

Joji Omino TAGUCHI, et al.
vs.
GOVERNMENT OF THE
NORTHERN MARIANA
ISLANDS and Immigration and
Naturalization Office

Civil Action No. 86-0003
District Court NMI

Decided March 26, 1986

1. Constitution (NMI) -

Schedule on Transitional Matters

The Schedule on Transitional Matters is an attachment to the Constitution, not a part of the body of the Constitution, and is not subject to amendment by a Constitutional Convention and any attempt by a Constitutional Convention to amend the schedule is null and void. NMI Const., Schedule on Transitional Matters, §8.

2. Constitutional Law -

Justiciability - Case or
Controversy

That the Commonwealth Attorney General agrees with the legal arguments advanced by plaintiffs regarding the Constitutional Convention's lack of authority to amend the Schedule on Transitional Matters does not demonstrate the absence of a justiciable case or controversy. U.S. Const., Art. III.

FILED
Clerk
District Court

MAR 26 1986

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN MARIANA ISLANDS

3 CIVIL ACTION NO. 86-0003

3 JOJI OMINO TAGUCHI, PONCIANO)
4 R. EUSEBIO for and in behalf)
5 of HAIDEE EUSEBIO (a minor),)
6 ROMEO C. PAGAPULAR for and in)
7 behalf of JOSE ROCELITO G.)
8 PAGAPULAR, CATHERINE G.)
9 PAGAPULAR, RANDY G. PAGAPULAR,)
10 and CHARLENE G. PAGAPULAR (all)
11 minors), EVELYN C. ARRIOLA,)
12 CRISTINA C. ARRIOLA, and)
13 PERPETUA V. ARRIOLA for and)
14 in behalf of ANTONIO C.)
15 ARRIOLA, MARITES C. ARRIOLA)
16 (all minors), JESUS M. QUIBLAT,)
17 and TAKASHI TAGUCHI for and)
18 in behalf of ROBERT TAGUCHI)
19 (a minor),)

20 Plaintiffs,)

21 vs.)

22 GOVERNMENT OF THE COMMONWEALTH)
23 OF THE NORTHERN MARIANA)
24 ISLANDS, and IMMIGRATION AND)
25 NATURALIZATION OFFICE,)

26 Defendants.)

DECISION

18
19 Defendants' motion for judgment on the pleadings was
20 heard on March 14, 1986. After consideration of the briefs and
21 papers filed and after listening to the arguments of counsel in
22 support of their respective positions, the Court hereby renders
23 the following decision.

24 Plaintiffs' complaint asks this Court to reevaluate its
25 decision in Pangelinan, et al. v. Government of the Northern
26 Mariana Islands, Civil Action No. 85-0022. In that case, the

1 Court found that Constitutional Amendment No. 44 proposed by the
2 Second Northern Marianas Constitutional Convention and certified
3 as having been adopted by referendum, was an act beyond the scope
4 and powers of the Convention and the voters to enact.

5 Plaintiffs argue that:

- 6 1. Amendment 44 is constitutional;
- 7 2. The Second Constitutional Convention had
8 the authority to propose amendments to
9 Section 8 of the Schedule on
10 Transitional Matters and, therefore,
11 Amendment 44 was not an ultra vires act;
12 and
- 13 3. This Court should invalidate the
14 judgment in Pangelinan, et al. v. GNMI,
15 on the basis that it was the product of
16 collusion between counsel for the
17 Plaintiffs and counsel for the
18 Defendants.

19 Defendants' Motion for Judgment on the Pleadings
20 requests invalidation of Amendment 44, and dismissal of
21 Plaintiffs' action.

22 DISCUSSION

23 While the Court will, and has in the past, reversed
24 itself where it feels that it was wrong in a previous decision,
25 the Court, after having taken a fresh look at the issue of the
26 validity or invalidity of Amendment 44 is not persuaded that its
27 decision in Pangelinan was in error.

28 [1] Plaintiffs' first claim is that Amendment 44 is
29 constitutional. Even assuming that this be true, it is not
30 relevant to the disposition of this motion. The Court found that
31 the Schedule of Transitional Matters was not and is not part of

1 the Constitution of the Northern Mariana Islands and was beyond
2 the power of the Second Constitutional Convention to amend.

3 The Second Constitutional Convention was authorized to
4 propose amendments to the Constitution of the Northern Mariana
5 islands. Amendment 44, on the contrary, proposes to amend
6 Section 8 of the Schedule on Transitional Matters. The Schedule
7 on Transitional Matters contains transitional provisions which
8 "remain in effect until their terms are executed". The Attorney
9 General is authorized to review the provisions yearly and certify
10 to the Governor which have been executed. Without reviewing at
11 this time all the authorities relied on by this Court in deciding
12 in Pangelinan, et al. v. GNMI that Amendment 44 was ultra vires,
13 the Court notes that the introductory language from the Schedule
14 itself makes the Schedule transitional and that only the Attorney
15 General has the authority to act upon them and only to the extent
16 of certifying those which have been executed.

17 The Schedule deals with and controls transitional
18 matters from January, 1978, to the time the trusteeship is
19 terminated, at which time the Northern Mariana Islands will
20 become a full-fledged Commonwealth. It is an "attachment" to the
21 Constitution. It is not part of the body of the Constitution
22 which constitutes the permanent laws of the Commonwealth of the
23 Northern Mariana Islands and which are subject to repeal or
24 modification under the provisions of Article XVIII of the
25 Northern Mariana Islands Constitution.

26 Amendment 44, being an attempt to amend a provision

1 contained within the Schedule on Transitional Matters, is not in
2 reality an amendment to the provisions contained in the
3 Constitution nor is it an amendment to add to or delete from the
4 body of the Constitution for which purposes the Convention was
5 convened. It was an ultra vires act, performed beyond the
6 authority, scope and powers of the Constitutional Convention.
7 Amendment 44 was and is null and void and of no force and effect.
8 This finding of ultra vires voids any necessity for determining
9 whether Amendment 44 is or is not constitutional.

10 [2] Plaintiffs' final claim is that the Opinion of the
11 Court in Pangelinan, et al. v. GNMI was rendered, without
12 jurisdiction because it was a friendly and non-adversary suit
13 forbidden by Article III of the United States Constitution.
14 Plaintiffs also argue that this suit was collusive because of the
15 fact that both parties in that case argued that the Second
16 Constitutional Convention had no authority to amend the Schedule
17 on Transitional Matters, and that neither side presented the
18 Court with authorities supporting the validity of Amendment 44.

19 The Court found a clear case or controversy in
20 Pangelinan. The Plaintiffs' voting rights, for example, rested
21 upon the interpretation and validity of Amendment 44. Neither
22 was the suit a collusive one. ". . . it would be a curious
23 result if, in the administration of justice, a person could be
24 denied access to the Court because the Attorney General . . .
25 agreed with the legal arguments asserted by the individual," (INO
26 v. Chadha, 103 S.Ct. 2764 (1983)).

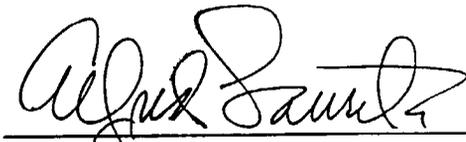
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Pangelinan is dispositive of the issues in this case:
Amendment 44 is null and void, and Section 8 of the Schedule on
Transitional Matters remains unamended and in full force and
effect.

Defendants' motion for Judgment on the Pleadings is
hereby granted.

Judgment will be entered accordingly.

DATED this 26th day of March, 1986.



JUDGE ALFRED LAURETA