

Maria T. PANGELINAN
vs.
COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS and Fifth Northern
Marianas Commonwealth
Legislature

DCA No. 86-9029
CTC Civil No. 86-286
District Court NMI
Appellate Division

Decided May 12, 1987

1. Taxpayer's Suit - Standing

Where plaintiff is challenging the expenditure of Commonwealth funds in contravention of a Commonwealth constitutional amendment, plaintiff has standing to bring the action as a taxpayer, even absent a direct particularized injury.

2. Taxpayer's Suits - Standing

To establish taxpayer standing, it is unnecessary for a party to allege or prove that the challenged government action will increase taxes.

3. Taxpayer's Suits - Standing

Where money is taken from the general fund to pay legislators' salaries in excess of the constitutional mandate, the money cannot be utilized for other constitutionally or statutorily permitted purposes, there is a harm suffered by taxpayer and others similarly situated.

4. Constitutional Law -
Construction of Constitution

Any presumption created by law in favor of the legislative interpretation of a constitutional provision is rebuttable at best, and this is particularly so where provision is tied directly to the legislators' pocketbook.

5. Constitutional Law -
Construction of Constitution

The judiciary is the ultimate interpreter of the Constitution.

6. Constitutional Law -
Construction of Constitution

The general principles which apply to statutory construction are equally applicable in cases of constitutional construction.

7. Constitutional Law -
Construction of Constitution

In interpreting the language of a constitutional provision, the Court applies the plain and commonly understood meaning of the words, unless there is evidence that a contrary meaning was intended.

8. Constitutional Law -
Construction of Constitution

When applying the plain meaning of the words used in a constitutional amendment the Court gives effect to the words as they were understood by the electorate which adopted the amendment.

9. Constitution (NMI) -
Legislative Budget Ceiling

In light of the fact that, NMI Constitutional Amendment placing a ceiling on the budget of the legislature was a restriction on legislative authority, combined with the fact that it was approved by the electorate who were left to define those words for themselves, the trial court's determination that the term "operations and activities" in the amendment included legislators' salaries is not unreasonable under the circumstances and it shall be affirmed.

10. Injunctions - Preliminary

A preliminary injunction can be transposed into a permanent injunction without an evidentiary hearing where there exists no triable issue of fact.

11. Injunctions - Permanent - Hearing

Where there were no issues of material fact before the trial court, it did not err when it granted a permanent injunction without an evidentiary hearing.

FILED
Clerk
District Court

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

MAY 12 1987

For The Northern Mariana Islands

APPELLATE DIVISION By [Signature]
(Deputy Clerk)

MARIA T. PANGELINAN,)
)
Plaintiff-Appellee,)
)
vs.)
)
COMMONWEALTH OF THE NORTHERN)
MARIANA ISLANDS and FIFTH)
NORTHERN MARIANAS COMMONWEALTH)
LEGISLATURE,)
)
Defendants-Appellants.)

DCA NO. 86-9029
CTC CIV. NO. 86-286

OPINION

Counsel for Appellee: MARYBETH HERALD
Fitzgerald, Herald & Bergsma
P. O. Box 909
Saipan, CM 96950

Counsel for Appellants: RAYMOND L. RILEY
Chief Legislative Counsel
Northern Marianas Legislature
P. O. Box 586
Saipan, CM 96950

BEFORE: LAURETA, DUENAS, and FITZGERALD*, District Judges

LAURETA, District Judge:

*The Honorable James M. Fitzgerald, Chief Judge, United States District Court of Alaska, sitting by designation.

1 Appellee Maria T. Pangelinan brought suit against the
2 Commonwealth of the Northern Mariana Islands (CNMI) to enjoin the
3 Legislature from expending sums allocated for legislative
4 salaries. The trial court granted Pangelinan's motion for a
5 preliminary injunction after which she moved for summary
6 judgment. Following the hearing on the summary judgment motion,
7 the trial court issued a permanent injunction prohibiting the
8 Legislature from expending sums in excess of the constitutional
9 ceiling on the legislative budget. The CNMI and the
10 Legislature^{1/} appeal. We affirm for the reasons set forth below.

11

12

FACTS

13

14

15

16

17

18

19

20

21

22

23

24

25

26

In July, 1985, the CNMI held its second Constitutional Convention. Pangelinan was one of 24 elected by the voters to participate as a delegate to the Convention. Constitutional Amendment 9 was one of 44 amendments adopted by the delegates which was later approved by the people of the CNMI in a general election and certified by the Board of Elections.

Amendment 9 placed a \$2.8 million ceiling on the Legislature for operations and activities. Subsequently, in order to implement this amendment the Legislature enacted a bill

^{1/} The Legislature originally filed an amicus curiae brief in the trial court and later moved to and was allowed to intervene.

1 appropriating the sum of \$2.8 million for activities and
2 operations of the Legislature for fiscal year 1986. This bill,
3 upon approval of the Governor, became P.L. 5-1. The Legislature
4 then passed another bill which "allocated" \$540,000 for
5 legislators' salaries for fiscal year 1986. The Governor
6 approved it and it became P.L. 5-9.

7 Pangelinan filed suit to enjoin the government from
8 expending the sum allocated by P.L. 5-9 for legislators'
9 salaries. She initially sought a temporary restraining order
10 contending that the \$2.8 million budget ceiling on operations and
11 activities of the Legislature already included legislators'
12 salaries; that the \$540,000 allocated by P.L. 5-9 constituted an
13 excess over and above that authorized for the Legislature by
14 Constitutional Amendment No. 9. The trial court denied
15 Pangelinan's request for a temporary restraining order, but upon
16 motion was granted a preliminary injunction.

17 Pangelinan moved for summary judgment pursuant to
18 Commonwealth Trial Court Civil Procedure Rule 56. Following the
19 hearing, the trial court determined sua sponte that summary
20 judgment was inappropriate since Pangelinan was seeking
21 injunctive relief and Rule 56 does not encompass injunctive
22 orders. The trial court determined that a permanent injunction
23 was the proper mode of relief. It also determined that a hearing
24 was not necessary. The trial court permanently enjoined the
25 Legislature from spending more than \$2.8 million for operations
26 and activities, including legislators' salaries, in any fiscal

1 year. The COMI and the Legislature appealed.

2 There are three issues presented in this appeal:

- 3 1. WHETHER PANGELINAN HAD STANDING AS A
4 TAXPAYER TO CHALLENGE LEGISLATIVE
5 SPENDING.
6
7 2. WHETHER THE TRIAL COURT CORRECTLY RULED
8 AS A MATTER OF LAW THAT THE CONSTITU-
9 TIONAL CEILING ON THE LEGISLATIVE BUDGET
10 INCLUDED LEGISLATORS' SALARIES.
11
12 3. WHETHER THE TRIAL COURT ERRED WHEN IT
13 TRANSFORMED THE PRELIMINARY INJUNCTION
14 INTO A PERMANENT INJUNCTION WITHOUT AN
15 EVIDENTIARY HEARING.

16
17 ANALYSIS

18 I. Standing

19 The Commonwealth Trial Court and this Court (in both
20 the trial and appellate divisions) have consistently supported
21 the principle of taxpayer standing in suits to prevent the
22 government from abusing its authority. See, Lizama v. Rios, CV
23 85-0011, Decision and Order (D.N.M.I. 1986); Manglona v. Camacho,
24 DCA 82-9009, Opinion, (D.N.M.I. 1983)(aff'g CTC 80-177); and
25 Romisher v. MPLC, CTC 83-401, Order (Commonwealth Trial Court
26 1983).

27 Still, the Legislature contends that the trial court
28 erred when it found that Pangelinan had standing to enjoin
legislative spending. It cites Taisacan v. Camacho, 660 F.2d 411
(9th Cir. 1981), in support of its proposition that absent direct
injury a taxpayer cannot sue to enjoin governmental activities.
Reliance on Taisacan is misplaced. Taisacan dealt with a

1 plaintiff seeking standing in a federal court. Plaintiff in
2 Taisacan was a resident of Rota. He challenged in the federal
3 District Court two gubernatorial vetoes of laws aimed in part at
4 disbursing capital improvement funds for the island of Rota.
5 These funds were paid by the United States to the CNMI under the
6 Covenant to Establish a Commonwealth of the Northern Mariana
7 Islands in Political Union with the United States of America
8 (Covenant). The Covenant was approved by Congress and signed by
9 the President. Of the \$4 million annual capital improvement
10 payment under the Covenant, \$500,000 was reserved for Rota.
11 Taisacan alleged that the Governor's withholding of the Rota
12 allotment involved a federal question. However, Taisacan failed
13 to allege any direct and unique injury. The Ninth Circuit
14 followed the precedent set by federal courts that individuals
15 challenging governmental actions do not have standing to sue
16 absent a showing of a particularized injury. See, e.g., Ex Parte
17 Levitt, 302 U.S. 633 (1937). Taisacan's suit was dismissed for
18 lack of standing.

19 [1] Fangelinan is challenging the expenditure of Common-
20 wealth funds in contravention of a Commonwealth constitutional
21 amendment. Lizama, Manglona, and Romisher all stand for the
22 proposition that standing is recognized in the Commonwealth in
23 this situation. Further support for this stance can be found in
24 Reynolds v. Wade, 249 F.2d 73 (9th Cir. 1957), cited in Lizama
25 and Manglona.

26 In Reynolds, a taxpayer brought suit to enjoin Alaskan

1 officials from unlawfully expending public funds. The district
2 court dismissed the suit. It found that the plaintiff lacked
3 standing because he had not shown the requisite case or
4 controversy. On appeal, the Ninth Circuit discussed the general
5 rule that a federal taxpayer does not have standing to enjoin the
6 expenditure of federal funds. The rule was based on the fact
7 that since (in 1967) a federal taxpayer was only one of 160
8 million taxpayers his or her interest was too miniscule to rise
9 to the requisite level of personal injury or harm as a result of
10 a given expenditure. However, the court distinguished the
11 situation presented by a federal taxpayer challenging the
12 expenditure of federal funds from that of a territorial taxpayer
13 challenging the expenditure of territorial funds. The court
14 determined that an Alaskan taxpayer, one of 130,000 taxpayers at
15 that time, had a sufficient interest in the expenditure of
16 territorial funds to enjoin their waste. The Ninth Circuit
17 reversed the district court and granted the plaintiff standing.

18 As this Court pointed out in Lizama, this reasoning is
19 even more compelling where there are less than 30,000 people in
20 the entire Commonwealth - far fewer of whom pay taxes.

21 [2] The Legislature attempts to negate Pangelinan's claim
22 of standing by including an affidavit from the Director of
23 Finance which indicates that the \$540,000 allocated for
24 legislators' salaries does not increase individual taxes. This
25 argument completely misses the point. It also reflects the
26 Legislature's attitude towards its role in disbursing public

1 funds and supports Pangelinan's assertion that the legislators
2 are merely seeking return of their "gold charge cards."
3 Basically, this argument implies that the Legislature can do
4 anything it wants with public funds provided it does not increase
5 taxes. It perceives this as the sine qua non of taxpayer
6 standing. This perception is incorrect. In re Cole's Estate,
7 102 Wis. 1, 78 N.W. 402 (1899), was cited and relied upon by the
8 trial division of this Court in Lizama. In Cole's Estate, Cole
9 bequeathed certain real property in trust to the town of
10 Watertown, Wisconsin. When the town, in violation of the trust,
11 sold a portion of the property to cover administrative and repair
12 costs a taxpayer sued to recover the property. 78 N.W. at 404.
13 The Wisconsin Supreme Court recognized standing even though no
14 money was lost to the municipality since the property that had
15 been sold had been received as a gift.

16 [3] Though the Legislature may be correct in its assertion
17 that individual taxes are not increased as a result of this
18 allocation, this fact is not controlling. Money taken from the
19 general fund to pay legislators' salaries in excess of the
20 constitutional mandate cannot be utilized for other
21 constitutionally or statutorily permitted purposes. Ultimately,
22 there is a harm suffered by Pangelinan and others similarly
23 situated.

24 Pangelinan also asserts that she has standing based on
25 Constitutional Amendment 31. This amendment provides that a
26 taxpayer can bring an action "to enjoin the expenditure of public

1 funds for other than public purposes or for a breach of fiduciary
2 duty." CNMI Const. Amend. 31. Because this panel has found that
3 Pangelinan has standing based on case precedent, it will not
4 address the constitutional issue.

5 Pangelinan was one of 24 delegates elected to the
6 Second Constitutional Convention. She asserted standing based on
7 this fact. The trial court agreed with Pangelinan. The appel-
8 lants cite this as error. The Court also declines to address
9 this issue since there is standing based on case precedent.

10
11 II. The Constitutionality of Public Law 5-9

12 The crux of this case centers on the proper
13 interpretation of Amendment 9. It states:

14 Section ____ . Budget Ceiling. There shall be
15 a ceiling on the budget of the legislature.

16 a) Appropriations, or obligations and
17 expenditures, for the operations and
18 activities of the legislature may not exceed
19 two million eight hundred thousand dollars in
any fiscal year. This ceiling on the
legislative budget shall be divided equally
between the Senate and the House of
Representatives.

20 b) Obligations and expenditures for
21 the operations and activities of the
22 legislature for the period October 1 through
23 the second Monday in January of a fiscal year
24 in which there is a regular general election,
25 may not exceed seven hundred thousand dollars
or the spending authority otherwise available
by law, whichever is less. This ceiling
shall apply to the various offices and
activities in the same proportions as the
annual spending authority provided by law.

26 . . .

1 The Legislature interpreted the budget ceiling
2 contained in Amendment 9 to exclude legislators' salaries. The
3 trial court interpreted Section (a) of the amendment to include
4 the salaries of the legislators. The Legislature contends that
5 the court erred. It cites authority for the proposition that
6 there is a strong presumption in favor of a Legislature's
7 interpretation of a constitutional provision. See Methodist
8 Hospital of Sacramento v. Saylor, 97 Cal.Rptr. 1, 488 P.2d 161
9 (1971). Pangelinan counters that this is a rebuttable
10 presumption. She maintains that this is an appropriate case to
11 overcome this presumption.

12 Methodist Hospital is distinguishable from the facts
13 herein. It dealt with the expansion of legislative authority.
14 Prior to 1968, the California Constitution prohibited the
15 Legislature from creating any debt or liability in excess of
16 \$300,000 without a bond issue, passed by the Legislature and
17 approved by a majority of the voters. In the 1968 California
18 general election, the voters amended the Constitution by adding
19 §21.5 to Article XIII of the Constitution. This amendment
20 authorized the Legislature to "insure or guarantee" loans for the
21 construction of public health facilities. The amendment
22 specifically provided that it was an exception to the \$300,000
23 limit on indebtedness. Subsequently, the Legislature passed a
24 series of statutes to implement this amendment. One of these
25 statutes authorized the issuance of debentures to insure the
26 payment of delinquent loans.

1 Methodist Hospital was unable to obtain state insurance
2 on a loan to finance the construction of its health care
3 facility. The Director of the Department of Public Health
4 declined to consider Methodist Hospital's application because an
5 independent bond counsel had questioned the power of the
6 Legislature to authorize debentures under the statutory scheme.
7 The hospital sued for a writ of mandamus.

8 The Director argued that the words "insure or
9 guarantee" did not include debentures. The California Supreme
10 Court pointed out initially that the California Constitution is a
11 limitation or restriction on the Legislature. Therefore, when a
12 party challenged an act of the Legislature, the courts looked to
13 see if the Constitution prohibited the act. California courts
14 interpret these restrictions strictly. The court reasoned that a
15 constitutional amendment removing these restrictions and
16 limitations should, in cases of doubt, be construed liberally.
17 The court concluded that since §21.5 removed the prior limitation
18 on the power of the Legislature to incur debt, the interpretation
19 of how to go about incurring the debt would be left to the
20 Legislature. This, the Court concluded, created a presumption in
21 favor of the Legislature's interpretation of the constitutional
22 amendment. Methodist Hospital, 97 Cal.Rptr. at 5.

23 Amendment 9 to the CNMI Constitution restricted the
24 Legislature's authority. It prohibited the Legislature from
25 spending more than \$2.8 million in any fiscal year. This is
26 precisely the obverse of the situation in Methodist Hospital.

1 Amendment 21.5 expanded the California Legislature's authority to
2 incur debt. The California court reasoned that the expansion of
3 constitutional authority required a liberal interpretation.
4 Likewise, this Court will strictly construe the constitutional
5 restriction of legislative authority.

6 [4] California case law may be persuasive but is not
7 controlling authority in the CNMI. But even assuming arguendo
8 that Methodist Hospital was controlling in this case, the
9 Legislature must still fail. Any presumption created by law in
10 favor of the legislative interpretation of a constitutional
11 provision is rebuttable at best. This is particularly so here,
12 in light of the fact that P.L. 5-9 is tied directly to the
13 legislators' pocketbooks. As the Legislature conceded in oral
14 argument, (though now it is only arguing that legislators'
15 salaries are not included in operations and activities) nothing
16 would prevent it in the future from proposing a similar
17 restrictive interpretation which, for example, could exclude
18 legislators' expenses and place that in the same category as
19 legislators' salaries.

20 [5-8] There are few principles so ingrained in American
21 jurisprudence than that set down by the United States Supreme
22 Court in Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803),
23 where it held that the judiciary is the ultimate interpreter of

24 ///

25 ///

26 ///

1 the Constitution. There is no legislative history^{2/} regarding the
2 intent of Amendment 9. The trial court was left to interpret the
3 language of this amendment. The general principles which apply
4 to statutory construction are equally applicable in cases of
5 constitutional construction. Johnson v. State Electoral Board,
6 53 Ill.2d 256, 290 N.E.2d 886, 888 (Ill. 1972). In interpreting
7 the language of a constitutional provision, the Court applies
8 the plain and commonly understood meaning of the words, unless
9 there is evidence that a contrary meaning was intended.
10 Coalition For Political Honesty, et al. v. State Board of
11 Elections, 65 Ill.2d 453, 359 N.E.2d 138, 143 (Ill. 1976).
12 Further, and more important here, when applying the plain meaning
13 of the words used in a constitutional amendment the Court gives
14 effect to the words as they were understood by the electorate
15 which adopted the amendment. Berry v. School District of City of
16 Benton Harbor, 467 F.Supp. 721 (S.D.Mich. 1978), aff'd and
17 remanded, 698 F.2d 813 (6th Cir. 1983), cert. denied, 104 S.Ct.
18 235, 236 (1983).

19 [9] The trial court determined that the plain and commonly
20 understood meaning of legislative budget ceilings for "operations
21

22 _____
23 ^{2/}Pangelinan introduced Committee Recommendation 24 entitled
24 "Report to the Convention by the Committee on Finance and Other
25 Matters." This report was compiled by a committee which assisted
26 the constitutional convention delegates by performing research
and compiling information on the proposed amendments. Though the
court admitted it over objection, it ruled that it ascribed
little or no significance to the report and that the same ruling
would have been made without it.

1 and activities" included legislators' salaries. In light of the
2 fact that this amendment was a restriction on legislative
3 authority combined with the fact that it was approved by the
4 electorate who were left to define those words for themselves,
5 the trial court's determination is not unreasonable under the
6 circumstances and it shall be affirmed.

7
8 III. The Trial Court's Ruling Without a Hearing

9 The trial court initially granted Pangelinan's motion
10 for a preliminary injunction preventing the CNMI from expending
11 funds in excess of the \$2.8 million ceiling on the Legislature.
12 Pangelinan moved for summary judgment. Following the hearing on
13 Pangelinan's motion for summary judgment, the trial court
14 determined sua sponte that a permanent injunction was
15 appropriate. The Legislature objects to the court's procedure
16 and to its ultimate conclusion.

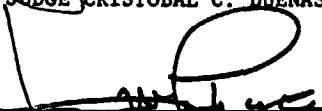
17 [10,11] A preliminary injunction can be transposed into a
18 permanent injunction without an evidentiary hearing where there
19 exists no triable issue of fact. See, e.g., United States v.
20 McGee, 714 F.2d 607, 613 (6th Cir. 1983). There were no issues
21 of material fact before the trial court. It did not err when it
22 granted the permanent injunction.

23 Pangelinan presented to the Court Amendment 9. The
24 amendment stated that the Legislature's budget could not
25 constitutionally exceed \$2.8 million in any fiscal year. She
26 also presented to the Court two public laws, P.L. 5-1 and 5-9.

1 Public Law 5-1 appropriated \$2.8 million for operations and
2 activities of the Legislature for fiscal year 1986. Public Law
3 5-9 allocated \$540,000 for legislative salaries for that same
4 year. The Legislature did not challenge the fact that \$2.8
5 million had been appropriated in P.L. 5-1. It did not challenge
6 the fact that an additional \$540,000 had been "allocated" in P.L.
7 5-9. The trial court noted that it had no formal compilation of
8 legislative history to rely upon for its decision. The Legisla-
9 ture argued that the delegates' intent was an issue of fact. The
10 only conceivable way to determine the intent of the given
11 amendments was to ask each delegate what his or her intent was in
12 drafting the proposed amendment. This procedure would have
13 definitely proved to be burdensome and of little help in
14 determining the ultimate issue. The people voted on these
15 amendments. They were left to interpret the plain meaning of the
16 words contained therein. So did the trial court. Its decision
17 is AFFIRMED.

18
19 
20 JUDGE ALFRED LAURETA

21
22 
23 JUDGE CRISTOBAL C. DUENAS

24
25 
26 JUDGE JAMES M. FITZGERALD