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FOR PUBLICATION

IN THE SUPERIOR COURT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSEPH M. PALACIOS, REPRESENTATIVE OF THE 17TH COMMONWEALTH LEGISLATURE,	CIVIL CASE NO. 11-0280
Plaintiff,) vs.)	ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
BENIGNO R. FITIAL, GOVERNOR OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,	
Defendant.)	

I. <u>INTRODUCTION</u>

THIS MATTER came for hearing on January 12, 2012 at 1:30 p.m. in Courtroom 223A. At the hearing the parties presented oral arguments regarding Governor Benigno R. Fitial ("Governor" or "Defendant")'s Motion to Dismiss and Joseph M. Palacios ("Palacios" or "Plaintiff")'s Cross-Motion for Summary Judgment. Plaintiff was represented pro se. Defendant was represented by Assistant Attorney Generals, Michael A. Stanker, Esq. and Michael L. Ernest. Esq.

Defendant moves to dismiss the lawsuit pursuant to NMI R. Civ. P. 12(b)(6) for lack of standing. After considering oral and written arguments, the Court finds that Plaintiff does not have standing to bring forth its claim. For the reasons discussed below, the Court **GRANTS** Defendant's Motion to Dismiss.

II. FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2011, the Saipan and Northern Islands Legislative Delegation ("SNILD") passed House Local Bill ("HLB") 17-44 which proposes a law to legalize casino gambling by exempting the Third Senatorial District from the Commonwealth-wide prohibition on gambling. On August 29, 2011, the Speaker of the House of Representatives signed HLB 17-44 and transmitted it to the Governor. On October 6, 2011, the Governor vetoed the bill. In vetoing the bill, the Governor provided a two page letter to the President of the Senate, Speaker of the House and Chairman of the SNILD explaining the reasons for his veto.

On October 26, 2011, Plaintiff filed a Petition for Declaratory Judgment regarding the reasons given by the Governor for his veto of HLB 17-44.

Defendant filed a Motion to Dismiss arguing a lack of standing and that the Governor's reasons for vetoing HLB 17-44 are constitutionally sufficient. Plaintiff has filed a cross-motion for Summary Judgment.

III. LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in a complaint. Under NMI R. Civ. P. 12(b)(6), a complaint or pleading is subject to dismissal where it lacks a cognizable legal theory or fails to allege facts constituting a cognizable legal theory. *See Bolain v. Guam Publications, Inc.*, 4 NMI 176 (1994). In deciding a motion to dismiss under Rule12(b)(6), the court must assume as true all factual allegations in the challenged pleading and construe them in a light most favorable to the non-moving party. *Cepeda v. Hefner*, 3 NMI 121, 127-28 (1992); *Govendo v. Marianas Pub. Land Corp.* 2 NMI 482, 490 (1992).

The Supreme Court has formulated a "two-pronged approach" for reviewing the legal sufficiency of a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662,129 S. Ct. 1937 (2009). The court must, first, identify the legal conclusions in the complaint, because they are not entitled to the assumption of truth. *Id.* at 1951. "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. *Id.* at 1949. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 1950. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 1949 (*citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 550 (2007)).

The second prong of this analysis requires the court to assume the veracity of any "well-pleaded factual allegations" and then determine "whether they plausibly give rise to an entitlement to relief." *Id.* at 1950. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." *Id.* at 1949 (quoting *Twombly*, 550 U.S. at 570)). A claim is plausible on its face when the plaintiff pleads factual content that allows the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 1949. This test is satisfied where the complaint pleads facts that are more than "'merely consistent with' a defendant's liability." *Id.* (quoting *Twombly*, 550 U.S. at 557). Thus, the plaintiff must allege enough factual content to "nudge" his claim "across the line from conceivable to plausible." *Id.* at 1952 (quoting *Twombly*, 550 U.S. at 570).

IV. <u>DISCUSSION</u>

Defendant has brought forth the current Motion to Dismiss pursuant to NMI R. Civ. P. 12(b)(6) on

the grounds that Plaintiff has no standing to bring forth his action for Declaratory Relief.

A. DECLARATORY RELIEF GENERALLY

Plaintiff has filed a Petition for Declaratory Judgment. "A declaratory judgment or decree is one which [] declares the rights of the parties or expresses the opinion of the court on a question of law, without ordering anything to be done" *Rayphand v. Tenorio*, 2003 MP 12 (quoting *Burgess v. Burgess*, 210 Ga. 380, 80 S.E.2d 280, 282 (Ga. 1954)).

"It is not disputed that the Commonwealth Superior Court has jurisdiction to entertain an action for declaratory [] relief." *Mafnas v. Commonwealth*, 2 NMI 248, 256 (1991). The Commonwealth Rules of Civil Procedure provide the guidelines for obtaining a declaratory judgment pursuant to 7 CMC § 2421. NMI R. Civ. P. 57. The Commonwealth Code provides:

In a case of actual controversy within its jurisdiction, the Commonwealth Trial Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking the declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by the judgment.

7 CMC § 2421 (emphasis added).

B. PLAINTIFF HAS NO STANDING TO BRING HIS CLAIM

To determine whether an actual controversy exist the Court must look to whether Plaintiff has standing. "Standing is 'a concept utilized to determine if a party is sufficiently affected so as to insure that a *justiciable controversy* is presented to the court." *Commonwealth v. Anglo*, 1999 MP 6 ¶ 8 (citing *Borja v. Rangamar*, 1 NMI 347, 360 (1990)) (emphasis added). Without standing a case cannot go forward. *See*

Lujan v. Defenders of Wildlife, 540 U.S. 555, 560-561 (1992).

Standing requires three elements: (1) personal injury in fact; (2) causation; and (3) redressability. See Anglo, 1999 MP 6 \P 8. The Court finds that neither of the three elements of standing are present here.

Plaintiff alleges he was injured through the Governor's veto message which "damag[ed] his political reputation and 'electability.'" (Pl's. Opp'n to Mot. To Dismiss at p. 6.) This alleged injury is not the type of concrete injury that meets the first prong of the standing requirement. *See Anglo*, 1999 MP 6 ¶ 8 (citing *Gladstone*, *Realtors v. Bellwood*, 99 S. Ct. 1601, 1607 (U.S. 1979)). Moreover, an elected member of the Commonwealth Legislature, cannot have suffered a personal injury in fact from a veto of a legislative bill. *See Anglo*, 1999 MP 6 ¶ 8; *Raines v. Byrd*, 521 U.S. 811 (1997) (holding members of the United States legislature had not suffered personal injury when challenging a veto by the President). It follows, that, without injury there can be no causation.

The Court further finds that redressability is not present. The doctrine of legislative immunity would prevent the suit from going forward against the Governor who was acting within the legislative process and prevent this Court from providing redress. *See Tinian Casino Gambling Control Commission v. Babauta*, et al., Civ. No. 04-0326C (Super Ct. Oct. 18, 2004) (Order Granting Respondent's Mot. To Dismiss). Further, because the Governor can veto a bill for any reason, as long as a reason is given, this Court cannot provide redress by requiring the Governor to re-review the bill let alone approve it. *See Romer v. Colorado General Assembly*, 840 P.2d 1081, 1083 (Col 1992) (holding that while a court can invalidate a veto for failing to provide a reason, if a reason is given the courts cannot review that decision). Here, the Governor issued a memorandum detailing the reasons for his veto and this Court is not in a position to review it for its merits. (Def's. Mot. To Dismiss, Ex. 1.)

Moreover, Plaintiff himself conceded in his briefing and at oral arguments that none of the standing elements are present here. (Pl's. Opp'n to Mot. To Dismiss at pp. 3-5.) Without standing there exists no actual or justiciable case in controversy and therefore this case cannot be brought forth. *Lujan*, 540 U.S. at 560-561.

Plaintiff argues that the issue, here, is not the veto of the Governor itself but the issue of "whether

Plaintiff argues that the issue, here, is not the veto of the Governor itself but the issue of "whether a local law is Commonwealth law." (Pl's. Opp'n to Mot. To Dismiss at p. 5.) However, without an actual controversy, which the doctrine of standing is designed to ensure, as made clear in 7 CMC § 2421, this Court cannot address the question regardless of its importance. The Courts do not have the time or resources to issue advisory opinions when no actual controversy exists. The Court notes that the Constitution has provided a means for redress when a dispute arise between elected officials through the Certified Question process which allows the issue to be processed in a expedited manner before the Commonwealth Supreme Court. *See* NMI Const. art. IV, § 11.

As Plaintiff does not have standing to bring the case, remaining issues, including Plaintiff's Motion for Summary Judgment, will not be addressed by this Court and the case is hereby dismissed.

V. CONCLUSION

Based on the foregoing, Defendant's Motion to Dismiss is hereby $\underline{\textbf{GRANTED}}$ for lack of Standing .

SO ORDERED this $\underline{19^{th}}$ day of January, 2012.

/ s /
David A. Wiseman, Associate Judge