order, the District Court denied Respondent Moylan’s Motion to Vacate Permanent Injunction Pursuant to Fed.R.Civ.P. 60(b)(5) and to Dismiss this Case with Prejudice (“Motion to Vacate Injunction”).

¹ In his Motion to Dismiss, Respondent Moylan identifies himself and the party on behalf of whom he is filing as “Respondent Government of Guam (People of Guam) through the Attorney General of Guam,” Moylan Mot. Dismiss at 1, “the People of Guam’s counsel,” *id.* at 1, “the People of Guam”, *id.* at 2, “[t]his Attorney General of Guam and my client, the Government of Guam / People of Guam,” *id.* at 5, and other similar terms. Neither the Government of Guam nor the People of Guam is a party to this matter. In its February 18, 2023 Order (“2/18/2023 Order”), the Court designated the Attorney General of Guam as a Respondent in this matter based on his participation in the District Court of Guam case *Guam Soc. of Obstetricians & Gynecologists v. Leon Guerrero*, Civil Case No. 90-00013, in which he appears in his official capacity as the Attorney General of Guam, not on behalf of the Government of Guam or the People of Guam.

In support of his Motion to Dismiss, Respondent Moylan first argues that because the District Court denied his Motion to Vacate Injunction, there is no longer a pending case or controversy in this case and this court has been divested of subject matter jurisdiction. Moylan Mot. Dismiss at 3. He claims that the 3/24/2023 Order rendered the questions before the court in this matter unripe or moot, and the District Court “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’ argument contained in their opposition memorandum.” Moylan Mot. Dismiss at 2. Respondent Moylan further argues that, due to the shortage of attorneys within the Office of the Attorney General, he and the “Government of Guam/People of Guam” are “being prejudiced by having to maintain 2 separate civil actions that are closely related on P.L. No. 20-134.” *Id.* at 5.

Finally, AG Moylan states that the court should abstain from proceeding in this matter because of the significant risk of conflicting decisions between this court and the federal courts, and that the court should defer to the federal courts in the interest of comity. *Id.* at 6-7. “Dismissing or staying this discretionary declaratory judgment case is consistent with judicial prudence, the orderly administration of justice, and saving the Court’s valuable time and resources until such time as the issues are more developed and other appellate courts act.” *Id.* at 8-9.

Petitioner Lourdes A. Leon Guerrero, *I Maga'hågan Guåhan*, Governor of Guam, opposes Respondent Moylan's Motion to Dismiss. First, the District Court's 3/24/2023 Order does not constitute final adjudication of the District Court Case. Respondent Moylan has not exhausted the availability of appeal, and has, in fact, indicated that he intends to move for reconsideration or seek appeal in the Ninth Circuit Court of Appeals and possibly the United States Supreme Court. Moylan Decl. at ¶ 7. The fact that the District Court has denied Respondent Moylan's Motion to Vacate Injunction, without exhaustion of the potential appeal, does not impact the criteria in determining the court's jurisdiction in a 7 GCA § 4104 review. Likewise, a "case or controversy," which Respondent Moylan claims is now lacking in this matter, is not among the jurisdictional factors in a Section 4104 case.

Moreover, the 3/24/2023 Order did not evaluate the merits of the questions before the court in this matter. Rather, the District Court denied AG Moylan's Motion to Vacate Injunction for failure to meet his burden to obtain relief from the permanent injunction pursuant to Fed.R.Civ.P. 60(b)(5) because he failed to even *counter* substantive arguments Plaintiffs raised in opposition to his Motion to Vacate Injunction.

Respondent Moylan's argument that his office is short-staffed and is "prejudiced" by having to maintain separate actions before this court and the District Court has no bearing on this court's jurisdiction over this matter, nor does the fact

that parties in the District Court Case have raised issues the court is considering in this matter in opposing AG Moylan’s Motion to Vacate Injunction. As the court held in its 2/18/2023 Order, the two questions pending before the court, whether the Legislature acted *ultra vires* its Organic Act authority in passing P.L. 20-134 and whether P.L. 20-134 has been impliedly repealed by subsequent legislation passed in the intervening years are important issues of *local* law, for which *this* court is the ultimate arbiter. 2/18/2023 Order at 5.

To the extent that there is a risk of conflicting decisions between the courts on issues of local law, it is the *federal* courts that should abstain so as to ensure their decisions are not relegated to the status of advisory opinions in the event the highest state court issues a conflicting but controlling decision on a matter of state law. *See Moore v. Sims*, 442 U.S. 415, 428, 99 S.Ct. 2371, 60 L.Ed.2d 994 (1979) (“[T]he *Pullman* concern [is] that a federal court will be forced to interpret state law without the benefit of state-court consideration and ... render[] the federal-court decision advisory and the litigation underlying it meaningless.”). Some federal courts have been held to have abused their discretion for not abstaining where a definitive ruling from state courts on issues of state law would invalidate a regulation and moot pending constitutional issues. *See Cedar Shake & Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 626 (9th Cir. 1993).

The arguments Respondent Moylan has offered in support of his claim that the court has been divested of jurisdiction by the District Court's 3/24/2023 Order, specifically, that the court should otherwise dismiss this matter for "equitable" reasons related to staffing issues at his office, or apply a reverse-*Pullman* abstention on itself, do not justify dismissal of a declaratory relief action under 7 GCA § 4104. Accordingly, the court should deny Respondent Moylan's motion.

II. RELEVANT FACTS

A. District Court Case

On February 1, 2023, Respondent Moylan filed a Motion to Vacate Injunction in the District Court Case. In his motion, Respondent Moylan sought an order vacating the permanent injunction the District Court issued on August 23, 1990, enjoining the enforcement of P.L. 20-134. Respondent requested *vacatur* on the basis that the U.S. Supreme Court, in *Dobbs v. Jackson Women's Health Org.*, 241 S.Ct. 2228 (2022), had reversed *Roe v. Wade*, 410 U.S. 113, 122, 93 S. Ct. 705, 711 (1973), the landmark case interpreting abortion rights implied in the Fourteenth Amendment for nearly fifty (50) years, upon which the District Court relied in its decision entering the permanent injunction. Respondent Moylan claimed he was "duty-bound" to seek dissolution of the injunction. *See* Req. Declaratory J., Ex. 2.

Several parties opposed Respondent Moylan's motion, including (1) Petitioner Leon Guerrero; (2) Defendant Lillian Perez-Posadas, M.N., R.N.,

Administrator of the Guam Memorial Hospital; and (3) Plaintiffs and Proposed Intervenors (“Plaintiffs”). *See* Moylan Decl. at Exhibit 2 at 2-3. While several of the arguments the other parties made opposing Respondent Moylan’s Motion to Vacate Injunction overlapped, Plaintiffs uniquely argued that P.L. 20-134 was void *ab initio* because the Guam Legislature lacked the authority to enact laws that violated the U.S. Constitution. *Id.* at 3. The other parties opposing Respondent Moylan’s motion did not raise the *ultra vires* argument.

On March 22, 2023, Respondent Moylan filed a consolidated reply to the oppositions filed by Defendants Leon Guerrero and Perez-Posadas, but did not respond to the *ultra vires* issue raised in Plaintiffs opposition.

On March 24, 2023, the District Court issued its Order denying Respondent Moylan’s Motion to Vacate Injunction. *See* Moylan Decl. at Exhibit 2. The 3/24/2023 Order was brief – the District Court held in relevant part:

While Defendant AG filed a response to the oppositions filed by Defendants Governor and GMH Administrator, Defendant AG’s Reply did not respond to issues raised in the Plaintiffs’ Opposition. Based on Defendant AG’s lack of response to Plaintiffs’ arguments, especially those that did not overlap with the arguments raised by Defendants Governor and GMH Administrator, it is reasonable to presume that Defendant AG takes no position on their arguments or is not contesting them...While Defendant AG argues that the legal basis for the permanent injunction no longer exists, Defendant AG failed to address whether the change in law in *Dobbs* warrants vacatur of the permanent injunction in its entirety. As Plaintiffs have argued, “irrespective of *Dobbs* or any other Supreme Court decision concerning abortion issued after Guam Public Law 20-134 was enacted, the public law was a legal nullity the moment it was passed and can have no force or effect today.

Defendant AG has not refuted this argument, and having reviewed the relevant statutes and the legal authority provided by Plaintiffs in their opposition, to which Defendant AG did not respond, the court finds that Defendant AG has not met his burden under Rule 60(b)(5).

Id. at 3-4.

On April 3, 2023, Respondent Moylan filed his Motion to Dismiss this matter in light of the District Court's 3/24/2023 Order, arguing that the denial of his motion eroded the court's subject matter jurisdiction in this case, resulted in the lack of a case or controversy, or otherwise mooted the questions raised or rendered them unripe. Respondent Moylan further argued that the court should dismiss this matter for equitable reasons or abstain in deference to the federal courts. Respondent has also indicated an intent to either seek reconsideration of the District Court's order, or to appeal it to the Ninth Circuit Court of Appeals. Moylan Decl. at ¶ 7.

III. ARGUMENT

A. The District Court's 3/24/2023 Order Does Not Impact the Court's Continued Jurisdiction in This Matter

1. The Questions Raised in this Matter Continue to Meet Jurisdictional Requirements for Review Pursuant to 7 GCA § 4104

In its 2/18/2023 Order, the court evaluated at length whether the issues Petitioner raised in her Request for Declaratory Judgment met the following strict jurisdictional requirements of 7 GCA § 4104: (1) the issue raised must be of great public importance; (2) the issue must be such that its resolution through the normal

process of law is inappropriate as it would cause undue delay; and (3) the subject matter of the inquiry is appropriate for section 4104 review. 2/18/2023 Order at 3-5.

The court held that two of the questions Petitioner raised met these jurisdictional requirements: (1) whether the Organic Act of Guam, as it existed in 1990, authorized the Guam Legislature to pass an unconstitutional law, or the Guam Legislature acted *ultra vires* in passing Public Law 20-134 (“Question 2”); and (2) to the extent P.L. 20-134 is not void or otherwise unenforceable, has it been repealed by implication through subsequent changes in Guam law (“Question 3”). *Id.* at 5-6.

The court held that both questions satisfied the requirement of being matters of great public importance. Specifically, the court found that the issues carried “implications for the Legislature, the Executive Branch and subordinate agencies, and the Judiciary.” *Id.* at 3. The court noted a particular impact on executive branch agencies charged with the enforcement of the law, who may be permitted to arrest individuals for conduct proscribed under the act, resulting in significant consequences. *Id.* The court further found that the questions also concerned the power of the Legislature, and when it may legislate. “Whether the Guam Legislature violated the Organic Act in passing an unconstitutional law is a matter of considerable importance, as is whether the Legislature impliedly repealed P.L. 20-134 through several subsequent enactments.” *Id.*

The court also found that the delay in answering Questions 2 and 3 through normal process of law would be notable, specifically observing:

First, the litigation surrounding P.L. 20-134 is unlikely to end at the District Court. Rather, an appeal by the losing side will almost assuredly follow. During that time, there will be great uncertainty in Guam about the status of P.L. 20-134 and about the legality of abortion. Assuming the federal courts eventually dissolve the injunction on federal constitutional grounds, this matter would then be litigated in Guam courts on matters of local law. Guam residents, healthcare providers, and law enforcement agencies would suffer from lack of clarity regarding their rights and obligations. At worst, a resident of Guam could be held liable for conduct ultimately declared legal.

One purpose of section 4104 is to “avoid the necessity of creating harm to some party in order to have a decision.” 7 GCA § 4104 cmt. The present situation comports with the statutory purpose. Assuming the Governor is right, by not adjudicating the present Questions, this court could let some harm come to Guam residents only then to hold the statute had no force. This risk of potential harm thus bolsters our decision to hear Questions 2 and 3.

Id. at 4. Finally, the court found that the questions were appropriate topics for Section 4104 review as they involve review of separation of powers issues and interpretations of local law. *Id.*

In his Motion to Dismiss, Respondent Moylan argues that the court has been divested of jurisdiction in this matter by the District Court’s 3/24/2023 Order. However, Respondent Moylan has not engaged the requirements for jurisdiction in a Section 4104 review as this court applied in its 2/18/2023 Order. Respondent Moylan neither identifies nor provides analysis for any of the requirements, and does not specifically discuss which of the three Section 4104 requirements are affected

by the District Court's order, if any. Instead, Respondent Moylan broadly argues that "[t]o the extent that this motion addresses a jurisdiction issue earlier ruled upon in the High Court's 2/18/2023 order, the People of Guam (sic) seek reconsideration based upon the recent *changing* underlying events occurring in the related Federal Court civil case." Moylan Mot. Dismiss at 2.

None of the Section 4104 requirements are affected by the District Court's 3/24/2023 Order, which denied Respondent Moylan's Motion to Vacate Injunction on the basis of his failure to meet the applicable burden under Fed.R.Civ.P. 60(b)(5). The District Court did not resolve the merits of issues pending before this court. Respondent Moylan's claim that the District Court "addressed Questions 2 and 3 thereby incorporating into its order the plaintiff and proposed intervenors' arguments contained in their opposition memorandum," Moylan Mot. Dismiss at 4, is baseless. The District Court's 3/24/2023 Order did not "incorporate" plaintiff and proposed intervenors' arguments. Rather, the District Court referenced the arguments to illustrate that Respondent Moylan had neglected to refute them, thereby failing to meet his burden under Fed.R.Civ.P. 60(b)(5). 3/24/2023 Order at 3-4.

As the court explained in its 2/18/2023 Order, the jurisdictional requirements under 7 GCA § 4101 include: (1) the issue raised must be a matter of great public importance; (2) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay; and (3) the subject matter of

the inquiry is appropriate for section 4104 review. 2/18/2023 Order at 3-5. Question 2 seeks a determination of whether the 20th Guam Legislature exceeded its Organic Act authority in passing P.L. 20-134, where the Organic Act of Guam limits legislative authority to matters not inconsistent with the Organic Act, including the due process rights guaranteed therein. Question 3 asks whether P.L. 20-134 has been impliedly repealed by legislation the Guam Legislature subsequently passed which regulate the provision of lawful abortion care in Guam under specific circumstances.

Questions 2 and 3 continue to meet the jurisdictional requirements for Section 4104 review. First, both questions remain issues of great public importance. Whether the Guam Legislature acted *ultra vires* in enacting P.L. 20-134, which directly implicates concerns over “the power of the Legislature and when it may legislate,” and whether the Legislature impliedly repealed P.L. 20-134 remain matters “of considerable importance.” 2/18/2023 Order at 3. Respondent Moylan’s position that the 3/24/2023 Order declining to lift the permanent injunction somehow moots this matter presumes that the questions the court is reviewing in this matter are only important to the extent they may be used to deny his Motion to Vacate Injunction, and not because the questions are intrinsically important, which they are.

Assuming *arguendo* that Respondent Moylan’s argument that the questions before the court in this matter are *only* important to the extent they may impact the permanent injunction, that argument similarly does not support dismissal of this

matter based on the District Court's denial of the Motion to Vacate Injunction. Because the 3/24/2023 Order does not represent a final adjudication on the merits of the Motion to Vacate Injunction, and Respondent Moylan has not exhausted his right to appeal, it would not be proper to dismiss this action. Respondent Moylan has indicated that he will move for reconsideration or appeal the District Court's 3/24/2023 Order. Moylan Decl. at ¶ 7.

Further, the second Section 4104 requirement, undue delay inherent through the normal process of law, likewise continues to be met. If successful in his bid for reconsideration or appeal, the matter will be further remanded to the District Court for resolution on the merits, which will result in potential delay and lead to further appellate review of such determination on the merits. In its 2/18/2023 Order the court noted this likelihood, observing that "the litigation surrounding P.L. 20-134 is unlikely to end at the District Court. Rather, an appeal by the losing side will almost assuredly follow. During that time, there will be great uncertainty in Guam about the status of P.L. 20-134 and about the legality of abortion..." 2/18/2023 Order at 4.

The circumstances in this case are markedly different from the circumstances in *In re Request of Gov. Gutierrez for a Declaratory Judgment*, 1996 Guam 4. In *In re Gutierrez*, the court declined to exercise jurisdiction over the governor's request for declaratory judgment, finding that the issues submitted for review had already been litigated in the Superior Court of Guam, were available for this court's review

on direct appeal, and in fact an appeal was already pending. *Id.* at ¶ 8. Under those circumstances, the court determined that an action for declaratory judgment may not result in a faster resolution than the pending appeal might yield, and accordingly, the court found the questions did not meet the Section 4104 requirement of significant delay through ordinary course of the pending appeal, and therefore, the court could not exercise jurisdiction over the governor’s request. *Id.* at ¶¶ 9, 15.

The third Section 4104 requirement – appropriateness of the issues for Section 4104 review – continues to be met. Question 2 constitutes a separation of powers question and Question 3 requests an interpretation of local law, both topics that the court has determined were appropriate for declaratory judgment.

Accordingly, Respondent Moylan has not demonstrated that the jurisdictional requirements for Section 4104 review have been displaced by the District Court’s 3/24/2023. The court should therefore deny the Motion to Dismiss on this basis.

2. “Case or Controversy” Is Not a Requirement for Section 4104 Review

In his Motion to Dismiss, Respondent Moylan repeatedly argues that this case lacks a “case or controversy” in the advent of the District Court’s 3/24/2023 Order, such that the court should dismiss the action for lack of subject matter jurisdiction. “Case or controversy” is notably *not* a requirement for Section 4104 jurisdiction. *See* 7 GCA § 4104 cmt (“Under the usual rule, no case may be brought until it has ripened into a ‘case or controversy’). This section will permit important issues to be

decided before that time and will avoid the necessity of creating harm to some party in order to have a decision.); *In re Request of Gutierrez*, 2002 Guam 1 ¶16 (“We recognize that there are evils which the issuance of a declaratory judgment pursuant to section 4104 can avoid...specifically, hearing a matter before it has ripened into a true case or controversy avoids the necessity of creating harm to some party in order to have a decision.” (cleaned up)).

In support of his argument that Section 4104 jurisdiction requires a “case or controversy,” Respondent Moylan cites *Brause v. State, Dep’t of Health & Soc. Servs.*, 21 P.3d 357, 358 (Alaska 2001). See Moylan Mot. Dismiss at 5 (discussing that “[t]he Court’s role is to adjudicate an adversarial case brought before it, either by a civil or criminal pleading, not to decide esoteric facts devoid an opposing party with something to loose (sic) or gain.”). *Brause* is inapposite.

In *Brause*, the court reviewed whether superior courts in Alaska had statutory authority to issue declaratory judgments in the absence of an “actual controversy,” which the court determined encompassed other considerations including lack of standing, mootness, and lack of ripeness. *Brause*, 21 P.3d at 358. The *Brause* court ultimately affirmed the superior court’s judgment, finding that the questions presented by plaintiffs, a same-sex couple questioning whether they can constitutionally be denied benefits available by law only to married people, were not ripe where they did not allege that they were denied specific benefits. *Id.* at 357-358.

However, AS 22.10.020(g), the Alaska statute at issue in *Brause* that granted superior courts the power to issue declaratory judgments, specifically provides in relevant part that “[i]n case of an actual controversy in the state, the superior court, upon the filing of an appropriate pleading, may declare the rights and legal relations of an interested party seeking the declaration, whether or not further relief is or could be sought. Alaska Stat. Ann. § 22.10.020 (West) (emphasis added). In contrast, 7 GCA § 4104 *does not* require an “actual controversy.” This court is expressly authorized to consider important issues *before* they ripen into a “case or controversy.”

Respondent Moylan’s reliance on *People v. Blas*, 2016 Guam 19 is similarly misplaced. Though Respondent Moylan’s parenthetical for *Blas* proffers that the “exercise of [the] Supreme Court of Guam’s power [is] premised upon existence of the ‘case or controversy’ requirement,” Moylan Mot. Dismiss at 5, this statement does not accurately represent the holding in *Blas*.

Blas involved interlocutory review of a trial court’s denial of the defendant’s request for a continuance on his trial, which he requested to await the return of a witness from off-island travel. *Blas*, 2016 Guam 19 ¶ 4. The *Blas* court considered at the outset whether the interlocutory appeal was moot where the stay was ultimately issued and the witness had returned to Guam during the pendency of the appeal. In its review of the mootness issue, the court referenced *Tumon Partners*,

LLC. v. Shin, 2008 Guam 15 ¶ 37, for the proposition that “the existence of an actual controversy is an essential requisite to *appellate* jurisdiction.” *Blas, supra* at ¶ 12. Accordingly, the *Blas* court determined, an *appeal* should be dismissed as moot “when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant.” *Blas, supra* at ¶ 14.

Again, the actual controversy requirement inherent in interlocutory review under 7 GCA § 3108(b) is *not* present in an original declaratory judgment matter brought under 7 GCA § 4104. Respondent Moylan’s insistence on inserting a controversy requirement into the jurisdictional requirements in a Section 4104 review has no basis or supporting authority and should not be sustained.

3. The Court Should Not Dismiss This Matter Due to Staffing Challenges at Office of the Attorney General

In furtherance of his claim that the court lacks subject matter jurisdiction over this matter, Respondent Moylan argues:

Furthermore, This (sic) Attorney General of Guam and my client, the Government of Guam/People of Guam, respectfully contend that we are being ***prejudiced*** by having to maintain 2 separate civil actions that are closely related on P.L. No. 20-134. Based upon the limited size of the Guam Bar and scarcity of attorneys, assigning attorneys to litigate 2 cases with similar issues depletes the time and money resources at the AG’s Office, which is currently recruiting off Island (sic) to secure sufficient attorneys to handle all our legal work. Moreover, the two (2) cases addressing P.L. No. 20-134 have overlapping legal issues that are now being decided and have a great potential of court trial and appellate decisions in the 2 the (sic) local and Federal court systems being in conflict.

Moylan Mot. Dismiss at 5.

Respondent Moylan's decision to dedicate his office resources to other matters is not grounds to dismiss this action or any action over which the court has jurisdiction. Respondent has not offered a shred of authority for his theory that his inability to recruit or retain attorneys should somehow result in the dismissal of valid actions he is defending before the court. Accordingly, the court should not dismiss this matter based on Respondent Moylan's office priorities.

B. The Court Should Not Abstain or Defer to Federal Courts on Questions of Guam Law

Respondent Moylan has alternatively requested that the court "exercise its inherent power to abstain observing comity between court systems," and dismiss or stay this case because it is purportedly non-justiciable and poses a significant risk of creating conflicting decision with the federal courts. Moylan Mot. Dismiss at 6.

However, to the extent the issues in this matter overlap with issues in the District Court Case, it is the *federal* courts that should abstain because the questions involve significant and novel issues of *Guam* law. *See Riley v. Kennedy*, 553 U.S. 406, 425, 128 S. Ct. 1970, 1985, 170 L. Ed. 2d 837 (2008) (holding that "[a] State's highest court is unquestionably the ultimate expositor of state law," and "the prerogative of the Alabama Supreme Court to say what Alabama law is merits respect in federal forums.") (internal quotations omitted). Because definitive resolution of the local law issues, which is ultimately within this court's purview,

would obviate the need for the District Court to resolve the constitutional issues pending in the District Court Case, which it must resolve if it is to reach the merits of Respondent Moylan's Motion to Vacate Injunction, it is appropriate for the District Court to abstain from further proceedings in the District Court Case pending resolution of this matter, pursuant to *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500, 61 S. Ct. 643, 645, 85 L. Ed. 971 (1941) (abstaining from further proceedings when the existence of a federal constitutional issue depended on a railroad commission order that was potentially invalid under state law). *See also Planned Parenthood of Greater Texas Surgical Health Servs. v. City of Lubbock, Texas*, 542 F. Supp. 3d 465, 489 (N.D. Tex. 2021) (abstaining to allow state courts to address whether city ordinance including private enforcement of abortion restrictions was valid under state law).

In fact, the Ninth Circuit has held that a district court's failure to abstain where a state law ruling may invalidate a regulation or ordinance and moot the constitutional issue before the district court would constitute an abuse of discretion. *See Cedar Shake & Shingle Bureau v. City of Los Angeles*, 997 F.2d 620, 626 (9th Cir. 1993) (finding that district court abused discretion in failing to abstain where definitive state court ruling on whether city ordinance was invalid would obviate the need for a constitutional ruling in federal court).

The converse is not true. The risk of inconsistent decisions between this court and the federal courts does not justify an abstention by this court in deference to the federal courts on interpretations of Guam law. Again, Respondent Moylan has not offered authority for his inventive argument that federal courts are entitled to such deference on matters of local law.

Respondent Moylan further argues that this matter is better suited to slow litigation in due course before trial courts:

...[D]ismissing the case to allow the Judges in the lower court to analyze define and distill the important legal questions, so that the Supreme Court of Guam can dispassionately and prudentially considers (sic) the legal issues, local and Federal laws and render a good decision should take precedence over quickly in a matter of weeks briefing, arguing (sic) and not allowing the Justices the benefit of a refined analysis of the issues (which are still changing and developing).

Moylan Mot. Dismiss at 8-9. However, “7 GCA § 4104 was intended to provide a fast track for the initiation of cases before the Supreme Court of Guam so that rulings could be obtained on important issues of law without time consuming litigation in the inferior court.” *In re Request of Gutierrez*, 2002 Guam 1 ¶ 8.

This court has already recognized the reasons that this case should not be relegated to the delay inherent in the due course litigation process:

One purpose of section 4104 is to “avoid the necessity of creating harm to some party in order to have a decision.” 7 GCA § 4104 cmt. The present situation comports with the statutory purpose. Assuming the Governor is right, by not adjudicating the present Questions, this court could let some harm come to Guam residents only then to hold the

statute had no force. This risk of potential harm thus bolsters our decision to hear Questions 2 and 3.

2/18/2023 Order at 4.

Respondent Moylan's proposed course of action would create uncertainty in the community, among government agencies, and within the judiciary of the respective rights and responsibilities of parties affected by P.L. 20-134 and subsequent legislation affecting the provision of abortion care in Guam. This is precisely the purpose for which Section 4104 was created, and its streamlined process should not be cast aside in deference to the federal courts, who do not have this court's ultimate authority to adjudicate issues of Guam law.

IV. CONCLUSION

For the foregoing reasons, the court should deny Respondent Moylan's Motion to Dismiss.

Respectfully submitted this 10th day of April, 2023.

OFFICE OF THE GOVERNOR OF GUAM

By: /s/ Leslie A. Travis

LESLIE A. TRAVIS

JEFFREY A. MOOTS

Attorneys for Petitioner

Lourdes A. Leon Guerrero

Governor of Guam



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Office of the Attorney General
Douglas B. Moylan
Attorney General of Guam
Civil Division
590 S. Marine Corps Drive
ITC Bldg., Ste. 801 • Tamuning, Guam 96913 • USA
671-475-3406 • 671-477-3390 (fax)
efile@oagguam.org • www.oagguam.org

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,) **Reply to Gov's. Opposition to**
RELATIVE TO THE VALIDITY AND) **Motion to Dismiss**
ENFORCEABILITY OF PUBLIC LAW NO.)
20-134.)
)
)
)

Petitioner's April 10, 2023 "opposition" brief¹ fails to meaningfully respond to fundamental problems with the § 4104 action proceeding. 7 GCA § 4104.

Contrary to Petitioner's flawed reading, the Supreme Court of Guam's February 18, 2023 order specifically stated on page 4, lines 6-8,

6 || passed, and the Governor's Question would be answered. If the court declines to dissolve the
7 || injunction, the status quo would be unchanged, and declaratory relief from this court would be
8 || unnecessary. Thus, we must decline to answer this Question.

In fact, as mentioned in the order, if the District Court of Guam "*declined to dissolve the injunction,*" then petitioner's declaratory relief would be unnecessary. Such is the case now.

¹ The filing should have been entitled "response" and violates the 20 page limit for an opposition to a motion. Guam R. App. P. 6(a)(3) and (f)(2).

E-Received
4/12/2023 7:40:51 AM

osition to Motion to Dismiss
Guam Case No. CRQ23-001

1 In addition, Petitioner's response argues no case or controversy need apply to § 4104
2 declaratory judgment petitions. However, the Supreme Court of Guam has interpreted § 4104
3 petitions by "*strictly construing*" § 4104, and chosen to stay away from questions that involve a
4 "*political struggle*" between the other 2 branches of government. *In re Request of Governor*
5 *Carl T.C. Gutierrez*, 2002 Guam 1 ¶ 13. This High Court has plainly stated,

7 **[14] Strict construction should be particularly applied with regard to**
8 **section 4104 because the statute is a means for parties to bypass the**
9 **normal processes of law. Issues regarding the constitutionality of a**
10 **statue, whenever possible, ought be left to the normal processes of**
11 **law.** As recognized by the Supreme Court of Florida:

12 This court has many times declined to pass upon the
13 constitutionality of a statute in rendering advisory opinions,
14 particularly where such a test can best be accomplished in
15 adversary proceedings appropriately briefed and buttressed by
16 argument of counsel. This policy is the product of the historical
17 recognition of the presumed constitutionality of an act of the
18 Legislature until such presumption is set at rest by a court of
19 competent jurisdiction in a proper adversarial proceeding.

20 *In re Advisory Opinion to the Governor*, 509 So. 2d at 301 (Fla. 1987); see
21 also *Opinion to the House of Representatives*, 264 A.2d 920, 921 (R.I.
22 1970) ("every reasonable intendment is made in favor of the
23 constitutionality of a duly enacted statute and that such a statute is
24 presumed to be constitutional until the contrary is established in
25 appropriate litigation").

26 **[16] We recognize that there are evils which the issuance of a declaratory**
27 **judgment pursuant to section 4104 can avoid. See 7 GCA § 4104 cmt.**
28 **Specifically, hearing a matter before it has ripened into a true case or**
controversy "avoid[s] the necessity of creating harm to some party in order
to have a decision." *Id.*; see also Note, *Advisory Opinions on the*
Constitutionality of Statutes, 69 HARV. L. REV. 1302, 1304-05 (1956)
(discussing how an advisory opinion can prevent the enactment of an
unconstitutional statute, avoiding both the time and expense of
challenging litigation and reliance by the general public). However, we
also recognize the dangers inherent in turning the courtroom into a forum
for political debate. This court is not the arena within which the executive
and legislative branches should seek to wage their political battles.
Therefore, we approach section 4104 as most courts have approached
their respective advisory opinion laws in the past, cautiously and
conservatively. While we will not turn away from reviewing those issues

1 properly before us, neither will we permit matters that fall outside the plain
2 language of section 4104 to be brought in on the shoulders of broad
3 interpretation. (Emphasis added).

4 *In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1 ¶¶ 14 and 16. This case presents
5 the exact “*political struggle*” to the Supreme Court of Guam of the continuing political
6 controversy between the Guam Legislative and Executive Branches of this government over
7 allowing abortions on Guam. Each time the Guam Legislature hears a pro-life bill, not only do
8 protests form around the Guam Legislature representing both proponents and opponents, but
9 Petitioner ultimately vetoes those bills.

10 This High Court should take judicial notice of this fact, specifically the struggle of the 36
11 and now 37th Guam Legislatures to pass and only to have Petitioner Governor veto anti-
12 abortion legislations. Under *In re Request of Governor Carl T.C. Gutierrez* the Supreme Court
13 of Guam should properly dismiss this case because now it *not only* lacks any case or
14 controversy with the 3/24/23 denial of the AG’s motion to lift the injunction in the U.S. District
15 Court of Guam, but because the 2 other branches of government are actively fighting one
16 another on this political question. *Id.*

17 Moreover, this petition seeks to find P.L. No. 20-134 as being the equivalent of
18 “**unconstitutional**” and to **void it** (strike it) using a § 4104 action 7 GCA § 4104. As plainly
19 stated in *In re Request of Governor Carl T.C. Gutierrez*,

20
21
22
23 **[17]** Here, the Governor is asking the court, not to draw meaning from the
24 language of section 7, but to declare the provision unconstitutional and
25 thereby void in its entirety. “An unconstitutional act is not a law; it
26 confers no rights; it imposes no duties; it affords no protection; it creates
27 no office; it is, in legal contemplation, as inoperative as though it had
28 never been passed.” *In re Opinion of the Justices*, 168 N.E. 536, 538
(Mass. 1929) (quoting *Norton v. Shelby County*, 118 U.S. 425, 442, 6 S.
Ct. 1121, 1125 (1886)). By contrast, interpretation, in its plain meaning, is
“[t]he process of determining what something, esp. the law or a legal
document, means; the ascertainment of meaning.” BLACK’S LAW
DICTIONARY 824 (7th ed. 1999). When interpreting a statute, the court’s

1 task is to determine the intent of the legislature and give the statute
2 meaning without altering or amending the statute's scope. See *In re*
3 *Advisory Opinion to the Governor*, 504 A.2d 456, 459 (R.I. 1986) ("Our
4 task in construing any statute is to effectuate and establish the intent of
5 the Legislature."). We find that a request challenging the constitutionality
6 of a statute does not present the same inquiry as a request seeking the
interpretation of a statute. Thus, the Governor's request for a judgment
declaring section 7 unconstitutional does not qualify as a request for an
interpretation of law under section 4104. (Emphasis added).

7 *In re Request of Governor Carl T.C. Gutierrez*, 2002 Guam 1 ¶ 17. The People of Guam
8 deserve to have the legal issues raising the Constitutionality / enforceability of P.L. No. 20-134
9 properly presented before the Superior Court of Guam and dispassionately resolved on appeal,
10 if necessary, before the Supreme Court of Guam. *Id.* The Supreme Court of Guam should
11 properly dismiss this § 4104 petition.
12

13 Finally, Petitioner contends that Respondent is only in this case representing himself as
14 Attorney General (without a client). Petitioner's 4/10/23 "Opposition" Brief, p2, FN1. Petitioner
15 essentially contends that the Government of Guam / People of Guam are not appearing. The
16 Attorney General is the Chief Legal Officer of the Government of Guam. 48 USC §
17 1421g(d)(1). Petitioner argues that no one is representing the Government of Guam in this §
18 4104 petition. However the People of Guam / Government of Guam is the party who's rights,
19 duties and obligations are fundamentally at stake, and who risk the loss of the benefits of P.L.
20 No. 20-134. We understand that under the High Court's 2/18/23 order (p 6, lines 7-9) in this
21 case, that the AG was designated in his role as the attorney for the Government of Guam.
22 Otherwise, the Government of Guam should have been separately identified to submit a legal
23 brief, as was the case for the Guam Legislature, who appear to be the real parties in interest
24 that are necessary parties for the Court to properly exercise personal jurisdiction².
25
26
27

28 The petition should properly be dismissed.

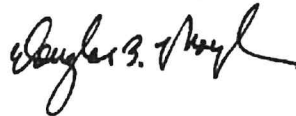
² We continue to contend that no subject matter jurisdiction exists, and the case should be dismissed also for other grounds.

1 **Conclusion.**

2 For the foregoing reasons the declaratory judgment petition should properly be dismissed.

3
4 Respectfully submitted this 12th day of April, 2023.

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

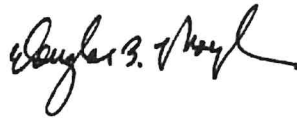
7 

8
9
10 **Douglas B. Moylan**
11 Attorneys for the Government of Guam (People of Guam)

1 **Certificate of Service.**

2 I, **Douglas B. Moylan**, certify that I caused one (1) copy of the above document, herein
3 simultaneously e-filed, to be electronically served upon counsel of record in the above case on
4 April 12, 2023 utilizing the Supreme Court of Guam's e-filing service and procedures.
5

6 Respectfully submitted this 12th day of April, 2023.

7
8 

9
10
11 **Douglas B. Moylan**
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28