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Okalani Shiprit

A handwritten signature in blue ink, appearing to read "Shiprit".

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**IN THE SUPERIOR COURT
OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

**RALPH DLG. TORRES, in his official capacity as
Governor of the Commonwealth, and the OFFICE
OF THE GOVERNOR,**

Plaintiffs,

vs.

**HOUSE STANDING COMMITTEE ON
JUDICIARY & GOVERNMENTAL OPERATIONS,
22ND NORTHERN MARIANAS COMMONWEALTH
LEGISLATURE, and PEDRO TOWAI, in his
official capacity as Sergeant at Arms of the House of
Representatives,**

Defendant.

Civ. No. 21-_____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs hereby set forth their complaint against Defendants as follows:

INTRODUCTION

1. By this Action, the Governor invokes the aid of the judiciary as interpreter of CNMI law to resolve a dispute that has arisen between the executive and legislative branches regarding ongoing attempts by the legislature to assert an unconstitutional dominance over the executive, and over the Governor particularly. The Governor has attempted to resolve it through discussion and negotiation, and remains willing to do so. The legislative actors involved, however, have

rejected any approach other than a confrontational and punitive one, and have now voted to hold the Governor in contempt, a step that exposes the Governor to potential arrest and imprisonment.

JURISDICTION

2. The Court has jurisdiction of this matter pursuant to the Commonwealth Constitution and the Judicial Reorganization Act, as amended.

PARTIES

3. Ralph DLG. Torres is Governor of the Commonwealth of the Northern Mariana Islands. He brings this action in his official capacity as Governor.

4. The Office of the Governor is an office in the Commonwealth government, comprised of the Governor, the Governor's Council, and other offices and functions as provided by law.

5. The House Standing Committee on Judicial and Governmental Operations (hereinafter "the Committee") is a standing committee of the 22nd Northern Marianas Commonwealth Legislature.

6. Pedro Towai is Sergeant at Arms of the Commonwealth House of Representatives. He is sued herein in his official capacity.

7. The Commonwealth of the Northern Mariana Islands is a self-governing polity established by, and existing pursuant to, the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America.

FACTS

8. On or about December 4, 2021, the Governor was served with a Subpoena issued by the Committee.

9. In the Subpoena, the Committee purported to "command" the Governor to appear before the Committee at a particular time and place and to testify on a wide range of subjects.

10. Among the subjects on which the Committee seeks testimony are some that may implicate Executive Privilege.

11. The Subpoena “commands” the Governor to appear before the Committee at a time and place designated by the Committee, and remain before the Committee and answer its questions “UNTIL EXPRESSLY EXCUSED BY THE COMMITTEE MEMBERS CONDUCTING THE PROCEEDING.”

12. The Subpoena threatens that, unless the Governor accedes to the commands of the Subpoena, he may be “SUBJECT TO CONTEMPT PURSUANT TO 1 CMC § 1306 AND 1 CMC § 1307,” statutes that provide for fines and imprisonment.

13. The Governor, for the reasons stated in further detail below, regarded the Subpoena as unlawful and unconstitutional.

14. He communicated with the Committee in repeated attempts to find common ground or a compromise solution, but the Committee rejected any proposal which did not place it in an adversarial, confrontational, domineering, and punitive position *vis-à-vis* the Governor.

15. The Governor therefore did not appear at the place and time designated in the Subpoena – namely, at the Committee’s meeting of Friday, December 10, 2021, at 10:30 a.m.

16. As a consequence of his non-appearance as “commanded,” the Committee voted, on Tuesday, December 14, 2021, to hold the Governor in contempt.

FIRST CAUSE OF ACTION

FOR A DECLARATION THAT THE SUBPOENA VIOLATES COMMONWEALTH STATUTE

17. The allegations in Paragraphs 1-16 are repeated, realleged and incorporated here by reference.

18. 1 CMC § 1301(b) provides that “[e]very investigating committee, when authorized by either house or both houses, as the case may be, may issue, by majority vote of all its members, subpoenas requiring the attendance of witnesses and subpoenas duces tecum requiring the production of books, documents, or other evidence, in any matter pending before the committee.”

19. The Committee is not an “investigating committee,” but rather a regular standing committee of the house. The Committee has also not been “authorized” by either full house of the Legislature to issue subpoenas. Furthermore, the Subpoena was not issued in any “matter pending before” the Committee, since it relates to no matter referred to the Committee by the House of Representatives, which are the only measures of which the Committee may properly and lawfully take cognizance.

20. The Subpoena was therefore issued in violation of Commonwealth law.

SECOND CAUSE OF ACTION

FOR A DECLARATION THAT ENFORCEMENT OF THE SUBPOENA WOULD INFRINGE UPON THE TESTIMONIAL IMMUNITY CONFERRED BY THE COMMONWEALTH CONSTITUTION

21. The allegations in Paragraphs 1-20 are repeated, realleged and incorporated here by reference.

22. The Constitution establishes, and the Commonwealth is required by the Covenant to maintain, a government having separate executive, legislative and judicial branches, co-equal in authority and dignity, with the executive power vested in a popularly elected Governor, and the legislative power vested in a popularly elected legislature. This constitutional structure gives rise to a principle of separation of powers, preventing any one branch from dominating over and interfering with the functions of another.

23. It violates the principle of separation of powers for one branch to “command” another branch to take any action whatsoever. In particular it violates the Constitution and the Covenant for a committee of one house of the Legislative Branch to command the live testimony of the Governor, particularly at a time and place and for the length of its choosing, and especially on subjects that would implicate information protected by Executive Privilege. Such an action interferes with the function of the Executive Branch.

24. The Subpoena threatens the Governor with imprisonment should he not comply fully with the Subpoena. The arrest or imprisonment of the Governor for defying a “command” of a committee of a house of the Legislative Branch would also unduly interfere with the functioning of the Executive Branch of government.

25. For the foregoing reasons, the Governor has immunity from the Subpoena, and its enforcement against him would violate the principle of separation of powers, and thus violate the Commonwealth Constitution.

THIRD CAUSE OF ACTION

FOR A DECLARATION THAT THE SUBPOENA LACKS A VALID LEGISLATIVE PURPOSE AND THEREFORE VIOLATES THE COMMONWEALTH CONSTITUTION

26. The allegations in Paragraphs 1-25 are repeated, realleged and incorporated here by reference.

27. It is a function of the principle of separation of powers, as embodied in the Commonwealth Constitution, that a legislative body may issue a subpoena only in furtherance of a constitutionally legitimate legislative purpose, and that the subpoena must concern a subject on which legislation could be had.

28. There is no pending legislation related to the issues identified in the Subpoena, nor do they concern any subject on which legislation could be had. Nor are any impeachment proceedings pending.

29. The legislative branch may not issue a subpoena for the purpose of law enforcement, because those powers are assigned under our Constitution to the Executive and the Judiciary, yet the Subpoena is manifestly for the purpose of law enforcement.

30. The Subpoena was therefore not issued in furtherance of a valid legislative purpose, and is unconstitutional and void.

FOURTH CAUSE OF ACTION

FOR A DECLARATION THAT THE SUBPOENA USURPS RESPONSIBILITIES CONSTITUTIONALLY DELEGATED TO OTHER EXECUTIVE OFFICES AND THEREFORE VIOLATES THE COMMONWEALTH CONSTITUTION

31. The allegations in Paragraphs 1-30 are repeated, realleged and incorporated here by reference.

32. Article II, Section 11 of the Commonwealth Constitution establishes the Office of the Attorney General as an independent agency within the executive branch of the Commonwealth government, with the responsibility for, *inter alia*, prosecuting “violations of Commonwealth law.”

33. Article III, Section 12 of the Commonwealth Constitution establishes a Public Auditor, with the responsibility to “audit the receipt, possession and disbursement of public funds by the executive, legislative and judicial branches of the government.”

34. By issuing the Subpoena pursuant to investigations constitutionally committed to the Attorney General and the Public Auditor, the Committee has usurped their constitutional

functions, and breached Article III, Sections 11 and 12, of the Constitution; and the Subpoena is thus unconstitutional and invalid.

PRAYER FOR RELIEF

Wherefore, Plaintiff now prays that the Court grant him the following relief:

1. A declaration that the Subpoena is invalid and unlawful.
2. An order quashing the Subpoenas.
3. An order enjoining the Defendant Committee from enforcing the Subpoena or causing another person to enforce the subpoena, and enjoining the Defendant Sergeant at Arms from arresting the Governor.
4. Costs of suit.
5. Such other and further relief as the Court deems just and proper.

Respectfully submitted this fourteenth day of December, 2021.

BANES HOREY BERMAN & MILLER, LLC

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