

No. 23-828

In the Supreme Court of the United States

Douglas B. Moylan,
Attorney General of Guam,

Petitioner,

v.

Lourdes Leon Guerrero,
Governor of Guam,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of Guam

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Does Congress' enactment of 48 U.S.C. § 1424-1(a) prohibit or fail to authorize the Guam Legislature's enactment of 7 Guam Code Ann. § 4104, the local statute providing Guam Supreme Court jurisdiction?

48 U.S.C.A. § 1424-1 is the Congressional grant of authority to Guam:

The Supreme Court of Guam shall be the highest court of the judicial branch of Guam (excluding the District Court of Guam) and shall--

(1) have original jurisdiction over proceedings necessary to protect its appellate jurisdiction and supervisory authority and such other original jurisdiction as the laws of Guam may provide. (Emphasis added)

7 G.C.A. § 4104 is the Guam Legislature's grant of Guam Supreme Court jurisdiction provided in law:

I Maga'lahaen Guåhan, in writing, or *I Liheslaturan Guåhan*, by resolution, may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal or local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the

powers and duties of *I Maga'lahi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively. ...The declaratory judgments may be issued only where it is a matter of great public interest and the normal process of law would cause undue delay.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

TABLE OF CONTENTS..... iii

TABLE OF AUTHORITIESiv

INTRODUCTION 1

STATEMENT OF THE CASE.....3

REASONS FOR DENYING THE PETITION 7

 I. The Petition Fails to Assert a Conflict
 Among the Circuits.....7

 II. The Petition Fails to Allege a Profoundly
 Important Issue8

 III. This Court’s Ruling Will Not Affect
 Substantive Law and is Not
 Outcome Determinative10

CONCLUSION.....12

TABLE OF AUTHORITIES

CASES

Dobbs v. Jackson Women's Health Org., 597 U.S. 215 (2022).....7

In re Request of Leon Guerrero, 2023 Guam 113

Golden v. Zwickler, 394 U.S. 103 (1969).....4

Guam Soc'y of Obstetricians & Gynecologists v. Ada, 776 F. Supp. 1422, (D. Guam 1990).....2

L. Offs. of Phillips & Bordallo, P.C. v. Leon Guerrero, No. CV 22-00020, 2023 WL 5075374, at *5 (D. Guam Aug. 9, 2023).....5

FEDERAL STATUTES

48 U.S.C. § 1424-1(a) (1987).....2

48 U.S.C. § 1424-1(b) (1987).....2

LOCAL STATUTES

7 G.C.A. § 4104 i, 2, 3

INTRODUCTION

On January 23, 2023, Respondent below, Lourdes A. Leon Guerrero, *I Måga'hågan Guåhan*, (Governor) filed a verified Petition for Declaratory Judgment Relative to the Validity and Enforceability of Public Law 20-134. The Governor asked the Supreme Court to rule, inter alia, *I Liheslaturan Guåhan* did not have the authority to pass Public Law 20-134 pursuant to the Organic Act of Guam, and further alleged Public Law 20-134 was void ab initio and invalid.

The Supreme Court of Guam, on February 17, 2023, designated Douglas B.K. Moylan, *I Abugáo Hinirat*, as a Respondent, and invited *I Liheslaturan Guåhan* to participate in this matter as a Respondent. *I Liheslaturan Guåhan* accepted the Supreme Court of Guam's invitation recognizing "the Governor's Questions touch on the powers and authority of *I Liheslaturan Guåhan*."

I Liheslaturan Guåhan respectfully declines to involve itself with the subsequent judicial interpretation of the current validity or invalidity of Public Law 20-134.

The Organic Act of Guam in 1990 authorized *I Liheslaturan Guåhan* to pass Public Law 20-134, as a "subject of local application," and today authorizes *I Liheslaturan Guåhan* to pass any bill applying to "rightful subjects of legislation."

The validity or invalidity of Public Law 20-134 is properly left to the Judicial Branch within the Government of Guam. Reciprocally, *I Liheslaturan Guåhan* requests the United States Supreme Court not disturb the previous or current authority of *I Liheslaturan Guåhan* to pass bills or perform functions authorized by the Organic Act of Guam. *I Liheslaturan Guåhan* does not side with either *I Måga'hågan Guåhan* or *I Abugáo Hinirat* on the merits of Public Law 20-134 but rises to defend its rightful authority to provide Guam Supreme Court jurisdiction pursuant to the Organic Act of Guam. *I Liheslaturan Guåhan* continues its position supporting legislative discretion whether to provide the Supreme Court of Guam with jurisdiction over certain expedited matters. Petitioner's challenge to 7 GCA § 4104 is best left to the Guam Legislature's discretion.

STATEMENT OF THE CASE

The Organic Act of Guam provides for the creation of the Guam Supreme Court in general terms:

Local Courts; Appellate Court Authorized. (a) Composition; establishment of local appellate court. The local courts of Guam shall consist of such trial court or courts as may have been or may hereafter be established by the laws of Guam. On or after the effective date of this Act [January 5, 1985], *the legislature of Guam may in its discretion establish an appellate court.* 48 U.S.C. § 1424-1(a) (1987) (emphasis added).

Congress provided the Guam Legislature the authority to grant jurisdiction to local courts, and therefore the Guam Legislature may grant additional jurisdiction to the Guam Supreme Court at the Legislature's discretion. While some state constitutions define the respective jurisdiction of each court in that state, the Guam Organic Act does not define or limit the jurisdiction of the Supreme Court of Guam. The only limitation placed on the Legislature's power to grant jurisdiction is in regards to causes within the exclusive jurisdiction of the federal courts. 48 U.S.C. § 1424-1(b). A declaratory judgment under section 7 G.C.A. S 4104 is not a cause within the exclusive jurisdiction of the federal courts. The Guam

Legislature's Organic Act powers include granting the Guam Supreme Court such jurisdiction.

7 GCA § 4104 requires the request from the Governor of Guam affect her powers and duties as Governor *and* her operation of the Executive branch. This precludes the Governor from requesting a declaratory judgment on a question limited to another branch of government or just subordinate officers or agencies. One branch may not request opinions as to the operation of another branch where that operation does not impinge on the requesting branch's operations.

Petitioner, as Attorney General of Guam, filed an action in the District Court of Guam to revive Public Law 20-134, a 1990 law instituting a ban on abortion in Guam. Federal courts had earlier enjoined P.L. 20-134 concluding it was unconstitutional. *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 776 F. Supp. 1422, 1426 (D. Guam 1990), *aff'd*, 962 F.2d 1366 (9th Cir. 1992), *as amended* (June 8, 1992). According to the Attorney General, since *Roe* is no longer good law, P.L. 20-134 should be enforceable. *I Maga'hågan Guåhan* (“the Governor”), filed a Request for Declaratory Judgment pursuant to 7 GCA § 4104 requesting the Guam Supreme Court declare P.L. 20-134 void *ab initio* or impliedly repealed by subsequent, local legislation.

7 GCA § 4104 relief can be granted only when the matter is of great public importance. The Guam Supreme Court correctly found that any issue satisfying the jurisdictional test of § 4104 will therefore also qualify for the great public interest exception to “injury-in-fact.”

In our February Order, we determined the statutory requirements were met for two of the three questions posed by the Governor. Order at 5 (Feb. 18, 2023). We stand by the analysis in that Order and shall only summarize here. [26] “[P]ublic interest ... signifies an importance of the issue to the body politic, the community, in the sense that the operations of the government may be substantially affected one way or the other by the issue's resolution.” *In re Request of Leon Guerrero*, 2021 Guam 6 ¶ 15 (alterations in original) (quoting *In re Request of Gutierrez*, 2002 Guam 1 ¶ 26). “[T]he issue presented must be significant in substance and relate to a

presently existing governmental duty borne by the branch of government that requests the opinion.” *In re Request of Gutierrez*, 2002 Guam 1 ¶ 26 (citation omitted). Whether P.L. 20-134 is a valid, viable law will substantially affect the operations of the Legislature, the Governor and subordinate agencies, and the Judiciary. The impact these Questions have on the executive branch is particularly notable, as agencies charged with the enforcement of this legislation may arrest individuals for engaging in certain conduct—resulting in significant consequences.

In re Request of Leon Guerrero, 2023 Guam 11, ¶¶ 25-26 (Guam Oct. 31, 2023).

Petitioner equates 7 GCA § 4104 with a judicial “grab for power” as opposed to the more accurate statutory grant of jurisdiction under limited, special circumstances. The strict requirements imposed by the Guam Legislature as part of the Guam Supreme Court's jurisdiction

pursuant to 7 GCA § 4104 and the Guam Supreme Court's conservative application of the requirements to the few § 4104 questions answered ensure the same level of protection from abuse as the federal "injury-in-fact" standing requirements.

REASONS FOR DENYING THE PETITION

I. The Petition Fails to Assert a Conflict Among the Circuits

Petitioner's attempt to prohibit a judicial procedure after losing before the District Court of Guam and Guam Supreme Court finds no issue with other circuits or states. Guam Supreme Court jurisdiction is best properly left to local autonomy and the method of governing Congress prescribed in the Organic Act. A retroactive prohibition decades after the executive and legislative branches of the Government of Guam began using and relying upon declaratory rulings would be unnecessarily destructive.

The federal Declaratory Judgment Act differs and requires an actual, existing controversy: No federal court, whether this Court or a district court, has jurisdiction to pronounce any statute, either of a state or of the United States, void, because

irreconcilable with the constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies.' *Liverpool, N.Y. & P.S.S. Co. v. Commissioners*, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899 (1885). (Emphasis added.) See also *United States v. Raines*, 362 U.S. 17, 21, 80 S.Ct. 519, 522, 4 L.Ed.2d 524 (1960). The express limitation of the Declaratory Judgment Act to cases 'of actual controversy' is explicit recognition of this principle.

Golden v. Zwickler, 394 U.S. 103, 110, 89 S. Ct. 956, 960, 22 L. Ed. 2d 113 (1969).

II. The Petition Fails to Allege a Profoundly Important Issue

The case does not involve a substantive federal question. While any Organic Act of Guam issue can be said to involve a federal statute, in application 7 GCA § 4104 is completely local. Petitioner chose not to appeal the merits of the case. Furthermore, 7 GCA § 4104 is procedural in substance as all parties would still be allowed to commence relevant complaints before the Superior Court of Guam.

Although Guam's Bill of Rights was passed by Congress and not ratified by the people of Guam, "[T]he Organic Act of Guam is a federal statute concerning only Guam." *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 776 F. Supp. 1422, 1427 (D. Guam 1990), *aff'd* 962 F.2d 1366 (9th Cir.), *cert. denied*, 506 U.S. 1011 (1992). Additionally, although "Guam is not a state the principles of federalism which underlie federal-state judicial relations apply equally to federal-Guamanian relations." *Western Sys. v. Ulloa*, 958 F.2d 864, 868 n.5 (9th Cir. 1992). ... Of course, decisions of the Supreme Court of Guam, as with other territorial courts, are instructive and are entitled to respect when they indicate how statutory issues, including

the Organic Act, apply to matters of local concern.

L. Offs. of Phillips & Bordallo, P.C. v. Leon Guerrero, No. CV 22-00020, 2023 WL 5075374, at *5 (D. Guam Aug. 9, 2023).

III. This Court's Ruling Will Not Affect Substantive Law and is Not Outcome Dispositive

Petitioner provides no reason why the court must answer the question presented immediately or in the near future. The procedure Petitioner challenges fails to raise a federal question. Guam is best able to determine priority of Guam Supreme Court cases. The Governor of Guam and Guam Legislature are the correct parties to determine jurisdiction in the Guam Supreme Court on purely local matters. The Guam Supreme Court ruling affects no other jurisdiction.

Congress can make the change in law if needed. At this time, the Governor, Guam Legislature and Judicial Branch of the Government of Guam all support the Guam Supreme Court's jurisdiction to hear special, limited requests from either the Governor or Guam Legislature. The incumbent Guam Attorney General is free to lobby the Congress to alter the current structure provided through the Organic Act of Guam. If Congress wants it is able to prohibit the Guam Legislature from

granting jurisdiction as the Guam Legislature did in 7 G.C.A. § 4104. The Guam Legislature may also modify this grant of jurisdiction.

Petitioner fails to provide a compelling reason to strip from Guam her ability to create and remove jurisdiction in the Guam Supreme Court. Petitioner failed to appeal the merits of the Guam Supreme Court Order and the Guam Supreme Court reached the correct decision. The outcome on the merits will be the same should the parties begin at the trial court level.

CONCLUSION

Respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance and moral substance. *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 300, 142 S. Ct. 2228, 2284, 213 L. Ed. 2d 545 (2022). The Guam Legislature is authorized and capable to make decisions on issues ranging from abortion to Guam Supreme Court jurisdiction. There are no circuit conflicts nor Constitutional questions. Restriction and expansion of Guam Supreme Court procedural, expedited jurisdiction should be left to Guam.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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