



By the order of the court, Judge David A Wiseman

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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,

Plaintiff,

vs.

BENIGNO R. FITIAL, GOVERNOR OF
THE COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Defendant.

CIVIL CASE NO. 11-0280

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

I. INTRODUCTION

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.

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

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

23 **IV. DISCUSSION**

24 Defendant has brought forth the current Motion to Dismiss pursuant to NMI R. Civ. P. 12(b)(6) on
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1 the grounds that Plaintiff has no standing to bring forth his action for Declaratory Relief.

2 **A. DECLARATORY RELIEF GENERALLY**

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

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

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13 *In a case of actual controversy* within its jurisdiction, the Commonwealth
14 Trial Court, upon the filing of an appropriate pleading, may declare the rights
15 and other legal relations of any interested party seeking the declaration,
16 whether or not further relief is or could be sought. Any such declaration
17 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.

18 7 CMC § 2421 (emphasis added).

19 **B. PLAINTIFF HAS NO STANDING TO BRING HIS CLAIM**

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21 To determine whether an actual controversy exist the Court must look to whether Plaintiff has
22 standing. “Standing is ‘a concept utilized to determine if a party is sufficiently affected so as to insure that
23 a *justiciable controversy* is presented to the court.’” *Commonwealth v. Anglo*, 1999 MP 6 ¶ 8 (citing *Borja*
24 *v. Rangamar*, 1 NMI 347, 360 (1990)) (emphasis added). Without standing a case cannot go forward. *See*
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1 *Lujan v. Defenders of Wildlife*, 540 U.S. 555, 560-561 (1992).

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

4 Plaintiff alleges he was injured through the Governor’s veto message which “damag[ed] his political
5 reputation and ‘electability.’” (Pl’s. Opp’n to Mot. To Dismiss at p. 6.) This alleged injury is not the type
6 of concrete injury that meets the first prong of the standing requirement. *See Anglo*, 1999 MP 6 ¶ 8 (citing
7 *Gladstone, Realtors v. Bellwood*, 99 S. Ct. 1601, 1607 (U.S. 1979)). Moreover, an elected member of the
8 Commonwealth Legislature, cannot have suffered a personal injury in fact from a veto of a legislative bill.
9 *See Anglo*, 1999 MP 6 ¶ 8; *Raines v. Byrd*, 521 U.S. 811 (1997) (holding members of the United States
10 legislature had not suffered personal injury when challenging a veto by the President). It follows, that,
11 without injury there can be no causation.
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13 The Court further finds that redressability is not present. The doctrine of legislative immunity would
14 prevent the suit from going forward against the Governor who was acting within the legislative process and
15 prevent this Court from providing redress. *See Tinian Casino Gambling Control Commission v. Babauta*,
16 et al., Civ. No. 04-0326C (Super Ct. Oct. 18, 2004) (Order Granting Respondent’s Mot. To Dismiss).
17 Further, because the Governor can veto a bill for any reason, as long as a reason is given, this Court cannot
18 provide redress by requiring the Governor to re-review the bill let alone approve it. *See Romer v. Colorado*
19 *General Assembly*, 840 P.2d 1081, 1083 (Col 1992) (holding that while a court can invalidate a veto for
20 failing to provide a reason, if a reason is given the courts cannot review that decision). Here, the Governor
21 issued a memorandum detailing the reasons for his veto and this Court is not in a position to review it for
22 its merits. (Def’s. Mot. To Dismiss, Ex. 1.)
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