OFFICE OF THE GOVERNOR OF GUAM
Ricardo J. Bordallo Governor's Complex
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Attorneys for the Governor of Guam
I Maga'låhen Guåhan Eddie Baza Calvo

FILED
2018 JAN 22 PM 4:22
SUPREME COURT
OF GUAM

Speaker Benjamin J.F. Cruz
JAN 22 2018
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Received By:
GL# 34-18-1439

IN THE SUPREME COURT OF GUAM

EDDIE BAZA CALVO, *I MAGA'LÅHEN GUÅHAN* Petitioner, vs. *I MINA'TRENTAI KUÅTTRO* *NA LIHESLATURAN GUÅHAN.* Respondent.	SUPREME COURT OF GUAM CASE NO. WRM 2018-001 VERIFIED PETITION FOR WRIT OF MANDAMUS

2018 JAN 22 PM 5:26

Petitioner *I Maga'låhen Guåhan* **EDDIE BAZA CALVO**, Governor of Guam, petitions this Court for a Writ of Mandamus directed to Respondent ***I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN***, Thirty-Fourth Guam Legislature, and by this verified petition hereby alleges as follows:

Parties.

1. Petitioner Eddie Baza Calvo is the elected Governor of Guam and is presently holding office.

2. Respondent *I Mina'trentai Kuåttro na Liheslaturan Guåhan* ("34th Guam Legislature" or "Legislature") is a unicameral body established by § 1423(a) of the

1433

Organic Act of Guam [Title 48 U.S.C.] upon which the Congress of the United States has vested the legislative power and authority of Guam.

Jurisdiction.

3. "[The Supreme Court of Guam] has original jurisdiction over a petition for writ of mandamus pursuant to 7 G.C.A. § 3107(b) and 48 U.S.C. § 1424-1(a)(1)." *Underwood v. Guam Election Commission (Camacho) ("Underwood II"),* 2006 Guam 19 ¶ 6, ¶ 9 ("To begin with, there is no question that this court is cloaked with the authority to exercise original jurisdiction over a petition for extraordinary relief, and in this case, a writ of mandamus."); *Gutierrez v. Guam Election Commission (Calvo)*, 2011 Guam 3, ¶ 4 ("We have jurisdiction over original proceedings for a writ of mandamus or prohibition.")

4. Further, § 1424-1(a)(3) of the Organic Act provides that "the Supreme Court of Guam shall have 'jurisdiction to issue all orders and writs in aid of its ... original jurisdiction. . . .'" *Underwood II,* 2006 Guam 19 at ¶ 9.

5. Guam law at 7 G.C.A. § 31202 additionally grants the Supreme Court of Guam jurisdiction to issue extraordinary writs, particularly with respect to a petition for a writ of mandate." *Underwood II,* 2006 Guam 19 at ¶ 9; *Gutierrez*, 2011 Guam 3 ¶ 9 ("This court may issue a writ in its original jurisdiction to 'compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. . . .'"

Bill 1(1-S).

6. On April 11, 2017, the Governor, pursuant to authority vested in him by § 1422 of the Organic Act of Guam, recommended to the 34th Guam Legislature a bill to finance tax refunds, to wit: *"An Act to Add § 1512.4 to Article 5, Chapter 1, Title 5, Guam Code Annotated, Relative to Authorizing the Issuance of General Obligation Tax and Revenue Anticipation Notes of the Government of Guam."*

7. On April 13, 2017, the Governor's tax refund financing bill was introduced as Bill 1(1-S) by the Guam Legislature Committee on Rules.

8. On May 9, 2017, and after a public hearing, a special session was convened by the Speaker where a quorum of the Legislature debated and voted on Bill 1(1-S).

9. Out of 13 senators present and voting on Bill 1(1-S), the final tally of the vote was seven (7) "Yay" votes in favor and six (6) "Nay" votes against. The Speaker of the Legislature declared at the end of said vote that the measure had failed to pass because it did not garner eight (8) affirmative votes as was required by Title 2 G.C.A. § 2104 and by section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature.

10. On May 25, 2017, the Governor sent a letter to Legislative Secretary, Senator Regine Biscoe Lee, advising her that pursuant to Organic Act § 1423b, Bill 1(1-S) had, in fact, passed because the measure had received 7 affirmative "Yay" votes, which is a majority of the 13 possible votes of the members that were present and voting at the meeting/session held on May 9, 2017, and that as set forth in Organic Act § 1423i, the Guam Legislature was required to present Bill 1(1-S) to the Governor for executive

action. A true and correct copy Governor Calvo's letter to Senator Lee is attached hereto as **"Exhibit 1."**

11. On or about May 25, 2017, Senator Lee responded to Governor Calvo's letter by stating that Bill 1(1-S) had not been "duly adopted." A true and correct copy of Senator Lee's letter to Governor Calvo is attached hereto as **"Exhibit 2."**

The Petition for Declaratory Judgment, Sup. Ct. Case No. CRQ17-001.

12. On June 9, 2017, the Governor filed a petition with the Supreme Court of Guam seeking a declaratory judgment pursuant to 7 G.C.A. § 4140 regarding the interpretation of Organic Act §1423b, as well as of 2 G.C.A. § 2104 and the Standing Rules of the 34th Guam Legislature. See, *In re: Request of I Maga'låhen Guahan Eddie Baza Calvo relative to the Interpretation and Application of Organic Act Section 1423b and what constitutes the affirmative vote of the members of I Liheslaturan Guahan,* PETITION FOR DECLARATORY JUDGMENT, Supreme Court of Guam Case No. CRQ17-001 (*"In re: Calvo"*).

13. On November 29, 2017, the Supreme Court issued an Opinion in favor of the Governor and declared that, "Pursuant to 48 U.S.C.A. § 1423b, when a quorum is present as defined under this provision, if proposed legislation receives 'the affirmative vote of a majority of the members present and voting,' it shall be deemed to have passed, and no further requirements necessary to pass legislation may be imposed." *In re: Calvo*, OPINION, 2017 Guam 14 at ¶ 50.

14. The Supreme Court's Opinion further declared that, "Title 2 G.C.A. § 2104 and section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature are

inorganic in that they seek to impose an additional requirement for the passage of legislation beyond that which is required by 48 U.S.C.A. § 1423b." *Id.*

15. The Supreme Court's Opinion further declared that, "Title 2 GCA § 2104 and section 1.02(d)(4) are invalid and void." *Id.*

16. On November 29, 2017, the Supreme Court issued a Judgment incorporating the declarations set forth in its Opinion, and said Judgment was entered on the docket the same day.

17. More than forty-five (45) have passed since entry of the Judgment on the docket, and pursuant to Rule 30 of the Guam Rules of Appellate Procedure, the Legislature did not file a petition seeking rehearing of the Judgment, no order has been issued to extend the time for filing such a petition, and the time for filing a Rule 30 petition for rehearing has lapsed.

The Requests for Transmittal of Bill 1(1-S) to the Governor.

18. Based upon the Supreme Court's Opinion, and Judgment in CRQ17-001, and pursuant to §1423b of the Organic Act of Guam, by a margin of 7 to 6 votes, Bill 1(1-S) was passed by a majority of a quorum of the members of the 34th Guam Legislature present and voting at the meeting/session held on May 9, 2017.

19. Based upon the Supreme Court's Opinion, and Judgment in CRQ17-001 that Title 2 G.C.A. § 2104 and Standing Rule Section 1.02(d)(4) are invalid and void, the Legislature cannot lawfully require that a minimum of 8 affirmative votes are necessary in order for a bill to be passed by the Legislature.

20. On December 1, 2017, the Governor sent a letter to Acting Secretary of the Legislature Senator Tom Ada requesting that Bill 1(1-S) be immediately transmitted

to him for signature. A true and correct copy of the Governor's letter to Senator Ada is attached hereto as **"Exhibit 3."**

21. On December 2, 2017, Senator Ada responded to the Governor's letter by refusing to transmit Bill 1(1-S) on the grounds that the Supreme Court had "expressly declined to address" whether Bill 1(1-S) had "appropriately passed." A true and correct copy of Senator Ada's letter to Governor Calvo is attached hereto as **"Exhibit 4."**

22. On December 13, 2017, the Governor sent a letter to Secretary of the Legislature Senator Regine Biscoe Lee requesting that Bill 1(1-S) be transmitted to him for signature. A true and correct copy of the Governor's letter to Senator Lee is attached hereto as **"Exhibit 5."**

23. On December 19, 2017, Senator Lee responded to the Governor's letter by refusing to transmit bill "at this time." A true and correct copy of Senator Lee's letter to Governor Calvo is attached hereto as **"Exhibit 6."**

Substantial Interest and Irreparable Harm.

24. The Supreme Court of Guam has held that "the question of whether or not legislation has validly passed necessarily impinges on the executive branch, and the Governor's power and duties" *In re: Calvo,* OPINION, 2017 Guam 14 at ¶ 15.

25. Section 1423i of the Organic Act commands that, "[e]very bill passed by the legislature shall, before it becomes a law, be entered upon the journal and presented to the Governor."

26. The Legislature's willful refusal and failure to present Bill 1(1-S) to the Governor contravenes Organic Act § 1423b and §1423i.

27. The Governor has a substantial interest in the Legislature's compliance with, and adherence to, the laws of Guam and the laws of the United States as they apply to Guam, including the Organic Act.

28. The Governor has a substantial interest in the Legislature's transmittal of Bill 1(1-S) to him because the Legislature has a legal obligation under § 1423i of the Organic Act to forward and present Bill 1(1-S) to the Governor for executive action.

29. If the Legislature is not compelled to comply with its obligation under Organic Act § 1423i to transmit Bill 1(1-S) to the Governor, and further to discontinue its reliance on Title 2 GCA § 2104 and Standing Rule Section 1.02(d)(4), both of which have been declared by the Supreme Court as being invalid and void, the Governor shall be irreparably harmed in that the Governor's powers and duties under Organic Act § 1422 and § 1423i to consider duly passed legislation and to either approve or veto such legislation shall be unlawfully impinged because the Governor cannot exercise his Organic Act authority until such legislation is presented to him.

30. If the Legislature is not compelled to comply with its obligation under Organic Act § 1423i to transmit Bill 1(1-S) to the Governor, and further to discontinue its reliance on Title 2 GCA § 2104 and Standing Rule Section 1.02(d)(4), both of which have been declared by the Supreme Court as being invalid and void, the Governor shall be irreparably harmed in that the doctrine of separation of powers shall be violated and the operation of the executive branch impinged.

31. If the Legislature is not compelled to comply with its obligation under Organic Act § 1423i to transmit Bill 1(1-S) to the Governor, and further to discontinue its reliance on Title 2 GCA § 2104 and Standing Rule Section 1.02(d)(4), both of which

have been declared by the Supreme Court as being invalid and void, the Governor shall be irreparably harmed because the executive branch and his office as Governor will suffer the willful misapplication of the law.

Matter of Great Public Importance and Exigency.

32. The Supreme Court's exercise of original jurisdiction over a petition for writ of mandamus is warranted where "'the issues are of great public importance and should be resolved promptly." *Underwood II,* 2006 Guam 19 at ¶ 17 (". . .where the issue is determined to be one of great public importance and must be resolved promptly, "the existence of an alternative appellate remedy will not preclude [the] court's original jurisdiction."); *Gutierrez*, 2011 Guam 3 at ¶ 7 ("One such case in which the exercise of original jurisdiction may be warranted is where 'the issues are of great public importance and should be resolved promptly.'")

33. Ensuring that public officials comply with, and follow, the laws of Guam and the laws of the United States as they apply to Guam is a matter that presents an issue of great public importance and should be resolved promptly.

34. The Legislature has a clear and present duty and obligation to comply with, and follow, the laws of Guam and the laws of the United States as they apply to Guam.

35. The Governor has a clear, present, and beneficial right to the Legislature's compliance with the laws of Guam and the laws of the United States as they apply to Guam.

36. The objective of Bill 1(1-S) is to enable the Government of Guam to pay tax refunds within weeks, if not days, of tax returns being declared as error free and accepted, aka "Status A."

37. The tax-filing season for calendar year 2017 has begun, and federal tax law [26 C.F.R. § 31.6051-1(d)] requires all employers to provide W-2 statements by no later than January 31, 2018, which means that taxpayers who receive their W-2 statements will soon begin filing their returns.

38. It is a matter of great public importance to promptly pay tax refunds as quickly as possible, and if Bill 1(1-S) is not presented to the Governor promptly, taxpayers whose returns are declared as Status A could wait up to six months to receive their refunds, and not just weeks or day, thus causing taxpayers to unnecessarily suffer delay and hardship.

39. There are less than eleven (11) months remaining in the term of the 34th Guam Legislature which began on January 2, 2017, and which will end on January 6, 2019. If the instant petition is not resolved before the end of the Legislature's term on January 6, 2019, the Legislature will adjourn *sine die* without the presentation of Bill 1(1-S) to the Governor having been effected, at which point Bill 1(1-S) will expire and can no longer be presented.

40. The instant Petition for Writ of Mandamus presents an issue of great public importance and time is of the essence in its resolution.

PRAYER FOR DECLARATORY RELIEF

WHEREFORE, *I Maga'låhen Guåhan* Eddie Baza Calvo respectfully prays as follows:

A. That a writ of mandamus immediately issue in the first instance commanding the 34th Guam Legislature to:

i. Transmit and present Bill 1(1-S) as it was passed on May 9, 2017, to the Governor of Guam so that he may duly exercise his powers and duties under the Organic Act; and

ii. Restrain from engaging in further action to delay or prevent the transmittal and presentation of Bill 1(1-S) to the Governor of Guam.

B. That the Supreme Court expedite the briefing and resolution of this Petition; and

C. That the Court grant such other relief as it may deem just and proper.

Respectfully submitted this 12nd day of January 2018.

OFFICE OF THE GOVERNOR OF GUAM

By _____
SANDRA CRUZ MILLER

VERIFICATION

I, EDDIE BAZA CALVO, say:

I am the elected Governor of Guam and am presently holding office. I am the Petitioner named in this action. I have read the above petition for Writ of Mandamus and Prohibition and know its contents. I verify that the factual matters set forth in the petition are true of my own knowledge and belief except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed at Hagåtña, Guam on JAN 2 2 2018.

EDDIE BAZA CALVO
Governor of Guam

Doc. No. 34GL-17-1433.

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

May 25, 2017

Honorable Regine Biscoe Lee
Legislative Secretary, I Mina Trentai Kuattro na Liheslaturan Guahan
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

Dear Madam Secretary,

It has been 16 days since the Legislature voted on Bill No. 1 (1-S) in the special session I convened for that purpose. I understand from coverage of the special session that 13 senators were present and voting. Seven senators voted in the affirmative, and six voted against the quicker payment of tax refunds. Customarily, the Legislative Secretary, on behalf of the Legislature, presents legislation duly passed to I Maga Lahi within days, if not hours, of passage and engrossment. The presentment of bills is a legislative duty prescribed in federal law.

No local statute or rule may supercede such authority.

§1423b the Organic Act, vesting the legislative authority of the territory in the Legislature, provides clear and explicit language to enumerate the number of votes needed, when a quorum is present, to pass a bill before presentment to I Maga Lahi. The relevant portion of §1423b states, in part:

> "[The Legislature] shall choose from its members its own officers, determine its rules and procedure, ***not inconsistent with this chapter***, and keep a journal. The quorum of the legislature shall consist of a simple majority of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays."

Behind this legislation are the real lives of thousands of our people waiting for money that is theirs. Please do not let them wait any further. Please do your duty, present that bill to me. I will sign it, and our people, after more than two decades, will finally be able to get their money back as intended under the tax code. You had the opportunity to be part of the solution, but instead you and a minority of senators present and voting stood in its way. You now have a duty to move this solution to my desk for immediate signature.

Sincerely,

EDDIE BAZA CALVO

Exhibit 1

Ricardo J. Bordallo Governor's Complex • Adelup, Guam 96910
Tel: (671) 472-8931 • Fax: (671) 477-4826 • governor.guam.gov • calendar.guam.gov
Eddie Baza Calvo @eddiebazacalvo @governorcalvo governorofguam

OFFICE OF THE PEOPLE
SENATOR RÉGINE BISCOE LEE
SIKRITÅRIAN LIHESLATURAN GUÅHAN • I MINA'TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

Honorable Governor Calvo
Ricardo J. Bordallo Governor's Complex
Adelup, Guam 96910

Håfa Adai Governor Calvo,

I am in receipt of your letter dated May 25, 2017, and have transmitted the same to my colleagues.

Bill 1 (1-S) was not duly adopted by I Mina'Trentai Kuåttro Na Liheslaturan Guåhan.

Un Dångkolo Na Si Yu'os Ma'åse'.

Senator Régine Biscoe Lee

cc: Senators, 34th Guam Legislature

Exhibit 2

Chairperson, Committee on Innovation and Economic, Workforce, and Youth Development
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910 | senatorbiscoelee@guamlegislature.org

FILE COPY

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

December 1, 2017

The Honorable Thomas C. Ada
Acting Secretary
I Mina'trentai Kuåttro na
Liheslaturan Guåhan
Ste. 207 Ada Plaza Ctr.
173 Aspinall Ave.
Hagåtña, GU 96910

RECEIVED by the
Office of Senator
Thomas C. Ada
4:05PM

Dear Senator Ada:

The Administration requests the immediate transmittal of Bill No. 1 (1-S) from the Legislative Secretary as per the Organic Act and the Supreme Court's ruling.

Once the bill is transmitted, it will be signed into law and my fiscal team will begin preparations for the distribution of next year's tax refunds. With the note in place, we will be able to pay tax refunds within weeks, if not days, of people filing. The note will be paid by the end of the fiscal year.

Time is of the essence. Thank you in advance for your prompt response.

Senseramente,

EDDIE BAZA CALVO
Governor of Guam

Exhibit 3

Sen. Thomas Ada

I Mina'Trentai Kuåtro Na Liheslaturan Guåhan • 34th Guam Legislature

December 02, 2017

The Honorable Edward J.B. Calvo
I Maga'låhen Guåhan
Ufisinan I Maga'låhi
Hagåtña, Guam 96910

Dear *Maga'låhi* Calvo:

I am in receipt of your November 30, 2017 letter requesting the immediate transmittal of Bill No. 1(1-S) on the basis of the Guam Supreme Court's ruling in *In re Request of I Maga'låhen Guåhan Eddie Baza Calvo Relative to the Interpretation & Application of Organic Act Section 1423b & What Constitutes the Affirmative Vote of the Members of I Liheslaturan Guåhan*, 2017 Guam 14 ("*In re Request of Calvo*").

In its opinion, however, the Court expressly declined to address whether the aforementioned bill was "appropriately passed." *In re Request of Calvo*, 2017 Guam 14, ¶ 50. Thus, as Acting Legislative Secretary of the 34th Guam Legislature, I cannot transmit the aforementioned at this time.

Respectfully,

Thomas C. Ada
Acting Legislative Secretary

OFFICE OF THE GOVERNOR
RECEIVED
DEC 04 2017
BY:
TIME: 8:00
CENTRAL FILES

Exhibit 4

OEI-1217-30744

Ada Plaza Center, Suite 207 • 173 Aspinall Ave. • Hagåtña, Guam 96910
(671) 473-3301 • Office@SenatorAda.org • www.SenatorAda.org

RECEIVED
12.2.17

FILE COPY

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor Of Guam

December 13, 2017

The Honorable Régine Biscoe Lee
Senator
I Mina'trentai Kuåttro na Liheslaturan Guåhan
163 Chalan Santo Papa
Hagåtña, GU 96910

Dear Senator Lee:

On your return to office as the Legislative Secretary and on behalf of the people of Guam who will be filing tax refunds in just a few weeks, we request the transmittal of Bill No. 1 (1-S) which the legislature passed earlier this year, according to the Organic Act.

In the past few years, people have looked forward to receiving their tax refunds to provide them with some breathing room to cover medical bills, mortgages, or utilities. I would like to remind you that you ran on a platform of "Strong Families, Strong Guam," and it is the season of giving and family.

In 2011, some Guamanians received more than just one year's worth of tax refunds — the government at that point was more comfortable owing the people than the bank. We challenged that belief and we were able to pay up to $300 million in tax refunds in the first two years alone. Some Guamanians who received their tax refund checks were in tears because those tax refunds gave them the little boost they needed to get ahead. It strengthened their ability to meet the challenges they faced.

We've been able to send out tax refunds within months of people filing their returns, but we can send out tax refunds within weeks, if not days, by using the tax revenue anticipation note. Additional delays in the transmittal of Bill 1(1-S) will mean delays in tax refund payouts using the TRAN. The government's ability to quickly return taxes that people overpaid is in *your* hands.

At this juncture, our goal is to have the tax and revenue anticipation note in place by February. If we had been able to use the TRAN earlier this year, we would have already paid it off before the end of the fiscal year.

Senator Lee, this is the season of giving and hope. I do not want to spend our time fighting each other over a bill that passed in accordance to the law. Let's follow the law and help our people.

Senseramente,

EDDIE BAZA CALVO
Governor of Guam

Office of the People
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 12.13.17 4:20pm.
Initials:

Exhibit 5

OFFICE OF THE PEOPLE
SENATOR RÉGINE BISCOE LEE
SIKRITÅRIAN LIHESLATURAN GUÅHAN • I MINA'TRENTAI KUÅTRO NA LIHESLATURAN GUÅHAN
LEGISLATIVE SECRETARY • 34TH GUAM LEGISLATURE

December 19, 2017

The Honorable Governor Eddie Calvo
Office of the Governor
Ricardo J. Bordallo
Governor's Complex
Adelup, Guam 96910

OFFICE OF THE GOVERNOR
CENTRAL FILES
RECEIVED BY
TIME 3:30 DATE 12.19.17

Dear Governor Calvo,

In response to your request to transmit Bill No. 1 (1-S), note that the Legislature cannot transmit the bill at this time, as the Legislative Counsel is currently evaluating the legal implications of the Supreme Court of Guam's decision in *In re Request of I Maga'låhen Guåhan Eddie Baza Calvo Relative to the Interpretation & Application of Organic Act Section 1423b & What Constitutes the Affirmative Vote of the Members of I Liheslaturan Guåhan*, 2017 Guam 14.

Sensaramente,

Régine Biscoe Lee
Legislative Secretary
Senator, 34th Guam Legislature

OFFICE OF THE GOVERNOR
RECEIVED
DEC 19 2017
BY:
TIME: 3:30
CENTRAL FILES

Exhibit 6

CAJ-1217-3217

Chairperson, Committee on Innovation and Economic, Workforce, and Youth Development
Guam Congress Building, 163 Chalan Santo Papa, Hagåtña, Guam 96910 | senatorbiscoelee@guamlegislature.org