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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, -v- MARIANAS POLITICAL STATUS COMMISSION, and MARIANA ISLANDS DISTRICT LEGISLATURE, and TRUST TERRITORY OF THE PACIFIC ISLANDS, Defendants	) CIVIL ACTION NO. 17-75)) MEMORANDUM OF POINTS) AND AUTHORITIES OF DE-) FENDANTS MARIANAS) DISTRICT LEGISLATURE) AND MARIANAS POLITICAL) STATUS COMMISSION IN) OPPOSITION TO PLAINTIFF'S) MOTION FOR A TEMPORARY) RESTRAINING ORDER AND IN) SUPPORT OF DEFENDANTS') MOTION TO DISMISS THE) COMPLAINT.

Defendants Marianas District Legislature and Marianas Political Status Commission oppose the Plaintiff's request for a temporary restraining order and have filed a motion to dismiss the complaint. In this Memorandum of Points and Authorities, Defendants will set forth some of the relevant background facts which have led to the scheduled ceremony today for the formal signing of the proposed Covenant and the legal authorities which we believe support our contentions.

STATEMENT OF FACTS

The people of the Marianas have persistently expressed their desire for a close and secure political relationship with the United States. Plebiscites conducted in 1967, 1968 and 1969, resolutions adopted by the Marianas District Legislature over the past 10 years and petitions to the United Nations have repeatedly reaffirmed this desire.

The Trusteeship Agreement between the United States and the United Nations requires the United States "to 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." Acting to fulfill its obligations under the Trusteeship Agreement, in September, 1969, the United States opened discussions with a delegation from the Congress of Micronesia, including representatives of the Marianas, to explore future political status alternatives for the entire Trust Territory. Early in the negotiations, the Micronesian delegation, now called the Joint Committee on Future Status, insisted on exploring a status of free association with the United States. In April, 1972, the Joint Committee on Future Status insisted on the right of unilateral termination of a free association status with the United States. It was clear that the objective of the Joint Committee on Future Status would not satisfy the expressed wishes of the people of the Marianas for a close political relationship with the United States.

At the April, 1972, meetings of the Joint Committee on Future Status and the United States, the Marianas representatives on the Joint Committee issued a Statement of Position. This statement reiterated the continuing desire of the peoples of the Marianas for political union with the United States. It emphasized that:

> "The people of the Marianas have for too long been dominated by autocratic powers, with little regard for the rights of their own subjects, let alone of the people of the Marianas. The coming of the United States, on the other hand, changed all this. The spirit of two hundred years of democracy, of a society which practiced the theory that government should be 'of the people, by the people, and for the people,' of the Bill of Rights, ensuring that every man is created equal under the law and guaranteeing his human rights, of a country which has historically been a refuge for the oppressed and a land of opportunity for all people, was brought to Micronesia by the United States. For the first time in four centuries, the people of the Marianas now live as free men. Political union with the United States will ensure that we keep this freedom so long denied to us."

In responding to the Statement of Position, Ambassador F. Haydn Williams, the President's Personal Representative and head of the United States delegation, recognized that pursuit and implementation of the free association status sought by the Joint Committee on Future Status "against the expressed will of the people of the Marianas, would deny them the right of self determination and would impose upon them a future political status which they have said is unacceptable". He further stated that the United States was "willing to respond affirmatively to the request....to enter into separate negotiation with representatives of the Marianas...."

In May, 1972, at a special session, the Marianas District Legislature passed a resolution, (Resolution No. 1-1974), endorsing and supporting the Statement of Position of the Marianas representatives on the Joint Committee on Future Status. During the same session, it acted (Act No. 2-1972) to create the Marianas Political Status Commission. The powers and duties of the Commission included conducting "discussions and negotiations with the United States Government on the future political status of the Mariana Islands District; provided, however, that any agreement reached on such issue will not be binding on the people of the Marianas District until ratified through a plebiscite or referendum."

The first meeting of the Marianas Political Status Commission and United States Government representatives to discuss the future political status of the Mariana Islands District was held December 13 and 14, 1972. Subsequent meetings were held in May, 1973; November, 1973; May, 1974; December, 1974; and February, 1975. All meetings of the Commission and the United States representatives have been held in Saipan.

The Commission and United States representatives jointly have conducted a number of public meetings in Saipan, Rota and Tinian. Joint press releases were issued during the course of each meeting of the Commission and United States representatives, and a joint communique, detailing the progress made, was issued at the conclusion of each meeting.

In the interim periods between meetings with the United States representatives, the Marianas Political Status Commission presented formal reports to the Marianas District Legislature on tentative agreements made with the United States and on unresolved issues. These reports were public documents and were widely distributed to the public. Both the Commission and individual Commissioners held public hearings in villages and communities in Saipan, Rota and Tinian. Every reasonable attempt was made to inform the public and to solicit public views as to the kind of political relationship the Commission was negotiating with the United States.

At the December, 1974, meeting of the Commission and the United States representatives, a draft agreement titled Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States was presented to the public. It was the desire of the Marianas Political Status Commission to permit the Mariana Islands District Legislature and the general public to review and comment on the Covenant prior to final action on the agreement by the Commission in February, 1975.

From February 3, 1975, to February 12, 1975, the Marianas Political Status Commission met to review written comments on the Covenant from various community groups, to receive comments on the Covenant from the Mariana Islands District Legislature and to resolve outstanding technical drafting issues. At 7:00 PM on February 12, 1975, the Commission voted unanimously to approve the Covenant in its present form, to sign the Covenant as an indication of their approval, and to present the Covenant to the Marianas District Legislature along with a recommendation that the Covenant be submitted to the people for their final judgment in a plebiscite.

ARGUMENT

Defendants Marianas Political Status Commission and Marianas District Legislature contend that Plaintiff's motion for a temporary restraining order should be denied and that the complaint for injunctive relief should be dismissed. Contrary to Plaintiff's belated allegations, the negotiations between the Marianas Political Status Commission and the United States are fully authorized and are in no way preempted by any laws or resolutions of the Congress of Micronesia. To hold otherwise would be to deny the citizens of the Mariana Islands District their inalienable right of self-determination guaranteed by Article 76 of the United Nations Charter and the Trusteeship Agreement under which the Trust Territory is administered by the United States. Since the question of future political status in the Marianas is ultimately a matter which only the Marianas people can resolve in a freely conducted plebiscite, Defendants respectfully suggest that the court has no jurisdiction over this fundamental and sensitive political question.

I. The People of the Mariana Islands District Have the Right of Self-Determination Under the Charter of the United Nations and the Trusteeship Agreement.

Plaintiff's complaint fails to state a valid cause of action because it fails to recognize that the people of the Mariana Islands District have an enforceable right of self-determination which would be violated if the complaint is not dismissed.

Article 76(b) of the Charter of the United Nations states that it is the purpose of the United Nations

> "to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive

development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement", (emphasis added)

Article 73 further provides that members of the United Nations with responsibilities for trusteeships are to

> "accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security...the well-being of the inhabitants of these territories, and, to this end:
>
> "a. ...
>
> "b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement"; (emphasis added)

The obligations of the United States Government as Administering Authority of the Trust Territory of the Pacific Islands are clearly set forth in the 1947 Trusteeship Agreement, which is explicitly made subject to the provisions of the United Nations Charter regarding self-determination. Article 6, subsection 1, of the Agreement provides that the United States shall

> "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"; (emphasis added)

In essence, the United States has a legal obligation to respect the right of self-determination of the peoples of the Trust Territory--including the people of the Mariana Islands District.

To suggest that the people of the Marianas can exercise their right of self-determination only in conjunction with the other peoples of the Trust Territory would be to deny the history of Micronesia. For centuries the several districts

of the Trust Territory were administered together only under colonial domination; never once during this period have the people of the Marianas been allowed the opportunity to exercise a free people's choice regarding their own political status. The people of the Northern Marianas have been linked by history, tradition, language and ethnic ties with Guam from time immemorial and not with the rest of Micronesia. Even under the Trusteeship, the Northern Marianas were separately administered for years. And long before the Congress of Micronesia was even created, the people of the Marianas were seeking a close political relationship with the United States.

It was for these reasons that the United States agreed to separate status negotiations with the Marianas in 1972. As the United States Representative to the United Nations Trusteeship Council stated in 1972,

> "Had the United States responded other than positively to the Marianas initiative, that could have led ultimately to an imposition upon the people of that district of a political status they had made abundantly clear they did not want".*

Or as was observed in the formal United States response to the Marianas request, a negative reply to the Marianas "would deny them their right of self-determination". ** In like fashion, to sustain Plaintiff's last minute attack upon the Marianas status negotiations would prevent the Marianas people from exercising their legally protected right of self-determination.

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* U.N. Doc. T/PV 1389, p. 11 (1972)

** "The Future Political Status of the TTPI", p. 63, Official Records of the Fourth Round of Micronesian Future Political Status Talks, Koror, Palau, April 2-13, 1972, OMSN, Washington, D. C. (1972)

II. The Marianas District Legislature and the Marianas Political Status Commission Have the Authority to Engage in Separate Status Negotiations With the United States.

The people of the Mariana Islands District have chosen to exercise their right of self-determination through their elected representatives in the Marianas District Legislature and the instrumentality created by the Legislature, the Marianas Political Status Commission. It is hard to imagine a more democratic method for conducting such negotiations. Plaintiff's contention that the Marianas District Legislature lacked the authority to exercise this responsibility on behalf of its constituents cannot withstand scrutiny.

A. The Marianas District Legislature Has the Necessary Legal Authority

The High Commissioner of the Trust Territory of the Pacific Islands has all executive and administrative powers of government in the Trust Territory and over its inhabitants. In the lawful exercise of this authority, former High Commissioner Wilfred Goding issued the Charter of the Mariana Islands District Legislature on January 7, 1963

> "to assist in the government of the district in accordance with the laws of the Trust Territory of the Pacific Islands, and the provisions of this Charter".

The legislative authority of the Mariana Islands District Legislature extends to all subjects not in conflict with the Trust Territory Code or Executive Orders of the High Commissioner (Article 1, Section 12). The creation of the Marianas Political Status Commission (Chapter 3.16 of the Mariana Islands District Code) was a lawful exercise of the legislative authority of the Mariana Islands District Legislature. To hold otherwise would be to conclude that the only elective body in the Mariana Islands District representative of all the municipalities was barred from dealing constructively

with the most fundamental concern of the Marianas people--namely, their future political status. Certainly, any such drastic conclusion would have to be based on a more explicit limitation of the District Legislature's powers than is suggested by Plaintiff.

Even if there were some doubt regarding the Legislature's authority, it was resolved by the District Administrator's approval of the legislation creating the Marianas Political Status Commission. All laws enacted by the Mariana Islands District Legislature must be approved by the District Administrator, who represents the High Commissioner in the district. The approval by the District Administrator of the law establishing the Marianas Political Status Commission both confirmed and clarified the authority granted the District Legislature under Article I, Section 12, of its Charter.

Any other construction of the District Legislature's authority to engage in status negotiations would raise the most serious questions under the provisions of the United States Constitution made applicable to the Trust Territory under its code. Only last month, the Supreme Court of the United States emphasized the protection afforded political activity by the First and Fourteenth Amendments of the United States Constitution. In Cousins v. Wegoda, 43 U. S. Law Week 4152 (Sup. Ct. January 14, 1975), the Court held that the State of Illinois improperly sought to interfere with the Constitutionally protected right of political association of the National Democratic Party and its adherents. The court stated:

> "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments...The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." Kusper v. Pontikes, 414 U. S. 51, 56-57 (1973). "And of course this freedom protected against

> *federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States." William v. Rhodes, 393 U. S. 23, 30-31 (1968). Moreover, "(a)ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." Sweezy v. New Hampshire, 354 U. S. 234, 250 (1957); see NAACP v Button, 371 U. S. 415, 431 (1963)." 43 U. S. Law Week at 4155.*

The court concluded that the State of Illinois had not identified any "compelling state interest" justifying interference with the important functions entrusted to delegates at a National Party Convention.

Quite apart from the authority expressly granted to it by the Trust Territory, in short, the members of the Marianas District Legislature have Constitutionally protected rights to engage in orderly political activity. The formation of the Marianas Political Status Commission and the subsequent negotiations with the United States during the past two and one-half years represent such protected political activity and expression. If the members of the Legislature had done otherwise, they would have placed themselves in direct opposition to the frequently expressed desires of their constituencs and would have denied the Marianas people any orderly and responsible way of pursuing status negotiations with the United States.

B. The Congress of Micronesia Cannot Foreclose the Mariana Islands District From Conducting Separate Status Negotiations

The breadth of Plaintiff's preemption argument is staggering. In essence, Plaintiff contends that the Congress of Micronesia has arrogated to itself the sole responsibility of negotiating the future political status of all the peoples in the Trust Territory. There is no basis for this contention in the Trust Territory Code or the actions to date by the Congress of Micronesia.

The powers of the Congress of Micronesia are set forth as follows in Department of Interior Order 2918, Part III,

Section 2, codified in 2 TTC (Section 102):

> "The legislative power of the Congress of Micronesia shall extend to all rightful subjects of legislation, except that no legislation may be inconsistent with
>
> "(a) treaties or international agreements of the United States:
>
> "(b) laws of the United States applicable to the Trust Territory;
>
> "(c) Executive Orders of the President of the United States and orders of the Secretary of the Interior; or
>
> "(d) Sections 1 through 12 of the Code of the Trust Territory".

Defendants maintain that the Congress of Micronesia has not acted to preempt the area of political status negotiations in the Trust Territory and that, in any event, an attempt to do so would exceed the bounds of its legislative authority.

The conclusion that there has not even been any attempted preemption of the area of future political status by the Congress of Micronesia rests upon the absence of any legislation to this effect. Effective preemption by the Congress would require the enactment of legislation, that is, an act approved by the High Commissioner. (2 TTC Section 163). All but one of the alleged preemptive actions of the Congress of Micronesia were Congressional resolutions establishing committees which were not approved by the High Commissioner. The complaint refers to only one statute to which it attributes a preemptive effect. That is the Act of August 29, 1969, Public Law 3C-15. That Act established a political status delegation to the United States consisting of not more than ten members. The Act related to the specific negotiations which were underway in 1969 and obviously was ad hoc legislation which is no longer in effect. The Political Status Delegation ceased to exist years ago. Indeed, the very fact that the

Congress of Micronesia has since established the Joint Committee on Future Status demonstrates that the Congress itself no longer considers Public Law 3C-15 to be of any effect. If it were still valid, the Congress of Micronesia would not even have the power to establish the twelve member Joint Committee on Future Status.

Assuming arguendo that the Congress of Micronesia attempted to preempt the field of future status by its numerous resolutions, it lacked the power to do so. Any legislation which sought to require that all negotiations relating to the future status of Micronesia would have to be territory-wide and conducted through a creature of the Congress of Micronesia would violate the limitations on its powers contained in paragraphs (a), (c) and (d) of Department of Interior Order 2918.

First, any such assertion of power by the Congress of Micronesia would violate the international agreements of the United States, specifically the Charter of the United Nations and the Trusteeship Agreement. As discussed above, the people of the Mariana Islands District have the right of self-determination which only they can exercise. Any effort by the Congress of Micronesia to preclude the exercise of this right and to pretend to be the sole voice of the many, diverse peoples of the Trust Territory would patently contravene the obligations of the United States under the Trusteeship Agreement to "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..."

Second, any attempt of the Congress of Micronesia to prevent the people of the Northern Mariana Islands to conduct separate negotiations with the United States would be inconsistent with the instructions of the President of the United States to his Personal Representative to conduct such separate negotiations. No particular form is required for an Executive Order of the President. The President's instructions to his Personal Representative, therefore, have the effect of an Executive Order of the President which necessarily overrides any law or resolution of the Congress of Micronesia.

Third, any attempted preemption by the Congress of Micronesia in this field would violate the basic freedoms of speech and the right to petition of the people of the Mariana Islands District guaranteed by the Trust Territory Code (1 TTC Section 1). It is clear that the Marianas people have the right to express their particular wishes regarding political status to the Administering Authority and to enter into such negotiations as appear best designed to achieve the goals of the people concerned. Plaintiff's sweeping and undocumented assertions regarding the authority of the Congress of Micronesia cannot obscure the fundamental fact that it is the people--not the Congress of Micronesia--whose basic Constitutional rights are at issue in this case.

III. Established Principles of Equity and Justiciability Preclude the Exercise of Jurisdiction in this Matter

Plaintiff's request for equitable relief calls into play the established principles of equity jurisprudence. The timing of this action literally on the eve of signing the Covenant, compounded by the lack of any irreparable injury to the Plaintiff, argue strongly against the grant of any equitable relief by the Court in this matter. Moreover, the demonstrably political nature of this case suggests that this Court should decline to exercise jurisdiction.

A. Plaintiff's Delay in Filing His Complaint Precludes the Grant of Injunctive Relief

Plaintiff is guilty of laches. According to the complaint, the alleged illegal activities and improper disbursements of tax revenues began in April, 1972 and have continued ever since. Plaintiff clearly has lost his rights, if he ever had any, by remaining silent over so long a period. As the historical sequence of events demonstrates, today's signing of the proposed Covenant is the culmination of more than two years of highly publicized negotiations between the United States and the Marianas Political Status Commission. In any event, if Plaintiff did not consider the matter to be of any urgency for nearly three years, his request for the extraordinary relief of a temporary restraining order must surely be denied.

B. A Fair Balancing of the Equities in this Matter Requires Denial of the Request for a Temporary Restraining Order

Plaintiff's dramatic request for a temporary restraining order of the signing ceremony today does not begin to meet the traditional tests applied by courts of equity. On the one hand, Plaintiff has not demonstrated that he will suffer any irreparable injury if the signing of the Covenant is permitted to proceed on schedule. Indeed, many of the Plaintiff's allegations of injury have nothing at all to do with the formal signing of the Covenant but are instead directed at actions to be taken in the future if and when the Covenant is approved by the Marianas people in a plebiscite and by the Congress of the United States. Against these hypothetical concerns the Court must weigh the intensive negotiations which have led to the finalization of the Covenant and the public interest at stake in preserving the peaceful

and democratic context in which the Marianas people are exercising their right of self-determination.

C. The Marianas District Legislature Has Not Consented to this Suit and is Protected by the Doctrine of Sovereign Immunity

Defendants contend that the Marianas District Legislature and its agent, the Marianas Political Status Commission, are protected by the doctrine of sovereign immunity. The United States Supreme Court has consistently held that a sovereign cannot be sued without its consent by its own citizens for legal or statutory actions it has undertaken.* This concept has been followed in the Trust Territory, where it is held that although the Trust Territory is not a sovereign in the international sense, it may still be granted immunity from suit where its consent has not been obtained. Alig v. Trust Territory, 3 TTR 603. In that case, the court stated:

> "...we hold that the delegation of legislative power outlined above to the Trust Territory of the Pacific Islands even though subject to some limitations, gave the Trust Territory what the United States Courts have referred to, as noted above, as 'quasi-sovereignty' or 'qualified sovereignty', carry with it the attribute of immunity from suit without its own consent."

Later rulings by the High Court have continued to uphold this doctrine. Rivera v. Trust Territory, 4 TTR 140; Matarme v. Ligor, 4 TTR 204; Schultz v. U. S. Peace Corps, 4 TTR 428; Ochetir v. Municipality of Angaur, Current Cases 159. Since the Marianas District Legislature is chartered by the High Commissioner and subject to his direction, Defendants contend that the holdings of this Court necessarily indicate that the doctrine of sovereign immunity should be extended to the Legislature and its subordinate committees.

*Hans v. Louisiana, 134 U.S. 1 (1890); Duhune v. New Jersey, 251 U.S. 311 (1920); Ujuch v. United States, 292 U. S. 571 (1934); Larson v. Domestic and Foreign Corp., 337 U.S. 682 (1949); Malone v. Boudin, 369 U.S. 643 (1962); Parden v. Terminal R. Co., 377 U.S. 184 (1964); Employees of Department of Public Health and Welfare v. Department of Public Health and Welfare, 411 U.S. 279 (1973).

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D. Courts of Equity Traditionally Decline to Exercise Jurisdiction in Matters Involving the Legislative or Electoral Process

Plaintiff is fundamentally seeking to enjoin the Marianas District Legislature and the Commission from proceeding to take those steps remaining in the process whereby the Legislature will have the opportunity to approve (or disapprove) the Covenant and to submit it to the people in a plebiscite. Courts of equity have generally declined to intervene so directly in the legislative or electoral process.

When the rights or questions involved are purely political, a court of equity will not as a rule assume jurisdiction. Although the political rights of a citizen are as sacred as are his rights to personal liberty and property, yet he must go into a court of law for redress when such rights are invaded or he is deprived of them. United States Standard Voting Machine Co. v. Hobson, 132 Iowa 38 as stated in 42 Am. Jur. 2nd 833. In the absence of constitutional or statutory provision conferring jurisdiction for that purpose (and there is none in the code of the TTPI), courts of equity have no jurisdiction in matters of a political nature, and will not issue injunctions to protect persons in the enjoyment of political rights or to assist them in acquiring such rights. Georgia v. Stanton 6 Wall 50, 18 L. Ed. 721.* Thus, a bill to enjoin the enforcement of a law, which is not based on an existing or threatened violation of complainant's rights, and which raises only an abstract question respecting the relative authority of Congress and a State in dealing with the subject of law involved, will be dismissed as not presenting an appropriate controversy for the exercise of judicial power. State of New Jersey v. Sargent, 269 U. S. 328.

*Even if there is also an additional incidental property right involved the equity courts still will not assume jurisdiction where the main question is of a political nature. Green v. Mills, 159 U.S. 651. It has also been held that such equitable denial is not a denial of due process or equal protection of the laws. State ex rel. McCaffery v. Aloe, 152 Mo. 466 as stated in 42 Am. Jur 2nd 834.

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Similarly, although equity may, in a proper case, restrain the enforcement of a statute after it has become a law, it will not ordinarily attempt to enjoin the legislature from enacting a statute or resolution, or restrain the signing of legislation. Basting v. Minneapolis, 112 Minn. 306 as stated in 42 Am. Jur. 2nd 935. Thus, in Bardwell v. Paris Council, 216 La 537, 44 So 2d 107, 19 ALR 2d 514, a suit for an injunction to restrain a municipality from performing its administrative duty in calling and holding an election to amend its charter, on the ground that the proposed amendment was unconstitutional, was dismissed as premature under the rule that a court of equity will not enjoin the holding of an election. Nor will equity ordinarily, at the instance of a taxpayer, enjoin a purely legislative action or the proposed exercise of discretion by a municipal legislative body within the scope of its authority, especially in a matter involving the performance of a governmental function as distinguished from a mere ministerial or proprietary act. Smith v. Brock, 83 RI 432, 118 A2d 336.

Applying these general principles to the instant case, the Marianas District Legislature and the Marianas Political Status Commission contend that the court should not exercise its jurisdiction to restrain these Defendants from performing the legislative and governmental functions involved in signing the Covenant, reviewing it in the Legislature, and (if approved) submitting it to the people in a plebiscite.

E. Plaintiff is Raising Nonjusticiable Political Questions which Only the People of the Mariana Islands District Can Resolve.

Defendants submit that the essential issue raised by Plaintiff is a nonjusticiable political question. Whatever the current viability of the "political question" doctrine under recent Supreme Court decisions, it should be obvious that the case at bar presents a political question, under any definition. Indeed, it would be difficult to imagine a more basic political issue than this desperate challenge to the efforts of the Marianas people to exercise their right of self-determination for the first time in more than four centuries.

In its landmark reapportionment case, Baker v. Carr, 369 U.S. 186 (1962), the Supreme Court reviewed the cases holding that the courts will

not intervene in disputes involving "political questions.". In summary, the court stated:

> Prominent on the surface of any case held to involve a political question is found a textually demostrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question. 369 U. S. at 217.

Applying these guidelines to the case before the Court, the Marianas District Legislature and the Marianas Political Status Commission contend that the complaint should be dismissed for nonjusticiability. The future political status of the peoples of the Trust Territory manifestly involves "a textually demonstrable constitutional commitment of the issue to a coordinate political department"--namely, the Executive Branch of the United States Government as Administering Authority.* Certainly there is "a lack of judicially discoverable and manageable standards for resolving" the issues raised by Plaintiff and an "impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." In view of the position taken by the United States during the course of the separate status negotiations with the Marianas during the past two and one-half years, it seems equally clear that Plaintiff has presented the Court with "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government."

*In this respect, the case is not dissimilar from those in which the Supreme Court has held that it was inappropriate for the Court to decide whether a representative of a foreign government with whom the United States was negotiating a treaty was the proper representative of that government. See, e.g. Re Baiz, 135 U.S. 403 (1890); Doe ex dem. Clark v. Braden, 16 How 635, 14 L. Ed. 1090 (U.S. 1853).

A decision by this Court to decline to exercise jurisdiction in this political area will protect--not impair--the basic rights of the Marianas people. It will leave the question of future political status for the Marianas exactly where it belongs--in the hands of the people where it will be resolved eventually in a plebiscite on the proposed Covenant.

Conclusion

For the reasons set forth above, the Marianas District Legislature and the Marianas Political Status Commission urge the Court to deny the motion for a temporary restraining order and to dismiss plaintiff's complaint for injunctive relief.

Respectfully submitted,

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Received and filed this
15th day of February, 1975.

Clerk of Courts
Mariana Islands District

027025

SECOND REGULAR SESSION, 1966 House Joint Resolution No. 47

CONGRESS OF MICRONESIA

A HOUSE JOINT RESOLUTION

Requesting the High Commissioner, through the Secretary of the Department Interior, to petition the President of the United States of America to establish a Commission to ascertain the political desires of the people of Micronesia, and to develop and recommend procedures and courses of political education and action, with such alternatives as may be applicable and appropriate, to lead to the attainment of such desires and determination of the political status of Micronesia.

WHEREAS, the Micronesian people should freely excercise their sovereign right of self-determination as set forth in the Trusteeship Agreement between the United Nations and the government of the United States of America; and

WHEREAS, the Congress of Micronesia believes that this generation of Micronesians should have an early opportunity to determine the ultimate constitutional and political status of Micronesia; and

WHEREAS, such determination should be made on the basis of meaningful proposals of the political and constitutional alternatives open to the people of Micronesia; now, therefore,

BE IT RESOLVED by the House of Representatives of the Congress of Micronesia, Second Regular Session, 1966, the Senate concurring, that the High Commissioner, and through him the Secretary of the Department of the Interior, be and are hereby enjoined to use their good offices to petition the President of the United States of America 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; and,

BE IT FURTHER RESOLVED that said commission report its findings to the President of the United States of America no later than December 31, 1968.

Adopted, August 9, 1966

APPENDIX A

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