IN THE SUPREME COURT OF GUAM

EDDIE BAZA CALVO, I MAGA'LÅHEN GUÅHAN,
Petitioner,

v.

I MINA' TRENTAI KUÅTTRO NA LIHESLATURAN GUÅHAN,
Respondent.

Supreme Court Case No.: WRM18-001

OPINION

Cite as: 2018 Guam 6

Motion to Dismiss Petition for a Writ of Mandate
Filed in the Supreme Court of Guam
Argued and submitted on May 2, 2018
Hagåtña, Guam

Appearing for Petitioner:
Sandra Cruz Miller, *Esq.*
Office of the Governor of Guam
Ricardo J. Bordallo Governor's Complex
Adelup, GU 96910

Appearing for Respondent:
Julian Aguon, *Esq.*
Blue Ocean Law, PC
Terlaje Professional Bldg., Ste. 216
194 Hernan Cortez Ave.
Hagåtña, GU 96910

BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.

MARAMAN, C.J.:

[1] Petitioner Eddie Baza Calvo, I Maga'låhen Guåhan (the "Governor"), has filed a Petition seeking a writ of mandamus directed against I Mina' Trentai Kuåttro Na Liheslaturan Guåhan (the "Legislature") commanding the Legislature to "[t]ransmit and present Bill 1(1-S) as it was passed on May 9, 2017" to the Governor and to "[r]estrain from engaging in further action to delay or prevent the transmittal and presentation of Bill 1(1-S) to the Governor of Guam." Verified Pet. for Writ of Mandamus at 10 (Jan. 22, 2018) (hereinafter, "Pet."). The Legislature has filed an Answer to the Petition. The Legislature has also separately moved to dismiss the Petition on a number of jurisdictional and justiciability grounds. The Governor has opposed the Legislature's motion to dismiss.

[2] In its motion to dismiss, the Legislature has asserted, in part, that the various issues presented in the Petition raise nonjusticiable political questions. We agree with the Legislature that the question of whether a bill has passed the Legislature as a factual matter is nonjusticiable. Because the Legislature has never determined as a factual matter that Bill 1(1-S) was validly passed, and only the Legislature has that authority, the court is unable to grant the relief requested in the Petition. Accordingly, the Legislature's motion is granted, and the Governor's Petition is dismissed with prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] On April 11, 2017, the Governor recommended a bill to the Legislature bearing the title: "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." This bill was introduced as Bill 1(1-S), and the Legislature was called into special session in order to consider it. Of the fifteen members of the Legislature, only thirteen voted; seven voted in favor of the bill and six against the bill. The Speaker of the Legislature then declared the measure had failed to pass because it did not garner eight affirmative votes as required by the then-existing versions of 2 GCA § 2104 and section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature ("the Standing Rules").

[4] The Governor brought suit seeking a declaratory judgment against the Legislature. We held 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* (hereinafter, "*In re Request of Calvo*"), that both 2 GCA § 2104 and section 1.02 of the Standing Rules were inorganic and therefore void. 2017 Guam 14 ¶ 50. The court issued a declaratory judgment that, as a matter of law and "[p]ursuant 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." *Id.* Based upon our prior precedent, however, the court expressly refused to address as a factual matter "whether Bill 1(1-S) was appropriately passed." *Id.* (citing *In re Request of I Mina'Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund*, 2014 Guam 15 ¶ 54 [hereinafter *In re Tax Trust Fund*]).

[5] Following the entry of judgment in favor of the Governor, the Governor requested that the Legislature transmit Bill 1(1-S) to him for his signature and approval. *See* Pet. at 5. The

Legislature refused this request, *id.* ¶¶ 21, 23, and the Governor's Petition followed. On January 24, 2018, the Legislature reconsidered its action on Bill 1(1-S) and re-voted. *See* Decl. Rennae V. Meno ¶ 3 (Feb. 6, 2018). Upon re-vote, Bill 1(1-S) failed to pass by a vote of six in favor and eight against, with one member abstaining. *Id.* The Legislature subsequently moved to dismiss the Petition.

II. JURISDICTION

[6] Generally speaking, this court has original jurisdiction over a petition for a writ of mandamus pursuant to 7 GCA § 3107(b) (2005) and 48 U.S.C.A. § 1424-1(a)(1) (Westlaw through Pub. L. 115-140 (2018)). *See Underwood v. Guam Election Comm'n*, 2006 Guam 19 ¶¶ 6, 9; *Gutierrez v. Guam Election Comm'n*, 2011 Guam 3 ¶ 4; *Duenas v. Guam Election Comm'n*, 2008 Guam 1 ¶¶ 11-13; *see also* 7 GCA § 31201 *et seq.*

III. ANALYSIS

[7] A writ of mandamus is "[a] writ issued by a court to compel performance of a particular act by a lower court or a governmental officer or body . . . to correct a prior action or failure to act." *Mandamus*, Black's Law Dictionary (10th ed. 2014). It is an "extraordinary remedy employed in extreme situations." *Sorensen Television Sys., Inc. v. Superior Court of Guam*, 2006 Guam 21 ¶ 12 (citation omitted); *see also Holmes v. Territorial Land Use Comm'n*, 1998 Guam 8 ¶ 11. The Organic Act vests this court with "original jurisdiction as the laws of Guam may provide" and "jurisdiction to issue all orders and writs in aid of its appellate, supervisory, and original jurisdiction." 48 U.S.C.A. § 1424-1(a)(1), (3). Pursuant to 7 GCA § 3107, the court's "authority also includes jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies to protect its appellate jurisdiction." 7 GCA § 3107(b); *cf.*

Clough v. Curtis, 134 U.S. 361, 368 (1890) (rejecting argument that territorial government did not have authority to grant original jurisdiction to territory's supreme court in cases seeking mandamus).

[8] Here, the Governor requests that a writ be issued against the Legislature commanding it to "[t]ransmit and present Bill 1(1-S) as it was passed on May 9, 2017." Pet. at 10. As the language of this request makes clear, underlying the Governor's Petition is the baseline assumption that "Bill 1(1-S) . . . was passed" by the Legislature. *Id.* We can make no such assumption. On the record before the court, there is no indication that Bill 1(1-S) was passed as evidenced by an attested enrolled bill. During oral argument in this matter, the Governor conceded that the engrossment and enrollment of Bill 1(1-S) has not occurred. *See* Oral Argument at 11:52:02-11:52:33 (May 2, 2018). This is fatal to the Governor's Petition.

[9] The political question doctrine provides that a question will be considered nonjusticiable where, among other things, it is "appropriate[] under our system of government of attributing finality to the action of the political departments" or there is a "lack of satisfactory criteria for a judicial determination." *Coleman v. Miller*, 307 U.S. 433, 454-55 (1939). "The doctrine of which we treat is one of 'political questions,' not one of 'political cases.'" *Baker v. Carr*, 369 U.S. 186, 217 (1962). "[T]he presence of constitutional issues with significant political overtones does not automatically invoke the political question doctrine." *INS v. Chadha*, 462 U.S. 919, 942-43 (1983). Rather, "[t]he nonjusticiability of a political question is primarily a function of the separation of powers." *Baker*, 369 U.S. at 210. Although we have never expressly found that the political question doctrine applies in this jurisdiction, "[b]y its very language, . . . the Organic Act requires application of the constitutional doctrine of separation of

powers to government of Guam functions." *Hamlet v. Charfauros*, 1999 Guam 18 ¶ 9 (citation omitted); *see also* 48 U.S.C.A. § 1421a ("The government of Guam shall consist of three branches, executive, legislative, and judicial . . . .").

[10] The Organic Act vests the legislative powers of the Government of Guam solely in the legislative branch. *See* 48 U.S.C.A. § 1423a. "Where the judicial branch is involved, our primary concerns are that the judiciary not be drawn into tasks more appropriate to another branch and that its institutional integrity be protected." *Brown v. Owen*, 206 P.3d 310, 317 (Wash. 2009) (en banc) (citation omitted). In setting forth its argument that the Petition presents nonjusticiable political questions, the Legislature focuses on two aspects of the legislative process: (i) the determination of whether or not a bill has validly passed; and (ii) the determination of when (or even if) a validly passed and attested enrolled bill will be presented to the Governor. We agree with the Legislature that the determination of whether legislation has validly passed *in fact* is a question solely within the purview of the legislative branch.

[11] Under section 1423b of the Organic Act, the Legislature has authority to make its own rules of procedure. *See* 48 U.S.C.A. § 1423b. The Standing Rules of the 34th Guam Legislature provide that, before final passage of legislation, a bill must be engrossed and enrolled. *See* Standing R. 34th Guam Leg. § 6.04(d)(6), (7). The enrolling of a bill and attestation of that enrolled bill by the presiding officer represent the Legislature's final factual determination that a bill has validly passed. *See Pub. Citizen v. U.S. Dist. Court for D.C.*, 486 F.3d 1342, 1343 (D.C. Cir. 2007) ("[A] bill signed by the leaders of the House and Senate—an attested 'enrolled bill'—establishes that Congress passed the text included therein . . . ."); *accord Marshall Field & Co. v. Clark*, 143 U.S. 649, 672 (1892) (establishing enrolled bill rule). *See generally State ex rel.*

Hammond v. Lynch, 151 N.W. 81 (Iowa 1915). There is no evidence in the record of this case that the Legislature enrolled Bill 1(1-S) or that it was attested to by the presiding officer; indeed, the Legislature has affirmatively denied that Bill 1(1-S) was validly passed as a factual matter. *See* Answer ¶ 5 (Feb. 5, 2018). Where there are no clear restrictions placed on the Legislature's discretion in the law-making process, its resolution of legislative procedural issues—including those related to the enrollment of bills—is entitled to deference. *See Birmingham-Jefferson Civic Ctr. Auth. v. City of Birmingham*, 912 So. 2d 204, 217 (Ala. 2005) (holding whether vote by "a majority of each house" meant a bill was constitutionally required to pass by a majority of a *quorum*, rather than by a majority of votes *cast* was a nonjusticiable political question, in the absence of constitutional limits); *United States v. Ballin*, 144 U.S. 1, 6 (1892) ("The constitution has prescribed no method of making th[e] determination [of whether a quorum is present], and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact.").

[12] The ultimate relief requested by the Governor is the presentment of Bill 1(1-S). In order for this court to find that presentment to the Governor is a non-discretionary ministerial obligation such that mandamus must be issued against the Legislature,[1] the court must first determine that Bill 1(1-S) was validly passed in fact. The Governor's Petition assumes that Bill 1(1-S) was validly passed based solely on our decision in *In re Request of Calvo*. There, however, we expressly refused to make that determination. *See* 2017 Guam 14 ¶ 50 (citing *In re Tax Trust Fund*, 2014 Guam 15 ¶ 54). Earlier in that same opinion, we recognized that the court

[1] In light of our holding on nonjusticiability, we need not and do not address in this Opinion the separate contention made by the Legislature that the court lacks authority under 7 GCA § 31202 to issue a writ of mandamus against the Legislature.

would have authority, in an appropriate case, to decide whether a bill had validly passed *as a matter of law*. *See id.* ¶¶ 14-17. This, however, is a question separate and apart from the determination of whether legislation has validly passed *as a factual matter*. *See* 2017 Guam 14 ¶ 50 (citation omitted). In reaching our determination in *In re Request of Calvo*, we drew a distinction between determining the necessary vote requirements for passing legislation and determining whether those requirements have been met in a particular case. As the court stated, "determining *how* or *whether* the necessary votes exist is within the legislature's authority while *altering* the necessary number of votes needed for approval is not." *Id.* ¶ 48 (citing *Ballin*, 144 U.S. at 5-6).

[13] Under the Organic Act and our tripartite system of government, the Legislature has the final say over whether a bill validly passed through its enrollment and attestation process. If the court were to act as adjudicator of fact and find that Bill 1(1-S) was validly passed, we would usurp the legislative authority vested in the Legislature under the Organic Act. The Supreme Court of Missouri, for example, held in *State ex rel. Davisson v. Bolte* that it did not have the jurisdiction to issue a writ of mandamus to require the speaker of the state senate to place his signature upon and certify that a bill was validly passed by the senate. 52 S.W. 262, 264-65 (Mo. 1899). The *Davisson* court reasoned that "ruling that the bill was not passed" by the "presiding officer of the senate" was "strictly within the line of his duties as the presiding officer of the senate, and not merely ministerial." *Id.* at 265; *see also Brown*, 206 P.3d at 320-21 (finding a nonjusticiable political question where presiding officer determined that a bill, with a simple majority voting in favor, did not pass because of parliamentary point of order found the bill required two-thirds majority vote to pass).

[14] The same result was reached by the Alabama Supreme Court in *Ex parte Echols*, 39 Ala. 698 (Ala. 1866). There, after taking a vote on a bill in which forty-seven votes were in favor of passage and twenty-two votes were against passage, "[t]he speaker decided[] that the bill had not passed by a vote of two-thirds of that branch of the legislature." *Id.* at 699. A member of the state house of representatives sought a writ of mandamus compelling the speaker to certify that the bill validly passed and transmit it to the senate for its consideration. *Id.* at 698. The court rejected this petition, finding that the speaker's actions were "not a mere ministerial duty, but one that pertains to their legislative functions, and is one over which the house has exclusive jurisdiction." *Id.* at 699; *see also State ex rel. Scarborough v. Robinson*, 81 N.C. 409, 420-24 (N.C. 1879) (holding that court could not force presiding officers of legislative bodies to place signature upon legislation because determining whether signature was appropriate, and whether legislation was validly passed, was an issue solely for the legislative branch). *But cf. Comm'rs of Leavenworth Cty. v. Higginbotham*, 17 Kan. 62, 76-78 (Kan. 1876) (stating in dicta that mandamus could lie against lieutenant governor in his role as presiding officer of senate to properly authenticate that a law was passed by the senate because "he holds his office independent of the legislature" and the legislature "ha[s] no power to remove him from office").

[15] In a similar vein, the United States Supreme Court found in *Clough v. Curtis*, that the Supreme Court of the territorial government of Idaho could not "by means of writs of *mandamus* operating upon the officers of legislative bodies, . . . supervise the making up of the records of the proceedings of those bodies, or cause alterations to be made in such records as are prepared by the officer whose duty it was to prepare them." 134 U.S. at 371-72; *see also State ex rel. Landis v. Thompson*, 164 So. 192, 196-97 (Fla. 1935); *Fox v. Harris*, 91 S.E. 209, 209-10

(W. Va. 1917). Likewise, the Washington Supreme Court found in *State ex rel. Daschbach v. Meyers*, that it did not have the authority to order the legislature "to affix the true date of passage upon a bill." 229 P.2d 506, 507 (Wash. 1951) (en banc). In other words, the official records of the legislative branch—including determinations regarding vote totals, dates, and other factors used to determine when or whether a bill has validly passed—are within the Legislature's sole jurisdiction.

[16] The Governor's Petition requests, in effect, that the court direct the Legislature to pass specific legislation. But, it is a "well-established principle, rooted in the doctrine of separation of powers, that the courts may not order the Legislature or its members to enact or not to enact, or the Governor to sign or not to sign, specific legislation." *Serrano v. Priest*, 557 P.2d 929, 941 (Cal. 1976) (en banc) (footnotes and citations omitted); *see also Mandel v. Myers*, 629 P.2d 935, 947 n.9 (Cal. 1981) (en banc) ("[B]y virtue of the separation of powers doctrine courts lack the power to order the Legislature to pass a prescribed legislative act.").

[17] While there are various provisions in the Organic Act that may potentially cabin the Legislature's use of discretion in its presentment authority[2]—a question we need not decide today—the Governor has not pointed to any constitutional or organic restriction on the Legislature's authority to determine (as a factual matter) if and when legislation has passed. The Organic Act vests that authority solely in the legislative branch. As the valid passage of Bill 1(1-S) is a predicate fact necessary to grant the relief the Governor requests in the Petition, we are unable to afford him the relief he seeks. The Petition presents a nonjusticiable controversy and

[2] *See* 48 U.S.C.A. § 1423i; *see also Brewer v. Burns*, 213 P.3d 671, 673-79 (Ariz. 2009) (en banc); *Campaign for Fiscal Equity, Inc. v. Marino*, 661 N.E.2d 1372, 1373 (N.Y. 1995).

must be dismissed. We decline to reach the other jurisdictional arguments presented by the Legislature.

V. CONCLUSION

[18] For the reasons set forth above, the Legislature's Motion to Dismiss is **GRANTED** and the Governor's Petition is **DISMISSED WITH PREJUDICE**. An order will be separately issued.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
KATHERINE A. MARAMAN
Chief Justice