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TRUST TERRITORY OF THE PACIFIC ISLANDS
TRIAL DIVISION OF THE HIGH COURT
MARIANA ISLANDS DISTRICT

JOSE P. MAFNAS,
On behalf of himself and
all others similarly situated,

Plaintiff,

) CIVIL ACTION NO. 17-75

-v-

MARIANAS POLITICAL STATUS COMMISSION,

and

MARIANA ISLANDS DISTRICT LEGISLATURE,

and

TRUST TERRITORY OF THE PACIFIC ISLANDS,

Defendants

C O M P L A I N T

1. Plaintiff is JOSE P. MAFNAS, a citizen of the Trust Territory of the Pacific Islands and a resident of Saipan, Mariana Islands District, on behalf of himself and all others similarly situated.

2. Defendants are the MARIANAS POLITICAL STATUS COMMISSION, body public and corporate created under and pursuant to Act No. 2-1972 of the Mariana Islands District Legislature; the MARIANA ISLANDS DISTRICT LEGISLATURE, a district legislature of the Trust Territory of the Pacific Islands, chartered on January 7, 1963, by M. W. Coding, former High Commissioner of the Trust Territory of the Pacific Islands; and the TRUST TERRITORY OF THE PACIFIC ISLANDS.

3. Jurisdiction is vested in this Honorable Court by virtue of the provisions of 5 T. T. C. 53, 6 T. T. C. 251 (1) (b), and other Sections of the Trust Territory Code, and of Rule 5 of the Rules of Civil Procedure.

4. On July 18, 1947, by Joint Resolution of the United States

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Congress, 61 Stat. 397, the United States of America and the United Nations Security Council entered into a Trusteeship Agreement, previously approved by the said Security Council under the provisions of Chapter XIII of the United Nations Charter on April 2, 1947. The said Trusteeship Agreement created the Trust Territory of the Pacific Islands, consisting of all those islands formerly under mandate to Japan, and constituted the United States as Administering Authority. Article 3 of the said Agreement provided,

"The Administering Authority shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement..."

Article 6 of the said Agreement provided further,

"...(T)he Administering Authority shall:

1. foster the development of such political institutions as are suited to the trust territory and shall promote the development of the inhabitants of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely-expressed wishes of the peoples concerned..."

The said Agreement was at all times relevant hereto and is now in full force and effect.

4. On June 30, 1954, the United States of America, as Administering Authority and in furtherance of its obligations and within its authority as such, provided by law that

"Until Congress shall further provide for the Government of the Trust Territory of the Pacific Islands, all executive, legislative, and judicial authority necessary for the civil administration of the Trust Territory shall continue to be vested in such person or persons and shall be exercised in such manner and through such agency or agencies as the President of the United States may direct or authorize."

The said law was at all times relevant hereto and is now in full force and effect.

6. Following a series of Executive Orders concerning the Administration of the Trust Territory, President John Fitzgerald

Kennedy, on May 7, 1962; issued Executive Order No. 11021,

provided in part as follows:

"The responsibility for the administration of civil government in all of the trust territory, and all executive, legislative, and judicial authority necessary for that administration, are hereby vested in the Secretary of the Interior... (who) shall take such actions as may be necessary and appropriate to carry out the obligations assumed by the United States as the administering authority of the trust territory under the terms of the trusteeship agreement and the Charter of the United Nations...

"The executive, legislative, and judicial authority provided for... may be exercised through such officers or employees of the Department of the Interior, or through such other persons under the jurisdiction of the Secretary of the Interior, as the Secretary may designate, and shall be exercised in such manner as the Secretary, or any person or persons acting under the authority of the Secretary, may direct or authorize."

The said Order was at all times relevant hereto and is now in full force and effect.

7. Following the issuance of the Executive Order mentioned in Paragraph 5 of this Complaint, a series of Departmental Orders was issued by the Secretary to provide for the civil administration of the Trust Territory. Included in this series was Department of the Interior Order No. 2876, dated January 30, 1964, as amended, and Department of the Interior Order No. 2882, dated September 28, 1964, as amended. Department of the Interior Order No. 2882 created and established the Congress of Micronesia as the Trust Territory-wide legislative body.

8. On December 27, 1968, former Secretary of the Interior Stewart L. Udall issued Department of the Interior Order No. 2918, which provided for the consolidation, and modification for minor particulars, of Departmental Orders No. 2876 and 2882, as amended. The said Order provides, in part, as follows:

"Part I. Purpose. The purpose of this Order is to delimit the extent and nature of the authority of the Government of the Trust Territory of the Pacific Islands... as it will be exercised under the jurisdiction of the Secretary of the Interior... pursuant to Executive Order No. 11021...

"Part III. Legislative Authority.

"Section 1. Organization. The Legislature of the Trust Territory of the Pacific Islands shall be known as the 'Congress of Micronesia'...

"Section 2. Legislative power. The legislative power of the Congress of Micronesia shall extend to all rightful subjects of legislation..."

9. Since December 27, 1968, the Secretary of the Interior has issued three amendments to the aforesaid Department of the Interior Order No. 2918, none of which alter or amend the provisions of the same which are set forth in Paragraph 8 of this Complaint. The said Order has been since the date of its issuance and is now in full force and effect.

10. At all times relevant hereto, Section 1 of Title 2 of the Trust Territory Code (formerly Section 46 of the Code of the Trust Territory, 1966 edition), provided and presently provides in part as follows:

"Section 1. Responsibilities and powers defined. The government of the Trust Territory through the High Commissioner and the Congress of Micronesia, subject to applicable Orders of the Department of the Interior of the United States, shall have primary responsibility for the following:

"(1) Problems of territory-wide concern including, but not limited to, ...activities involving relations with any government or government agency outside the Trust Territory."

11. At all times relevant hereto, Section 2 of Title 3 of the Trust Territory Code [formerly Section 47(a) of the Code of the Trust Territory, 1966 edition, as amended by Public Law 3C-28, Section 2, October 2, 1969], provided and presently provides for the responsibilities of the several district legislatures of the Trust Territory. The stated Section provides that the responsibility of the several district legislatures shall be "subject to all territory-wide laws", and lists several areas of primary responsibility, none of which areas includes the future political status of such district, and all of which are matters of

peculiarly local concern.

12. The Charter of the Mariana Islands District Legislature, which was promulgated and effective on January 7, 1963, provided that the purpose of the Legislature was "to assist in the government of the Mariana Islands District in accordance with the laws of the Trust Territory of the Pacific Islands." Section 12 of Article I of the said Charter provides, in part, that "District laws shall have the full force and effect of law insofar as they are not in conflict with the Trust Territory Code..." The said Charter of the Mariana Islands District Legislature contains no provision authorizing the Legislature to adopt laws concerning the future political status of the District.

13. At its Second Regular Session, the Congress of Micronesia on August 9, 1966, House Joint Resolution No. 47, which urged the President of the United States "to establish a commission to consult the people of Micronesia to ascertain their wishes and views, and to study and critically assess the political alternatives open to Micronesia". A copy of this Resolution is attached hereto and labeled Appendix A.

14. On August 5, 1967, the Congress of Micronesia adopted Senate Joint Resolution No. 25, which created a Future Political Status Commission, empowered, in part, "to present to the Congress of Micronesia for its consideration such range of possibilities and alternatives as may be open to Micronesians with respect to their choice of political status." A copy of Senate Joint Resolution No. 25 is attached hereto and labeled Appendix B. The life of the Commission was extended by House Joint Resolution No. 10, Congress of Micronesia, Fourth Regular Session, 1968. A copy of this Resolution is attached hereto and labeled Appendix C.

15. In May, 1969, then-Secretary of the Interior Walter J. Hickel invited the Congress of Micronesia to select a delegation to meet with representatives of the United States to devise legislation which would provide for the future political status of Micronesia. To this end, the Third Congress of Micronesia, on July 24, 1969, adopted Senate Joint Resolution No. 31, urging that the President and Congress "give serious consideration to the future political status of Micronesia and the ways in which this status should be finally resolved." A copy of Senate Joint Resolution No. 31 is attached hereto and labeled Appendix D. The Resolution was acknowledged by then-President Richard M. Nixon, who reaffirmed Secretary Hickel's invitation to the Congress of Micronesia to send a delegation to the United States concerning the future political status of Micronesia.

16. At the same session of the Congress of Micronesia referred to in Paragraph 15, the Congress enacted Senate Bill No. 55, which was signed into law by the High Commissioner, Edward E. Johnston, on August 29, 1969. Public Law 3C-15 created a Micronesian Political Status Delegation, charged with the responsibility to

"actively seek, support, and press for an early resolution and determination of the future political status of Micronesia",

and to

"take part in preliminary discussions regarding the relations which shall in the future prevail between Micronesia and the United States".

The law provided further that the Delegation was obligated to "adhere to the desires and policies of the Congress of Micronesia, as expressed by resolutions or otherwise." A copy of Public Law 3C-15 is attached hereto, and labeled as Appendix E.

17. At the same session of the Congress referred to in

Paragraph 15, the Congress adopted Senate Joint Resolution No. 63, directing the aforesaid Micronesian Political Status Delegation to identify the various questions regarding political status which were available to the people of Micronesia, and report to the Congress of Micronesia thereon. A copy of this Resolution is attached hereto and labeled Appendix F.

18. At the same session of the Congress referred to in Paragraph 15, the Congress adopted House Joint Resolution No. 53, which urged the United States

"to refrain from enacting any legislation that would affect the present political status of the Trust Territory of the Pacific Islands until the people of Micronesia through their duly elected representatives have advised the United States of their wishes, desires, and aspirations with respect to their future political status."

A copy of this Resolution is attached hereto and labeled Appendix

G.

19. At the same session of the Congress of Micronesia referred to in Paragraph 15, the Congress adopted House Joint Resolution No. 54, which the Congress declared that,

"until the resolution of the status of Micronesia, all activity, military or civilian, in any way related to the acquisition or development of military bases in Micronesia shall cease immediately; and that no new activity related to the acquisition or development of military bases in Micronesia shall commence, unless and until approval is sought and obtained, by the military, directly from the Congress of Micronesia."

A copy of this Resolution is attached hereto and labeled Appendix

H.

20. In October of 1969, pursuant to its mandate, the Micronesian Political Status Delegation conferred with the representatives of the United States in what was to become known as the First Round of Negotiations with regard to the future political status of Micronesia.

21. On May 4, 1970, the Second Round of Negotiations

between the Micronesian Political Status Delegation and the United States was held.

22. On August 14, 1970, the Third Congress of Micronesia, Third Regular Session, adopted House Joint Resolution No. 87, H. D. 1, adopting four principles and legal rights, to wit:

"(1) That sovereignty in Micronesia resides in the people of Micronesia and their duly constituted government;

(2) That the people of Micronesia possess the right of self-determination and may therefore choose independence or self-government in free association with any nation or organization of nations;

(3) That the people of Micronesia have the right to adopt their own constitution and to amend, change or revoke any constitution or governmental plan at any time; and

(4) That free association should be in the form of a revocable compact; terminable unilaterally by either party."

The said Resolution continued,

"WHEREAS, the Congress of Micronesia has considered these principles and legal rights, and believes that they should serve as the basis for any future association between Micronesia and the United States, and as guidelines in any future negotiations with representatives of the United States Government on the future political status of Micronesia; now, therefore,

"BE IT RESOLVED...that this Congress hereby endorses the four principles and legal rights which the Political Status Delegation of the Congress of Micronesia maintained must be recognized as an essential and non-negotiable component of any free association between the United States and Micronesia; and

"BE IT FURTHER RESOLVED that the Congress of Micronesia hereby declares that any future association between the United States and Micronesia must be in accordance with those principles and legal rights."

A copy of this Resolution is attached hereto and labeled Appendix I.

23. On August 20, 1970, at the same session of the Congress of Micronesia mentioned in Paragraph 21, the Congress adopted House Joint Resolution No. 90, rejecting the offer of status as a United States Commonwealth which had been made by the representatives of the United States, on the grounds that the

provisions of the said offer were not in conformity with the above-mentioned four principles and legal rights. A copy of this Resolution is attached hereto and labeled Appendix J.

24. On August 25, 1970, at the same session of the Congress of Micronesia mentioned in Paragraph 21, the Congress adopted House Joint Resolution No. 102, S. D. 1, which created the Joint Committee on Future Status, and empowered it

"To establish contacts and discuss the status question with appropriate persons and organizations within the United States...

and

"To continue discussions and negotiations with the United States Government on the future political status of the Trust Territory."

The Resolution also directed the Joint Committee to "adhere to the desires and policies of the Congress of Micronesia as expressed by Resolution or otherwise." A copy of this Resolution is attached hereto and labeled Appendix K.

25. From October 4 through 12, 1971, the Joint Committee on Future Status and the United States met in the Third Round of Negotiations concerning the future political status of Micronesia, at Hana, Maui, Hawaii.

26. On February 26, 1972, the Fourth Congress of Micronesia, at its Second Regular Session, adopted Senate Joint Resolution No. 91, S. D. 1, which directed the Joint Committee on Future Status to continue negotiations with the United States. A copy of this Resolution is attached hereto and labeled Appendix L.

27. From April 2 through 13, 1972, the Joint Committee on Future Status and the United States met in the Fourth Round of Negotiations concerning the future political status of Micronesia, at Koror, Palau.

28. On April 12, 1972, during the course of the aforesaid

Fourth Round of Negotiations, those representatives of the Mariana Islands District on the Joint Committee on Future Status, namely Edward DLG. Pangelinan, who is presently Chairman of Defendant the MARIANAS POLITICAL STATUS COMMISSION, and Herman Q. Guerrero, formerly a member of the said Commission, without the permission of the Joint Committee on Future Status, without its approval, and as individual members of the Joint Committee, submitted to Ambassador Franklin Haydn Williams, the head of the United States Delegation, a proposal for separate negotiations between the United States and the Mariana Islands District concerning the future political status of the Mariana Islands. Ambassador Williams responded affirmatively to the aforesaid request.

29. On May 13, 1972, Defendant MARIANA ISLANDS DISTRICT LEGISLATURE endorsed the proposal for separate negotiations referred to in Paragraph 28, in Resolution No. 1-1972.

30. On May 18, 1972, Defendant MARIANA ISLANDS DISTRICT LEGISLATURE enacted Act No. 2-1972, which Act was signed into law by District Administrator Francisco C. Ada on May 19, 1972, and which Act created Defendant MARIANAS POLITICAL STATUS COMMISSION, authorizing and empowering it

"To establish contacts and discuss the issue of future political status of the Mariana Islands District with appropriate persons and organizations within the United States,...

and

"To conduct discussions and negotiations with the United States Government on the future political status of the Mariana Islands District..."

A copy of this Act is attached hereto and is labeled Appendix M.

At the time of the said signing, the said Francisco C. Ada was and presently is an agent and employee of defendant TRUST TERRITORY OF THE PACIFIC ISLANDS, and performed the said signing in the course of his official duties.

31. From July 12 through August 1, 1972, the Joint Committee on Future Status and the United States met in the Fourth Round of Negotiations concerning the future political status of Micronesia, at Washington, D. C.

32. On September 2, 1972, the Fourth Congress of Micronesia, at its Second Special Session, 1972, adopted Senate Joint Resolution No. 117, S. D. 1, which authorized and directed the Joint Committee on Future Status to conduct negotiations with the United States regarding the establishment of Micronesia as an independent nation, while continuing negotiations toward free associated status. A copy of this Resolution is attached hereto and labeled Appendix N.

33. From September 26 through October 6, 1972, the Joint ~~Committee on Future Status~~ and the United States met in the Sixth Round of Negotiations regarding Micronesia's Future Political Status at Barber's Point, Oahu, Hawaii.

34. On December 13 and 14, 1972, Defendant MARIANAS POLITICAL STATUS COMMISSION and the United States met in their Opening Round of Negotiations concerning the future political status of the Mariana Islands District at Saipan, Mariana Islands.

35. On February 26, 1973, the Fifth Congress of Micronesia, at its First Regular Session, adopted Senate Joint Resolution No. 38, which declared, in part, that

"the Congress of Micronesia, through the Joint Committee on Future Status, is the sole authority in the Trust Territory of the Pacific Islands which is legally authorized and empowered to conduct negotiations with regard to the future political status of the Trust Territory, including all parts thereof, and that the Congress has the sole responsibility to negotiate on behalf of and provide for the future political status of the entire Trust Territory",

and which directed the Joint Committee to continue its negotiations with the United States on that basis. A copy of this Resolution is attached hereto and labeled Appendix O.

36. At several times and locations throughout the course of

1973, Defendant MARIANAS POLITICAL STATUS COMMISSION and the United States held a series of negotiations and subnegotiations concerning the future political status of the Mariana Islands District.

37. In November, 1973, the Joint Committee on Future Status and the United States met in the Seventh Round of Negotiations concerning the future political status of Micronesia, at Washington, D. C.

38. On March 4, 1974, the Fifth Congress of Micronesia, at its Second Regular Session, adopted Senate Joint Resolution No. 102, S. D. 1, which in part directed the Joint Committee on Future Status to continue the negotiations with the United States. A copy of this Resolution is attached hereto and labeled Appendix P.

39. Throughout the course of 1974, the Chairman of the Joint ~~Committee on Future Status and Ambassador Franklin Haydn Williams~~ conducted a series of meetings of heads of delegations concerning the future political status of Micronesia.

40. Throughout the course of 1974, Defendant MARIANAS POLITICAL STATUS COMMISSION and the United States held a series of negotiations and subnegotiations concerning the future political status of the Mariana Islands District.

41. On February 13, 1975, Defendant MARIANAS POLITICAL STATUS COMMISSION and the United States of America announced their agreement on a Covenant of Commonwealth for the Northern Mariana Islands, and have proposed the following timetable for its ratification: (1) signing of the said Covenant by an authorized agent of Defendant MARIANAS POLITICAL STATUS COMMISSION on Friday, February 14; (2) transmittal of the signed Covenant to Defendant MARIANA ISLANDS DISTRICT LEGISLATURE for its approval; (3) a legislative enactment or enactments by Defendant MARIANA ISLANDS DISTRICT LEGISLATURE approving the said Covenant and calling for the holding of a plebiscite among the people of the Mariana Islands District at which the said people will either

approve or disapprove the said Covenant, which enactments, under certain circumstances, would require the signature of Francisco C. Ada, District Administrator of the Mariana Islands District and an agent and employee of Defendant TRUST TERRITORY OF THE PACIFIC ISLANDS. The said Covenant provides, in part, that sovereignty over the Mariana Islands District resides in the United States of America, and that the Covenant shall be terminable only with the consent of both parties.

42. The actions and proposed actions of Defendant MARIANA ISLANDS DISTRICT LEGISLATURE, in authorizing the conduct of separate negotiations with regard to the future political status of the Mariana Islands District, and in taking any action leading to a separate future political status, particularly as based on the proposed Commonwealth Covenant, ~~are inconsistent with the provisions of Territory-wide law and resolutions which have the force and effect of law, and are therefore beyond the scope of the power and authority of the said Defendant, and are therefore unlawful.~~

43. The actions and proposed actions of Defendant MARIANAS POLITICAL STATUS COMMISSION, in conducting separate negotiations with regard to the future political status of the Mariana Islands District, and in taking any action leading to a separate future political status, particularly as based on the proposed Commonwealth Covenant, are inconsistent with the provisions of Territory-wide law and resolutions which have the force and effect of law, and are therefore beyond the scope of the power and authority which may lawfully be delegated to and exercised by it, and are therefore unlawful.

44. Any further actions by either Defendant MARIANA ISLANDS DISTRICT LEGISLATURE or Defendant MARIANAS POLITICAL STATUS

COMMISSION of the character set forth in Paragraphs 42 and 43, respectively, or of Defendant TRUST TERRITORY OF THE PACIFIC ISLANDS, by and through its agent or agents, employee or employees, in signing into law any legislative enactment designed to further a separate future political status for the Mariana Islands District, would result in irreparable injury to Plaintiff and all other persons similarly situated, in that such actions would result in the expenditure of tax revenues for unlawful purposes, and in that such actions would tend to deprive Plaintiff and all other persons similarly situated of their right, under the provisions of the United Nations Charter and the Trusteeship Agreement, freely to express their wishes concerning the future political status of all of Micronesia; and in that such actions would result in the denial of their rights to due process and equal protection of the laws, ~~as guaranteed to all citizens of~~ the Trust Territory by Sections 4 and 7 of Title 1 of the Trust Territory Code.

45. Plaintiff, and all other persons similarly situated, are without an adequate remedy at law to avoid the irreparable injury as set forth in Paragraph 44 of this Complaint.

WHEREFORE, Plaintiff, on his own behalf and on behalf of all others similarly situated, prays that this Honorable Court issue an Order:

1. Permanently enjoining Defendant MARIANAS POLITICAL STATUS COMMISSION, and any agent of the said Defendant, from signing the proposed Covenant which provides for the establishment of a Commonwealth of the Northern Mariana Islands, and from taking any other action designed to lead toward a separate political status for the Mariana Islands District or any part thereof, particularly under the proposed Commonwealth Covenant, without authority of

the Congress of Micronesia;

2. Permanently enjoining Defendant MARIANA ISLANDS DISTRICT LEGISLATURE from taking any action to approve the said Covenant, and from calling for the holding of a plebiscite concerning the said Covenant, and from taking any other action designed to lead toward a separate future political status for the Mariana Islands District or any part thereof, particularly under the proposed Commonwealth Covenant, without authority of the Congress of Micronesia;

3. Permanently enjoining Defendant TRUST TERRITORY OF THE PACIFIC ISLANDS, by and through its agent or agents, employee or employees, from taking any action in furtherance of an action from which Defendant MARIANA ISLANDS DISTRICT LEGISLATURE is enjoined hereby; and

4. Granting such other equitable relief as may be appropriate.

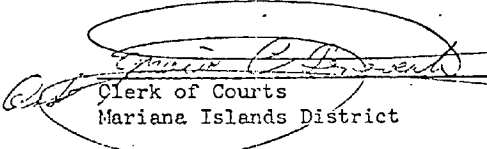
Respectfully submitted,

/s/ Michael A. White, Esq.

MICHAEL A. WHITE, ESQ.
Attorney for Plaintiff

Congress of Micronesia
Saipan, M. I. 96950

Received and filed this
14th day of February, 1975:


Clerk of Courts
Mariana Islands District