



Third Northern Mariana Islands Constitutional Convention

MEMORANDUM

TO: Legal Team **DATE:** 5/25/95

FROM: Bernard Zimmerman

SUBJECT: Pangelinan v. Government of the Northern Mariana Islands

Attached is a copy of the District Court's decision, in Pangelinan v. Government of the Northern Mariana Islands, Civil Action No. 85-0022.

It does not appear to me to be, as suggested in the research project memo, paragraph 1(b), an opinion holding unconstitutional the amendment of the 1985 Convention regarding voting rights. While the opinion is somewhat cryptic and obscure, probably intentionally so, all it holds is that Amendment No. 44, which is not set out, was an act beyond the scope and power of the Constitutional Convention and is therefore null and void.

Amendment No. 44 proposed to amend section 8 of the Schedule on Transitional Matters attached to the Constitution. The court held that the Schedule was not part of the Constitution and therefore not subject to modification by the Convention.

Section 8 contains an interim definition of citizenship, which Amendment 44 apparently extended to children. I cannot perceive any connection to voting rights. Perhaps one of you can help me out.

copy

CLERK
OF DISTRICT COURT

FEB 13 1986 MD

For The Northern Mariana Islands

By

IN THE DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

LEO S. PANGELINAN, DAVID K.	:	CIVIL ACTION NO. 85-0022
PETER, STACY POUNDS, and	:	
EMMET KAY,	:	
	:	
Plaintiffs,	:	
	:	
-v-	:	
	:	
GOVERNMENT OF THE NORTHERN	:	OPINION, JUDGMENT and
MARIANA ISLANDS,	:	<u>ORDER.</u>
	:	
Defendant.	:	

This matter came on for hearing on Plaintiffs Motion for Summary Judgment on February 11, 1986. After considering the briefs and papers filed and after listening to the arguments of counsel, IT IS HEREBY ADJUDGED DECREED and ORDERED:

OPINION

Constitutional Amendment No. 44 proposed by the Second Northern Marianas Constitutional Convention and certified as having been adopted by referendum is an act proposed and adopted beyond the scope and powers of the Convention and the voters to enact. Amendment 44 is an Ultra Vires Act.

44 proposes to amend Section 8 of the Schedule on Transitional Matters. The Schedule on Transitional Matters contains transitional provisions which "remain in effect until their terms are executed" these are not provisions which remain in effect unless sooner modified or repealed.

Further description of the Schedule states that "once each year the Attorney General shall review the following provisions and certify to the Governor which have been executed. Any provisions so certified shall be removed from this Schedule and no longer published as an attachment to the Constitution." It stands to reason that if any provision within the Schedule can be removed by the passage of time alone, it is not then subject to modification or repeal by the process of amending the Constitution as provided by Article XVIII which spells out the manner by which the Constitution can be amended.

This Schedule deals with and controls transitional matters from January 1978 to the time the Trusteeship is terminated at which time the Northern Mariana Islands become a full fledged Commonwealth. It is an "attachment" to the Constitution. It is not a part of the body of the Constitution which constitute the permanent laws of the Commonwealth of the Northern Mariana Islands and which are subject to repeal or modification under the provisions of Article XVIII of the Northern Mariana Islands Constitution.

Each of the 14 transitional provisions in the Schedule will become fully executed when the Trusteeship is terminated. Seven of these have already been certified as executed by the Attorney General and are no longer a part of the Schedule. When termination occurs there will no longer be any interim U.S. citizens--an event which occurs not by reason of any amendment but by reason that its sole existence was necessitated by the interim status of a commonwealth awaiting transition into full commonwealth entity.

Amendment 44, being an attempt to amend a provision contained within the Schedule of Transitional Matters and is not in reality an amendment to provisions contained in the Constitution nor is it an amendment to add to or delete from the body of the Constitution. . . for which purposes the Convention was convened, was an Ultra Vires Act--performed beyond the authority, scope and powers of the Constitutional Convention.

Amendment 44 is, therefore, hereby declared to be null and void and is of no force and effect.

JUDGMENT AND ORDER

1. Plaintiffs Motion for Summary Judgment submitted on Argument II of Plaintiffs brief regarding Ultra Vires is hereby granted; Judgment is for Plaintiffs herein and such judgment shall be entered by the Clerk.

2. This Court declares that the subject Amendment 44 is null and void and is of no force and effect.

3. This Court declares that the original Section 8 of the schedule on transitional matters was never amended, is hereby restored and remains, in full force and effect.

4. This Court declares that the run-off election held in Saipan on February 1, 1986 is null and void and of no force and effect. This Court further declares that the votes cast in that election are not to be tallied nor used for any purpose. This declaration and order is made in view of the Court's previous injunctive order against any action being taken by Defendant to enforce or implement the subject Amendment 44 pending determination of this lawsuit which order was inadvertantly violated during the election held on February 1, 1986. Defendants had agreed and stipulated before entry of injunctive order that no enforcement action of any kind would be taken.

5. Both counsel for the Plaintiffs, R. Brewster Thompson, Esq. and for the Defendants, Alex Castro, Esq., are commended by this Court for their handling of this controversial matter. Each counsel showed diligence, intelligence and maturity in the presentation of their respective positions in a manner appropriate for commendation.

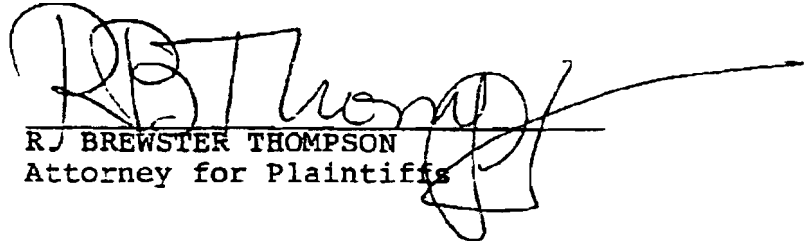
6. Costs, including attorney's fees are awarded to Plaintiffs, the prevailing party herein.

Approved as to form and content.

WHITE, NOVO-GRADAC AND THOMPSON
A Professional Corporation

Dated:

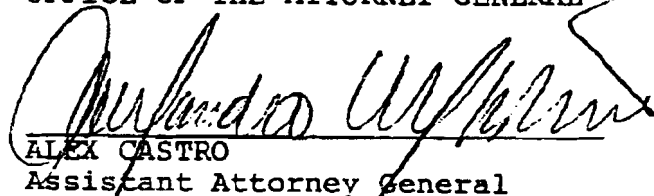
2/12/86


R. BREWSTER THOMPSON
Attorney for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL

Dated:

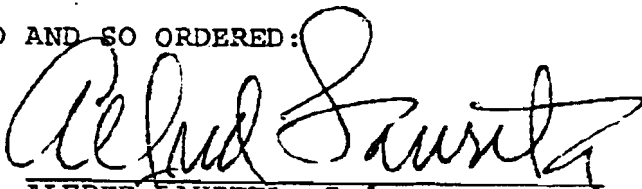
2/10/86


ALEX CASTRO
Assistant Attorney General
Attorney for Defendants

IT IS APPROVED AND SO ORDERED:

Dated:

2/13/86


ALFRED LAURETA, Judge
District Court for the Northern
Mariana Islands