

IN THE SUPREME COURT OF GUAM

**IN RE: REQUEST OF THE 24th GUAM  
LEGISLATURE FOR DECLARATORY  
JUDGMENT AS TO THE IMPLEMENTATION  
OF THE INITIATIVE REDUCING MEMBERS  
OF THE 25th GUAM LEGISLATURE**

Supreme Court Case  
No. CRQ97-001  
Filed: November 5, 1997  
Cite as: Guam 17

MOTION TO DISMISS  
Argued and Ruled Upon 19 September 1997  
Agana, Guam

**Appearing for Respondent,  
Twenty-Fourth Guam Legislature**  
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**CONCURRING OPINION**

[1] **ARRIOLA, JOAQUIN C.**, Associate Justice, concurring in the result:

I concur with the result reached in the main opinion, solely on the question of jurisdiction, but I do not wish to indulge in issues foreign to it, i.e., issues whether Public Law 24-61 is retroactive or the merits of the Legislative Request contained in Resolution No. 97-77.

[2] On May 6, 1997, the 24th Guam Legislature adopted Resolution No. 97-77, which requested a declaratory judgment, pursuant to § 4104, Title 7 GCA. Resolution 97-77 was thereafter filed with this Court, and the Legislature, the Governor of Guam and the Minority Leader of the Guam Legislature were designated interested and appropriate parties to the proceedings.

[3] Briefs were to be filed by September 12, 1997, and oral argument was scheduled for 9:00 A.M., Friday, September 19, 1997.

[4] First of all, it should be noted that unlike Rule 57, of both Federal and

Superior Court of Guam Rules of Civil Procedure for the Superior Court of Guam, the declaratory judgment relief made available by § 4104 does not require a justiciable controversy. Instead of filing its Brief, the Legislature on September 12, 1997, adopted and filed with this Court, Resolution 97-155, which sought the withdrawal of the Request for Declaratory Judgment contained in Resolution 97-77. Three days later, on September 15, 1997, the Legislature passed Bill No. 220, a measure to appropriate \$350,000 for road construction. Attached to Bill 220 was a rider which repealed and re-enacted § 4104--an abhorrent practice given its own Legislative Rules which provide that only "germane amendments may be made in the session or in the Committee of the Whole." § 6.04.07, Standing Rules of the 24th Guam Legislature. Bill 220 was passed by the Legislature on September 15, 1997, and was signed by the Acting Governor of Guam on September 17, 1997, and thereby became Public Law 24-61. Public Law 24-61 became effective midnight, September 17, 1997. § 102,

Title 1, GCA.

[5] The relevant portion of § 4104, as re-enacted, reads:

" . . . Upon a writing, or resolution in the case of the Guam Legislature, by the party submitting the request for the declaratory judgment that the party wishes the Supreme Court to dismiss its petition for declaratory judgment, *the Supreme Court shall no longer have jurisdiction and shall dismiss without prejudice the declaratory judgment case, provided that the request is filed with the Supreme Court at any time before the Court renders its written decision.*" (Italics added).

[6] In the federal system, Article III of the Constitution vests the judicial power of the United States in one Supreme Court, and in such inferior courts as the Congress may establish. Thus, federal courts (other than the Supreme Court) derive their jurisdiction wholly from Congress--defining the jurisdiction of such courts. "The Congressional power to ordain and establish inferior courts includes the power

'of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good'." *Lockerty v. Phillips* (1943) 319 U.S. 182, 63 S. Ct. 1019, 87 L.Ed. 1339, 1343.

[7] "And jurisdiction having been conferred, may, at the will of Congress be taken away in whole or in part; and if withdrawn *without a saving clause, all pending cases, although cognizable when commenced, must fall.*" (Italics added). *Gates v. Osborne* (1870) 9 Wall. 567, 19 L.Ed. 748, 751; *Kline v. Burke Constr. Co.* (1922) 260 U.S. 226, 43 S. Ct. 79, 67 L.Ed. 226, 232.

[8] As of midnight, September 17, 1997, the Request for Declaratory Judgment was pending; a Resolution was adopted by the Legislature and filed with this Court, requesting dismissal or withdrawal of such Request; Public Law 24-61 did not contain a saving clause; the Court had not rendered its decision. Accordingly, based on the foregoing U.S. Supreme Court decisions, this case "fell," and should be dismissed for want of jurisdiction.

24<sup>TH</sup> G.L. JUDGEMENT REDUCING 25<sup>TH</sup> G.L./1997 GUAM 17/CONCURRING OPINION

**JOAQUIN C. ARRIOLA**

Associate Justice (P.T.)

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