

Silvestre T. CRUZ
vs.
Ignacio K. QUICHOCHO,
Mayor of Tinian, both personally
and in his official capacity

Civil Action No. 87-0021
District Court NMI

Decided February 23, 1988

**1. Civil Rights - Due Process
Claims - Freedom of Speech**
Where plaintiff has alleged that he was fired solely as retaliation for exercising his constitutional right of freedom of speech, it is not merely a garden-variety breach of contract claim disguised as a legitimate civil rights claim. 42 U.S.C. §1983.

**2. Jurisdiction - District Court
Abstention**
There is no need for federal court to abstain from the exercise of federal jurisdiction where the state and federal constitutional provisions at issue in the law suit are identical or substantially similar.

**3. Jurisdiction - District Court -
Abstention**
Abstention from the exercise of federal jurisdiction is the exception, not the rule.

FILED
Clerk
District Court

FEB 23 1988

DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS

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

SILVESTRE T. CRUZ,)
)
Plaintiff,)
)
vs.)
)
IGNACIO K. QUICHOCHO, MAYOR)
OF TINIAN, both personally)
and in his official)
capacity,)
)
Defendant.)
_____)

CIVIL ACTION NO. 87-0021

DECISION AND ORDER

THIS MATTER came before the Court on February 19, 1988, for hearing of defendant's motion to dismiss for lack of jurisdiction over the subject matter or for failure to state a claim.

Defendant argues, in essence, that this Court should decline to exercise jurisdiction because the complaint alleges a violation of local law, as well as the alleged 42 U.S.C. §1983 action, and because there has been no showing that the Commonwealth Trial Court cannot afford an adequate remedy. Defendant cites the Court's previous decision in Attao v. Palacios, 2 C.R. 1086 (D.C.N.M.I. 1987), as controlling

1 precedent.

2 [1] The instant case is not identical to Attao in that,
3 here, plaintiff has alleged that he was fired solely as
4 retaliation for exercising his constitutional right of freedom of
5 speech. As alleged, it is not, as in Attao, merely a
6 garden-variety breach of contract disguised as a legitimate §1983
7 claim.

8 [2] Defendant argues for a Pullman-type abstention.^{1/}
9 Here, the very heart of the lawsuit is the allegation of
10 retaliation for participating in the political process.
11 Abstention on Pullman grounds is premised upon a finding by the
12 federal court that the federal claim or the pendent state claim
13 raises an unresolved issue of state law, the resolution of which
14 may avoid the need to grapple with the constitutional claim.
15 There is no need to abstain where the state and federal
16 constitutional provisions are identical or substantially similar.
17 Article 1, §2 of the CNMI Constitution is substantially similar
18 to the First Amendment of the United States Constitution and is
19 to be interpreted similarly, according to the "Analysis of the
20 CNMI Constitution".

21 [3] Abstention from the exercise of federal jurisdiction is
22 the exception, not the rule. It is an extraordinary and narrow
23 exception to the duty of a district court to adjudicate a
24

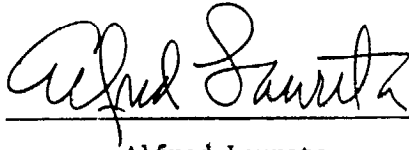
25 ^{1/} Railroad Commission of Texas v. Pullman Co., 61 S.Ct. 643
(1941)

controversy properly before it. Colorado River Water Conservation District v. United States, 96 S.Ct. 1236, 1244 (1976). Therefore,

Defendant's motion to dismiss is DENIED.

IT IS SO ORDERED.

DATED this 23rd day of February, 1988.

A handwritten signature in cursive script, appearing to read "Alfred Laureta", written over a horizontal line.

Alfred Laureta
Judge