

*brew*  
Feb 15, 1975

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

JOSE P. MAFNAS,	)	CIVIL ACTION NO. 17-75
On behalf of himself and	)	
all others similarly situated,	)	
	)	
Plaintiff,	)	
	)	
-v-	)	
	)	
MARIANAS POLITICAL STATUS COMMISSION	)	
	)	
and	)	
	)	
MARIANA ISLANDS DISTRICT LEGISLATURE	)	
	)	
and	)	
	)	
TRUST TERRITORY OF THE PACIFIC ISLANDS,	)	
	)	
Defendants	)	

MEMORANDUM OF LAW

This is an action seeking an injunction against the Mariana Islands District Legislature, enjoining it from adopting any further legislation intended to lead toward a separate future political status for the Mariana Islands District; against its creation, the Marianas Political Status Commission, to enjoin it from taking any action toward the same end, including the signing of the Covenant establishing the Commonwealth of the Northern Mariana Islands, scheduled for this afternoon; against the Trust Territory Government, enjoining the District Administrator from signing into law any further District legislation toward the same end; and for such other relief as this Court may deem appropriate.

A temporary restraining order is one which is issued, without notice to the party restrained, in order to preserve the status quo pending the determination of the matter by the Court. 24 Am. Jur. Injunctions, §14. The Court having declined to issue the temporary restraining order upon the filing of Plaintiff's Motion, Plaintiff respectfully requests that the Court treat this motion

as one for Temporary Injunction.

The granting of a temporary injunction does not involve a determination of the merits of Plaintiff's case, Rogers -v- Hill, 289 U. S. 582, 53 S. Ct. 731, 77 L. Ed. 1385; Public Service Commission -v- Wisconsin Telephone Co., 289 U. S. 67, 53 S. Ct. 514, 77 L. Ed. 1036. What is required is a lesser standard of proof: temporary injunction is properly granted where Plaintiff shows that his ultimate success in the case is certain or reasonably probable; that a continuation by Defendants of the acts against which injunction is sought, pending the final determination on the merits, will work substantial and irreparable injury to Plaintiff; and that Plaintiff has no adequate remedy at law. Societe Comptoir de l'Industrie Contonniere Etablissements Boussac -v- Alexander's Department Stores, Inc., (CA 2 NY) 299 F, 2d 33.

But it is clear in this case that under any standard of proof, Plaintiff is entitled to an injunction, both temporary as well as permanent. Accordingly, this Memorandum, and such additional memoranda as it may please the Court to require, is directed toward the Motion as well as the main matter.

It is well settled that the Court can restrain the enforcement of legislative enactments after they become law. Injunctive relief is based on the invalidity of the statute. This, together with the presence of the heads of equity, namely irreparable injury and the absence of an adequate remedy at law, warrants the exercise of the Court's powers of equitable relief. Grosjean -v- American Press Co., 297 U. S. 233, 56 S. Ct. 444, 80 L. Ed. 660; Stafford -v- Wallace, 258 U. S. 495, 42 S. Ct. 397, 66 L. Ed. 735; People -v- Amdur, 123 Cal App. 2d Supp. 951, 267 P. 2d 445.

Plaintiff's complaint shows the following:

(1) The Marianas District Legislature has no authority to legislate on the subject of future political status. The proposed actions of the Legislature would violate laws which expressly and in effect prohibit the adoption of the legislation against which the injunction is sought. As alleged in Paragraph 11 of Plaintiff's Complaint, the authority of the District Legislature to legislate within a given area is expressly "subject to all territory-wide laws." The very Charter of the District Legislature recognizes the supremacy of Territorial law, and in fact provides that "District laws shall have the full force and effect of law insofar as they are not in conflict with the Trust Territory Code." Article I, Section 12. The Congress of Micronesia has adopted a series of laws and resolutions which have the force and effect of law, all of which make it very clear that the Congress of Micronesia, whose legislative authority extends to "all rightful subjects of legislation," has assumed the entire and exclusive burden of legislation and negotiation concerning the future political status of Micronesia. See, e.g., Appendices E, K, and O. The latter provides, quite specifically, 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 entire 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."

It is equally clear that the laws of the Trust Territory, indeed the very nature of the Government, dictate that a district legislature is in effect prohibited from conducting negotiations with regard to future political status. It is a fundamental prerogative of a national government to conduct relations with

other national governments, to the exclusion of subordinate units of either. To permit the Marianas District Legislature to conduct negotiations with the United States, a foreign country even though it is the Administering Authority, has no more validity and is hence no more permissible than negotiations between the Government of Guam and the Republic of France.

Plaintiff is well aware that the provisions of the United Nations Charter and the Trusteeship Agreement grant to all of the people of the Trust Territory, including the people of the Mariana Islands District, the right to self-determination or independence in accordance with their freely-expressed wishes. But this does not detract from the plain fact that the Congress of Micronesia is engaged in a course of legislative conduct which is clearly intended to provide the people of the Mariana Islands District with the opportunity freely to express their wishes with regard to their future political status. As long as the legislative actions of the Congress do not derogate from this fundamental right, the Mariana Islands District Legislature has no authority to take legislative action which is inconsistent with that of the Congress.

Further, the actions of the Marianas District Legislature concerning the establishment of a separate political status are ultra vires. Aside from the inherent lack of authority to negotiate with foreign governments set forth above, it is clear that future political status is not a subject with which District Legislatures in general, or the Mariana Islands District Legislature, in particular, are competent to deal. First, the Trust Territory Code impliedly limits the areas of responsibility of the several district governments to matters of district-wide concern, since that is the extent of their jurisdiction, 3 T. T. C. 2, and since 2 T. T. C. 1 grants the Congress of Micronesia the sole legislative

When?  
How?  
On what?

authority in matters of territory-wide concern. The Congress has on many occasions made it clear that the future political status of Micronesia--including all its component parts--is a matter of territory-wide concern.\* Second, it is apparent from the enumerated list of matters which are the primary responsibility of the district governments, in 3 T. T. C. 2, that a subject of the scope and magnitude of future political status was never intended to be included.

(2) Legislation by the Marianas Islands District Legislature concerning the future political status of the District would result in irreparable injury to Plaintiff. The signing of the Covenant, and the proposed action of the Mariana Islands District Legislature to approve the Covenant and call for the holding of a plebiscite will inevitably result in two further actions: first, the plebiscite will be held, as is planned. Second, if the voters at the plebiscite approve the Covenant, the Mariana Islands District will immediately be separated from the remainder of the Trust Territory of the Pacific Islands, and the Congress of Micronesia will no longer have jurisdiction over the Marianas. Thus, the Congress of Micronesia would not have authority to negotiate on

\*In this connection, the Senate has said, in Standing Committee Report No. 208, Fifth Congress of Micronesia, Second Regular Session, 1974,

"Up until the present time, the Joint Committee on the Future Status of the Congress has assumed, and continues to assume, that its mandate comprehends all six districts of the Trust Territory and all of the people of Micronesia. In short, the Joint Committee on Future Status is not aware of any instruction by the Congress to attend and participate in the future political status negotiation talks representing only one segment of the Micronesian population or only one part of the geographical area of the Trust Territory and to exclude other segments of the total Micronesian population or to exclude another geographical area of the Trust Territory. Related thereto is the Resolution adopted by this Congress to the effect that no district has authority to negotiate separately."

behalf of Plaintiff and those in the class represented by him. Plaintiff and his class would not be able to participate in a variety of matters in which as Trust Territory citizens they have a right to participate, e. g., a referendum on the proposed Constitution of Micronesia, and a plebiscite on the future status alternatives which are placed on the ballot for all the remaining citizens of the Trust Territory.

Each of the above actions in and of itself, and all of the actions taken together, would thus cause Plaintiff and the class represented by him irreparable damages, since each is one link in a chain of events which can lead to but one conclusion: the eventual separation of the Mariana Islands District prior to the time when Plaintiff and others similarly situated may exercise their right to vote in the plebiscite and the referendum called by or at the request of the Congress of Micronesia. As such, Plaintiff and his class will be denied their rights to due process and the equal protection of the law. These steps are irreversible.

In addition to the deprivation of rights, as hereinbefore shown, the implementation of Act No. 2-1972 has required the expenditure of substantial amounts of funds from the public treasury, which consists of funds raised locally through the revenue laws of the District and the Trust Territory. Further action by the Legislature to implement this law, toward the same end, if invalid by reason of the incompetence of the Legislature to deal with the subject, would result in the expenditure of substantial additional sums from the public treasury for an unlawful purpose. These tax moneys would not be recoverable once expended, and the injury to Plaintiff and others in his class would therefore be irreparable.

(3) Plaintiff has no adequate remedy at law. The only other

conceivable action which might be open to Plaintiff is an action for declaratory judgment, which is neither law nor equity, but sui generis, Pacific Indemnity Co. -v- McDonald (CA 9 Ore) 107 F. 2d 446; United States Fidelity and Guaranty Co. -v- Koch (CA 3 Pa) 102 F. 2d 288. Thus, the standards for injunctive relief against further implementation of Act No. 2-1972 have been met, and the injunction sought should be granted.

It is, of course, well settled that the Court should not interfere with the discretionary activities of the legislature, in connection with its consideration of legislation which has not yet become law. See 24 Am. Jur. Injunctions, §168. But the exception to the general rule is that injunctive relief may be had where the proposed action of the legislative body violates a law which expressly or in effect prohibits the adoption of legislation of the character against which injunction is sought. Id., §171. A second exception to the general rule arises in cases in which the mere passage of legislation, as distinguished from the injury which may result from the carrying out or enforcement thereof, would occasion the irreparable injury which is the gravamen of an action for injunction. Id. In Smith -v- Brock, 83 R.I. 432, 118 A. 2d 336, the court held that a court of equity could grant injunctive relief where proposed legislation is ultra vires or clearly invalid, and that the passage thereof will occasion immediate, substantial, and irreparable injury to the civil rights of a taxpayer without any reasonably adequate remedy at law.

Thus, under these circumstances, it is quite proper for this Court to enjoin the Mariana Islands District Legislature from taking future action with regard to legislation intended to result in a separate political status for the Mariana Islands District.

It, therefore, follows inescapably that, if the Mariana Islands District Legislature had and has no lawful authority to legislate

concerning the future political status of the District, then the creation of the Marianas Political Status Commission, and any acts which it has taken or may take, have no validity either. As such, they are properly enjoined, since the heads of equity are also present. See Jordan -v- Hutcheson (CA 4 Va) 323 F. 2d 597. The signing of the Covenant establishing the Commonwealth of the Northern Mariana Islands, and the subsequent referral of that document to the District Legislature for its consideration, would have an immediate effect on Plaintiff, and would result in irreparable harm to him. Plaintiff, as above, has no adequate remedy at law.

The Trust Territory of the Pacific Islands was joined as a party Defendant on this case because under the provisions of 3 T. T. C. 53, no enactment can become law except upon the approval of the District Administrator or the High Commissioner, both agents and employees of the Trust Territory Government.\*

The same rule which applies to the power of the Courts to enjoin future legislative action also applies to the power to enjoin future executive action in approving or disapproving legislation. 24 Am. Jur. Injunctions, §169. But, as we have shown above, the relief sought against the Legislature is appropriate in this proceeding, and it is, therefore, proper for the Court to enjoin this function of the Executive, as well.

Plaintiff therefore respectfully submits that his ultimate success in the case is certain or reasonably probable; that a continuation of the acts against which injunction is sought, pending

\*Additionally, if the Court holds that the other two Defendants are not susceptible to suit in their own right, the Court must then conclude that they are agencies and instrumentalities of the Trust Territory Government, which can be made subject to the decisions of the Court only if the Trust Territory is joined as a Defendant.



the final determination of this matter on the merits, will work substantial and irreparable injury to Plaintiff; and that Plaintiff has no adequate remedy at law. Societe Comptoir, supra. For these reasons, Plaintiff respectfully requests that this Honorable Court grant the relief sought in Plaintiff's Motion for Temporary Restraining Order.

Respectfully submitted,

/s/ Michael A. White, Esq.  
MICHAEL A. WHITE, ESQ.  
Attorney for Plaintiff

Certification of Service

I hereby certify that I have served a copy of the foregoing document upon all parties to the above-captioned matter by personally delivering a copy hereof to their respective Attorneys, this 15th day of February, 1975.

/s/ Michael A. White, Esq.  
MICHAEL A. WHITE, ESQ.  
Attorney for Plaintiff