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Supreme Court of Guam, Clerk of Court

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**IN THE SUPREME COURT OF GUAM**

<b>IN RE:</b>	)	Supreme Court Case No. CRQ23-001
	)	
<b>REQUEST OF LOURDES A. LEON</b>	)	
<b>GUERRERO, I MAGA'HÅGAN</b>	)	
<b>GUÅHAN, RELATIVE TO THE</b>	)	
<b>VALIDITY AND ENFORCEABILITY</b>	)	<b>ORDER</b>
<b>OF PUBLIC LAW NO. 20-134.</b>	)	
	)	

This matter comes before the court upon the filing of a Request for Declaratory Judgment by *I Maga'hågan Guåhan* Lourdes A. Leon Guerrero (“the Governor”) on January 23, 2023. Her request comes as the Attorney General of Guam has moved to dissolve the permanent injunction placed upon Public Law 20-134 by the District Court of Guam. P.L. 20-134 had a broad ban on abortion, establishing criminal penalties for: (1) any person, including medical professionals, providing or administering drugs or using means to cause an abortion; (2) any woman soliciting and taking drugs or submitting to an attempt to cause an abortion; and (3) any person who solicits any woman to submit to any operation, or to using any means, to cause an abortion. Federal courts declared P.L. 20-134 unconstitutional swiftly after its passage in 1990 as it violated the holding in *Roe v. Wade*, 410 U.S. 113 (1973). *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).

In June 2022, the United States Supreme Court issued its Opinion in *Dobbs v. Jackson Women’s Health Organization*, overruling *Roe v. Wade* and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), and deciding the right to abortion is not expressly or implicitly protected by the U.S. Constitution. *Dobbs*, 142 S. Ct. 2228, 2242 (2022). In January of this year, the Attorney



1 General of Guam, Douglas Moylan, issued a Notice of Motion to Dissolve Injunction of Guam  
2 Public Law 20-134. In this Notice of Motion, Moylan expressed an intention to vacate the  
3 injunction by the end of January, noting the AG’s Office is “duty-bound” to seek the injunction’s  
4 dissolution. Req. Declaratory J. (Ex. 2). Moylan has since filed a Motion to Vacate the injunction  
5 in the District Court of Guam.

6 In response to the Attorney General’s actions, the Governor seeks a declaratory judgment  
7 answering three questions: (1) Is P.L. 20-134 void forever, such that it cannot be revived following  
8 the reversal of *Roe v. Wade*?; (2) Whether the Organic Act of Guam, as it existed in 1990,  
9 authorized the Guam Legislature to pass an unconstitutional law, or the Guam Legislature acted  
10 *ultra vires* in passing P.L. 20-134?; and (3) To the extent P.L. 20-134 is not void or otherwise  
11 unenforceable, has it been repealed by implication through subsequent changes in Guam law?  
12 Req. Declaratory J. at 25-26.

13 Title 7 GCA § 4104 permits the Governor of Guam or the Guam Legislature to request  
14 declaratory judgments from this court in certain circumstances. 7 GCA § 4104 (added by P.L. 29-  
15 103:2 (July 22, 2008)). However, there is a strict jurisdictional test that must be met before this  
16 court can give such a judgment.

17 [T]o pass jurisdictional muster, a party seeking a declaratory judgment must satisfy  
18 three requirements: (1) the issue raised must be a matter of great public  
19 importance; (2) the issue must be such that its resolution through the normal  
20 process of law is inappropriate as it would cause undue delay; and (3) the subject  
matter of the inquiry is appropriate for section 4104 review.

21 *In re Request of Gutierrez*, 2002 Guam 1 ¶ 9. The court must now determine whether the  
22 Governor’s three Questions meet these jurisdictional requirements.

23 “[P]ublic interest . . . signifies an importance of the issue to the body politic, the  
24 community, in the sense that the operations of the government may be substantially affected one  
25 way or the other by the issue’s resolution.” *In re Request of Leon Guerrero*, 2021 Guam 6 ¶ 15  
26 (per curiam) (alterations in original) (quoting *In re Request of Governor Gutierrez*, 2002 Guam 1  
27 ¶ 26). “[T]he issue presented must be significant in substance and relate to a presently existing  
28

1 governmental duty borne by the branch of government that requests the opinion.” *In re Gutierrez*,  
2 2002 Guam 1 ¶ 26 (citation omitted).

3 Moving to the Questions posed by the Governor, we conclude that they satisfy this  
4 requirement. This is not an instance where the issue concerns only one branch of government.  
5 See *In re Leon Guerrero*, 2021 Guam 6 ¶ 13. Rather, the Questions as to whether P.L. 20-134 is  
6 a viable law have implications for Guam’s Legislature, the Executive Branch and subordinate  
7 agencies, and the Judiciary. Req. Declaratory J. at 14-15. The impact these Questions have on  
8 the Executive Branch is notable, as agencies charged with the enforcement of P.L. 20-134 may be  
9 permitted to arrest individuals for engaging in certain conduct—resulting in significant  
10 consequences.

11 Also, all the Questions concern the power of the Legislature and when it may legislate.  
12 Whether the Guam Legislature violated the Organic Act in passing an unconstitutional law is a  
13 matter of considerable importance, as is whether the Legislature impliedly repealed P.L. 20-134  
14 through several subsequent enactments. Therefore, all three of the Governor’s Questions satisfy  
15 the first prong of the jurisdictional test.

16 With the first jurisdictional requirement addressed, we move to the second requirement:  
17 whether waiting for the normal process of law to play out would cause an undue delay. Because  
18 there is no “bright line demarcation,” undue delay is analyzed using a two-element test, requiring  
19 the court to “(1) measure the delay relative to the time that would be consumed by litigating the  
20 issue through the ‘normal process of law’ and (2) determine whether this delay is ‘excessive or  
21 inappropriate.’” *In re Leon Guerrero*, 2021 Guam 6 ¶ 17 (quoting *In re Request of Calvo*, 2017  
22 Guam 14 ¶ 11).

23 Turning to the first Question posed by the Governor, we conclude this requirement is not  
24 met. The Attorney General has moved to seek the dissolution of the permanent injunction issued  
25 by the District Court of Guam. This motion was made under Federal Rule of Civil Procedure  
26 60(b). To dissolve the injunction, the District Court would have to conclude the underlying law  
27 supporting the injunction changed and/or injunction itself is “no longer equitable.” Fed. R. Civ.  
28 P. 60(b)(5).

1 For Question 1, the Governor’s theory is that no law has changed. She asserts that when  
2 the District Court found P.L. 20-134 unconstitutional, it became void and is void forever. Req.  
3 Declaratory J. at 19. In ruling on the Attorney General’s Motion, the District Court of Guam will  
4 provide an answer to this Question. If the District Court of Guam dissolves the injunction, then  
5 it cannot be the case that P.L. 20-134 was void forever by virtue of being unconstitutional when  
6 passed, and the Governor’s Question would be answered. If the court declines to dissolve the  
7 injunction, the status quo would be unchanged, and declaratory relief from this court would be  
8 unnecessary. Thus, we must decline to answer this Question.

9 Conversely, Questions 2 and 3 may not be addressed by the District Court. While the  
10 District Court may consider the points raised by Questions 2 and 3 in its analysis of whether to  
11 dissolve the injunction, those questions have not been explicitly raised by the Motion to Vacate.  
12 Unlike with Question 1, there is a clear path for the District Court of Guam either to dissolve its  
13 injunction or decline to do so without answering Questions 2 or 3. Accordingly, there is a potential  
14 delay in adjudicating these Questions.

15 If the District Court declines to address these arguments, the delay in answering Questions  
16 2 and 3 would be notable. First, the litigation surrounding P.L. 20-134 is unlikely to end at the  
17 District Court. Rather, an appeal by the losing side will almost assuredly follow. During that  
18 time, there will be great uncertainty in Guam about the status of P.L. 20-134 and about the legality  
19 of abortion. Assuming the federal courts eventually dissolve the injunction on federal  
20 constitutional grounds, this matter would then be litigated in Guam courts on matters of local law.  
21 Guam residents, healthcare providers, and law enforcement agencies would suffer from a lack of  
22 clarity regarding their rights and obligations. At worst, a resident of Guam could be held liable  
23 for conduct ultimately declared legal.

24 One purpose of section 4104 is to “avoid the necessity of creating harm to some party in  
25 order to have a decision.” 7 GCA § 4104 cmt. The present situation comports with the statutory  
26 purpose. Assuming the Governor is right, by not adjudicating the present Questions, this court  
27 could let some harm come to Guam residents only to then hold the statute had no force. This risk  
28 of potential harm thus bolsters our decision to hear Questions 2 and 3.

1 The final jurisdictional hurdle is whether the Questions posed by the Governor are  
2 appropriate for section 4104 review.<sup>1</sup> To determine if the topic is appropriate, we have stated that  
3 requests for declaratory relief must ask this court for “(1) an interpretation of an existing law that  
4 is within its jurisdiction to decide; *or* (2) an answer to any question affecting [the Governor’s]  
5 powers and duties as governor and the operation of the executive branch.” *In re Calvo*, 2017  
6 Guam 14 ¶ 14 (quoting *In re Gutierrez*, 2002 Guam 1 ¶ 11). In *In re Calvo*, this court reaffirmed  
7 this test is disjunctive, meaning the Governor need only show her Questions meet one of the two  
8 options. *Id.* ¶ 15.

9 Question 2 asks this court to interpret the Organic Act; specifically, it asks this court to  
10 determine the powers given to the Guam Legislature by the Congress of the United States.  
11 Moreover, “the question of whether or not legislation has validly passed necessarily impinges on  
12 the operation of the executive branch, and the Governor’s powers and duties.” *Id.* When the  
13 Legislature acts beyond its authority, the separation of powers doctrine is violated. *In re Leon*  
14 *Guerrero*, 2021 Guam 6 ¶ 23. “Separation of powers questions are proper subject matter for  
15 declaratory judgment actions.” *Id.* ¶ 12. This requirement is met for Question 2.

16 This jurisdictional requirement is also met for Question 3. The Governor is asking whether  
17 the Women’s Reproductive Health Information Act of 2012, the Partial-Birth Abortion Ban Act  
18 of 2009, and the enactment of 19 GCA §§ 4A101-102, 4A107, and 4A109 served as implied  
19 repeals of P.L. 20-134. Req. Declaratory J. at 21-24. This request is asking this court to interpret  
20 local law—the effect the statutes had or did not have on P.L. 20-134. Thus, this prong is satisfied.

21 Question 1 fails to meet the undue delay requirement of 7 GCA § 4104, and so we cannot  
22 provide an answer to it. Questions 2 and 3 satisfy our jurisdictional test, and so we shall consider  
23 them further. For clarity, the specific questions on which we invite briefing are:

- 24
- 25 1. Whether the Organic Act of Guam, as it existed in 1990, authorized the Guam  
26 Legislature to pass an unconstitutional law, or the Guam Legislature acted *ultra vires*  
27 in passing Public Law 20-134; and

28 <sup>1</sup> Because Question 1 does not meet the undue delay requirement of the jurisdictional test, we omit analysis  
of whether it would meet the third jurisdictional requirement under 7 GCA § 4104.

1 2. To the extent P.L. 20-134 is not void or otherwise unenforceable, has it been repealed  
2 by implication through subsequent changes in Guam law?

3 On briefing, 7 GCA § 4104 provides this court “*shall*, pursuant to its rules and procedure,  
4 permit interested parties to be heard on the questions presented.” Cognizant of the importance  
5 and salience of this issue to so many stakeholders on Guam, the court is inviting any party to file  
6 amicus briefing in this matter consistent with the schedule set forth below.<sup>2</sup>

7 As for the parties to the case, the court first designates the Attorney General of Guam as a  
8 Respondent. It can be inferred from his Motion that the Attorney General does not view P.L. 20-  
9 134 as void *ab initio* and/or as having been impliedly repealed; moreover, it is in response to his  
10 actions that the Governor is seeking declaratory relief. In addition, we recognize that the  
11 Governor’s Questions touch on the powers and authority of *I Liheslaturan Guåhan* (“the  
12 Legislature”). We invite the Legislature to participate in this matter as a Respondent. If the  
13 Legislature participates, it shall file its briefing under the Amicus schedule below and be entitled  
14 to participate in oral argument.

15 Briefing will proceed as follows:

16 The Governor’s brief must be served and filed by **March 10, 2023**.

17 Any party supporting the Governor or supporting neither the Governor nor the  
18 Respondents shall serve and file their brief by **March 17, 2023**.

19 The Attorney General shall serve and file his brief by **March 24, 2023**.

20 Any party supporting the Attorney General shall serve and file their brief by **March 31,**  
21 **2023**.

22 The Governor may serve and file a reply brief by **April 5, 2023**.

23 The court schedules this matter for oral argument on **April 25, 2023, at 10:00 a.m.** in the  
24 Monessa G. Lujan Appellate Courtroom before the panel of Chief Justice Robert J. Torres,  
25 Associate Justice F. Phillip Carbullido, and Justice *Pro Tempore* John C. Manglona. A status  
26 conference shall be held on **April 10, 2023, at 10:00 a.m.** in the Monessa G. Lujan Appellate

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27 <sup>2</sup> Pursuant to Guam Rule of Appellate Procedure 2, the court is suspending the requirement that amicus  
28 parties must first seek the consent of the parties or leave of the court before filing briefing; any party may file a brief  
consistent with the schedule contained in this Order. All other rules pertaining to amicus briefs shall apply to amicus  
briefs filed in this matter.

1 Courtroom. Any party objecting to the competency of any justice shall make such an objection  
2 by the status hearing date.

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**SO ORDERED** this 17th day of February, 2023.

        /s/          
**F. PHILIP CARBULLIDO**  
Associate Justice

        /s/          
**JOHN A. MANGLONA**  
*Justice Pro Tempore*

        /s/          
**ROBERT J. TORRES**  
Chief Justice