

SUPREME COURT OF GUAM

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WRITTEN TESTIMONY
BY
THE HONORABLE F. PHILIP CARBULLIDO
ACTING CHIEF JUSTICE
SUPREME COURT OF GUAM

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ON H.R. 521
COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.
MAY 8, 2002

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Thank you Mr. Chairman. For the record, my name is Philip Carbullido, and I am the Acting Chief Justice of the Guam Supreme Court. It is an honor to speak before this distinguished Committee on a Bill that will have a profound impact on the advancement of the Territory of Guam.

Prior to being confirmed as an Associate Justice of the Guam Supreme Court, I practiced law as an attorney in Guam for approximately twenty-two years. In determining whether to accept my appointment to the Court, and to government service, it behooved me to reflect upon the history of the courts as an institution and the role of the judiciary in the overall governmental structure. Of the countless materials I reviewed on the subject, a basic and constant principle rooted all discussions, that of a co-equal and independent judiciary. H.R. 521 was conceived because of the infirmities of the current language of the Organic Act. The point I want to make today is that the existing framework in which our local government is structured is deficient.

The Organic Act of Guam functions as Guam's constitution. While the Organic Act establishes the executive and legislative branches of the Government of Guam, the Act does not establish a judicial branch. Instead, in 1984, the United States Congress passed the Omnibus Territories Act, amending the Organic Act and giving the Guam legislature the authority to create the courts of Guam, including an appellate court. Under this language, the Guam Supreme Court's existence and the scope of the court's powers has been subject to, and *remains* subject to, frequent legislative manipulation. Because of the current language of the Organic Act, the existence and organization of Guam's judicial branch is plagued by lingering uncertainty. Nowhere else in this nation does this occur. The present situation is such that it has fostered a peculiar and unprecedented system wherein our island's judicial branch is marked *not* by independence, but rather, by political influence.

It is this condition that has necessitated the introduction of H.R. 521. The measure would firmly establish, within the Organic Act, Guam's judicial branch as a co-equal, independent branch alongside the executive and legislative branches.

I am aware that the Bill as currently drafted has been criticized as a Congressional attempt to legislate on a uniquely local issue. These criticisms likely arise from the portions of H.R. 521 which comprehensively delineate the jurisdiction of the Supreme Court and inferior courts, as well as the powers of the Chief Justice. We have reviewed the criticisms and recognize the concerns voiced by opponents of H.R. 521. We now propose changes to the Bill, which address these concerns.

Specifically, our proposed version retains subsection (a) of the current version, which sets forth the backbone of the judicial branch's structure. This subsection provides for the courts of Guam, and states that the Supreme Court shall be the highest court of Guam with final appellate jurisdiction. Furthermore, subsections (a) (4) adds, in simple and clear terms, that the Guam Supreme Court is responsible for promulgating rules for the judicial branch, and that the Guam legislature may change these rules by a two-thirds vote of the unicameral legislature. This is ten (10) votes. Significantly, the version we now propose deletes subsection (b) of the current version relating to the jurisdiction of the local courts of Guam, the various powers of the Guam Supreme Court, and detailing the powers of the Chief Justice of the Supreme Court of Guam.

The changes we propose to the current H.R. 521 both preserve the intent of original Bill 521 in creating an independent judiciary in the territory of Guam, with the Supreme Court of Guam as the administrative head, while reserving powers for the local legislature to modify administrative rules promulgated by the Court.

In addition, Congressman Underwood, a Democrat, has been criticized as being political in introducing this Bill. Mr. David J. Sablan, the Chairman of the Republican Party of Guam in a letter to Senator Hansen stated, "Certain critics have labeled the Bill as "political." We do not think so. We simply believe it to be right. There is nothing political about wanting an independent judiciary. . . . The support for H.R. 521 transcends party lines. We believe in an independent judiciary and therefore support the passage of H.R. 521. This Bill's intent is correct and right."

I must also mention, at this point, that some individuals have expressed concern that the recent Ninth Circuit opinion in the case of *Pangelinan v. Gutierrez* has negated the need for H.R. 521. This is clearly a misconception. The Ninth Circuit's decision in *Pangelinan v. Gutierrez* does not eliminate the need for the passage of H.R. 521. This point is understood after viewing the underlying facts and issues involved in the *Pangelinan* case.

In 1993, pursuant to language in the Organic Act giving the Guam legislature the power to create an appellate court, local legislation was passed creating the Guam Supreme Court and establishing that Court as administrative head of all local courts ("1993 Law"). In 1998, another bill was passed by the Guam legislature. This 1998 Bill contained a rider which stripped the Supreme Court of its supervisory authority over the local courts ("1998 Law"). A local senator, Ben Pangelinan, challenged the validity of the 1998 Law, arguing that the 1998 Law was pocket vetoed. In that case, *Pangelinan v. Gutierrez*, the Guam Supreme Court agreed that the 1998 Law was pocket vetoed and therefore held that the provisions of the 1998 Law had no legal effect. The Ninth Circuit agreed, and affirmed the Guam Supreme Court's holding.

Thus, the issue in the *Pangelinan* case was whether a local law stripping the Guam Supreme Court of its administrative powers was properly enacted. The Ninth Circuit's holding in *Pangelinan* has the sole effect of directing that Guam's judiciary be structured in accordance with the 1993 Law, and not the 1998 Law, as the latter was held to be pocket vetoed. While the Ninth Circuit decision revamps the provisions of the 1993 Law which placed the Guam Supreme Court as administrative head of the judicial branch, the Ninth Circuit decision does nothing to change the fact that under the current language of the Organic Act, the local legislature retains the power to manipulate the internal structure of the judicial branch or even abolish the branch via legislation.

In short, the Ninth Circuit decision in *Pangelinan v. Gutierrez* was a *temporary solution* to an

permanent problem; that problem being that the Guam legislature has the power to determine the existence and overall structure of the judicial branch. *Guam needs a permanent solution.* H.R. 521 would provide that permanent solution. The measure will amend the Organic Act, giving the judicial branch a “constitutional” existence. It is imperative that the Organic Act be amended to model the system adopted in all other states as well as the federal government, which create all three branches of government in their constitutions.

As we pursue the passage of H.R. 521, I must emphasize that an amendment to the Organic Act has received broad-based support locally and nationally. The creation of the judicial branch of Guam in the Organic Act is a measure that has been vigorously endorsed by Guam’s legal community and the public-at-large, and on a national level, by the Conference of Chief Justices. (A copy of CCJ Resolution 17 is attached.) This avid support of a “constitutionally” established independent judiciary is not without precedent and is well-founded in American jurisprudence.

The founders of this nation crafted a tri-partite structure of government, which has been unanimously adopted by the states of the union. Each separate but co-equal branch performs a necessary role in a democratic and republican form of government. The efficacy of this system of government, both on the federal and state level, rests in checks and balances. Each branch is vested with constitutional and inherent powers for the purposes of both preventing another branch from accumulating powers, and ensuring that each branch effectively commits itself to fulfilling its recognized mandate. The judicial branch of our Territory can neither effectively operate as a necessary check on the other two branches, nor properly fulfill its obligation to interpret the law, without a “constitutional,” or in this case, an “Organic” existence.

Under the current law, Guam’s judicial branch has been created by local legislation, and can just as easily be eviscerated by local legislation. This alarming reality is evidenced by the comment of the current Chairman of the Judiciary Committee of the Guam Legislature, who said, and I quote, “some members of the legal community . . . may be apprehensive over the fact that the Legislature has the authority to determine the court’s future – *it has been vested with the authority to create as well as abolish the Guam Supreme Court* I assure everyone concerned that there will be no repeal of the law creating the Guam Supreme Court.”

That a local legislator has, *in the same breath*, acknowledged the power of one branch of Government to completely abolish another branch, and pledged that this would not happen, is far from assuring. The fact that a member of the Guam legislature can make this statement is, to say the least, chilling. The substance of the statement patently offends the fundamental principles of a tri-partite form of government. The ability of a local senator to make this statement is testament to the inadequate governmental structure currently set forth in the Organic Act.

In the same vein as the founders, we advocate an amendment to what is, essentially, our Constitution, to finally and permanently provide for an independent and co-equal judicial branch.

Thank you Mr. Chairman. It has been a privilege to speak before you. We herein submit with my testimony the proposed amendments to H.R. 521 for your consideration.

ATTACHMENT 1 – PROPOSED AMENDED H.R. 521

[COMMENT] To amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam. (Introduced in the House)
HR 521 IH

107th CONGRESS

1st Session

AH. R. _____ "

To amend the Organic Act of Guam for the purposes of clarifying the local judicial structure of Guam .

IN THE HOUSE OF REPRESENTATIVES

February 7, 2001

Mr. UNDERWOOD introduced the following bill; which was referred to the Committee on Resources

A BILL

To confirm the right of the People of Guam to establish an independent judiciary

WHEREAS, in 1950 Congress provided a civil government and confirmed the right of the People of Guam to an independent legislature in the Organic Act of Guam;

WHEREAS, in 1968 Congress confirmed the right of the People of Guam to an independent executive branch in the Guam Elective Governor Act; and

WHEREAS, Congress desires to confirm the right of the People of Guam to an independent judiciary

NOW THEREFORE BE IT ENACTED by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE.

This Act may be cited as the Guam Independent Judiciary Enabling Act.

SECTION 2. JUDICIAL STRUCTURE OF GUAM .

(a) **JUDICIAL AUTHORITY; COURTS-** Section 22(a) of the Organic Act of Guam (48 U.S.C. 1424(a)) is amended to read as follows:

`(a) (1) The judicial authority of Guam shall be vested in a court established by Congress designated as the `District Court of Guam' , and a local judicial branch of Guam which shall constitute a unified judicial system and include an appellate court designated as the `Supreme Court of Guam' which shall be the highest local court of Guam with final appellate jurisdiction, a trial court designated as the `Superior Court of Guam' , and such other lower local courts as may have been or shall hereafter be established by the laws of Guam.

`(2) The Supreme Court of Guam may, by rules of such court, create divisions of the Superior Court

of Guam and other local courts of Guam.

`(3) The courts of record for Guam shall be the District Court of Guam , the Supreme Court of Guam , the Superior Court of Guam (except the Traffic and Small Claims divisions of the Superior Court of Guam) and any other local courts or divisions of local courts that the Supreme Court of Guam shall designate.'

>(4) The Supreme Court shall make and promulgate rules governing the administration of all local courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all local courts. These rules may be changed by the Legislature by two-thirds vote of the members.

>(5) The Legislature shall provide for the compensation of all justices and judges. The salaries of justices and judges shall not be diminished during their terms of office, unless by general law applying to all salaried officers of Guam.

(c) TECHNICAL AMENDMENTS- (1) Section 22B of the Organic Act of Guam (48 U.S.C. 1424-2) is amended--

(A) by inserting `which is known as the Supreme Court of Guam ,' after `appellate court authorized by section 22A(a) of this Act ,'; and

(B) by striking `Natural Resources' and inserting `Resources'.

(2) Section 22C(a) of the Organic Act of Guam (48 U.S.C. 1424-3(a)) is amended by inserting `which is known as the Supreme Court of Guam ,' after `appellate court authorized by section 22A(a) of this Act,'.

(3) Section 22C(d) of the Organic Act of Guam (48 U.S.C. 1424-3(d)) is amended--

(A) by inserting `, which is known as the Supreme Court of Guam ,' after `appellate court provided for in section 22A(a) of this Act' ; and

(B) by striking `taken to the appellate court' and inserting `taken to such appellate court'.

SECTION 3. RESERVATION OF RIGHTS TO THE PEOPLE OF GUAM.

The provisions of this Act may be altered or modified by the People of Guam by a duly adopted Constitution and by amendments thereto duly adopted from time to time.

ATTACHMENT 2 – RESOLUTION

CONFERENCE OF CHIEF JUSTICES

Resolution 17

Recognizing the Supreme Court of Guam as the Highest Court of Guam

WHEREAS, the Conference of Chief Justices at its 1998 Midyear Meeting supported the efforts of Guam and the Congress to assure by legislation the independence of the judiciary and to maintain its judicial branch as a separate and co-equal branch of government; and

WHEREAS, the proposed legislation clarified existing federal law and recognized the Supreme Court of Guam as the highest court of the Territory; and

WHEREAS, the Conference supports the efforts of Guam and the Congress to ensure by legislation the independence of the Guam judiciary and to maintain its judicial branch as a separate and co-equal branch of government; and

WHEREAS, securing these fundamental principles is essential to our form of government; and

WHEREAS, H.R. 2370 was not acted upon by the Congress; and

WHEREAS, Congressman Robert A. Underwood, D-Guam, intends to renew his efforts in securing the passage of similar legislation to H.R. 2370 in the First Session of the 107th Congress; and

WHEREAS, the Conference wishes to express its continuing support of H.R. 2370 and similar successive legislation to be reintroduced in the First Session of the 107th Congress;

NOW, THEREFORE BE, IT RESOLVED, that the Conference supports renewed congressional efforts to clarify federal law recognizing the Supreme Court of Guam as the highest court of Guam; and

BE IT FURTHER RESOLVED, that the Government Relations Office of the National Center for State Courts actively assist the Supreme Court of Guam in obtaining that objective.

Adopted as proposed by the State-Federal Relations Committee of the Conference of Chief Justices in Baltimore, Maryland at the 24th Midyear Meeting on January 25, 2001

DISCLOSURE REQUIREMENT Required by House Rule XI, clause 2(g) and Rules of the Committee on Resources

A. This part is to be completed by all witnesses:

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4. Organization you are representing: Supreme Court of Guam.
5. Any training or educational certificates, diplomas or degrees or other educational experiences which add to your qualifications to testify on or knowledge of the subject matter of the hearing:

Juris Doctor Degree.

6. Any professional licenses, certifications, or affiliations held which are relevant to your qualifications to testify on or knowledge of the subject matter of the hearing:

Juris Doctor Degree; Member, Guam Bar Association.

7. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:

Acting Chief Justice, Supreme Court of Guam.

8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:

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SUPPLEMENTAL SHEET

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Summary of the comments and recommendations in the full statement:

This is testimony in support of H.R. 521. The Organic Act of Guam functions as Guam's constitution. The Organic Act creates only two branches of the Government of Guam, the legislative and executive branches. H.R. 521 is a measure which would firmly establish, within the Organic Act, Guam's judicial branch alongside the other two branches. We also propose changes to H.R. 521 as currently written. The proposed changes seek to address concerns that the Bill is a congressional attempt to legislate on a local issue. Both the original version and the version we now propose would create an independent judiciary in Guam. Such an amendment to the Organic Act has received local and national support. The well-founded principle of a tri-partite form of government should exist in Guam. We support H.R. 521, and advocate an amendment to the Organic Act to finally and permanently provide for an independent and co-equal judicial branch.

[\[COMMENT1\]](#)<!-- saved from url=(0065)http://thomas.loc.gov/cgi-bin/query/D?
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