



E-FILED
CNMI SUPREME COURT
E-filed: Jun 26 2018 02:17PM
Clerk Review: Jun 26 2018 02:17PM
Filing ID: 62173586
Case No.: 2017-SCC-0030-CQU
NoraV Borja

Notice: This opinion has not been certified by the Clerk of the Supreme Court for publication in the permanent law reports. Until certified, it is subject to revision or withdrawal. In any event of discrepancies between this opinion and the opinion certified for publication, the certified opinion controls. Readers are requested to bring errors to the attention of the Clerk of the Supreme Court, PO Box 502165 Saipan, MP 96950, phone (670) 236-9715, fax (670) 236-9702, e-mail Supreme.Court@justice.gov.mp.

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

RALPH DLG. TORRES,
Governor of the Commonwealth of the Northern Mariana Islands,
Joint Petitioner,

v.

EDWARD E. MANIBUSAN,
Attorney General of the Commonwealth of the Northern Mariana Islands,
Joint Petitioner.

Supreme Court No. 2017-SCC-0030-CQU

SLIP OPINION

Cite as: 2018 MP 4

Decided June 26, 2018

Gilbert J. Birnbrich, Legal Counsel, Office of the Governor, Saipan, MP, for
Joint Petitioner Governor.

Lillian A. Tenorio, Deputy Attorney General and Charles E. Brasington,
Solicitor, Office of the Attorney General, Saipan, MP, for Joint Petitioner
Attorney General.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLONA, Associate Justice;¹ PERRY B. INOS, Associate Justice.

MANGLONA, J.:

¶ 1 Governor Ralph DLG. Torres (“Governor”) and Attorney General Edward E. Manibusan (“Attorney General”) (collectively “Joint Petitioners”), in their official capacities as Commonwealth elected officials certify two questions. The subject of the certified questions relates to a conflict between the Governor and Attorney General in the exercise of their duties and powers under the NMI Constitution. The parties certify whether the authority to appeal cases resides with the attorney general; and whether the governor or government agencies may hire an outside counsel to prosecute the appeal without the grant of authority from the attorney general. For the reasons discussed below, we answer the first certified question in the affirmative and second certified question in the negative.

I. FACTS AND PROCEDURAL HISTORY²

¶ 2 On January 12, 2015, the first popularly elected Attorney General in the history of the Commonwealth was sworn into office. Conflicts of opinion between the Governor and the Attorney General began thereafter, concerning which elected official had the authority to decide whether to defend Commonwealth law and pursue significant matters of litigation on behalf of the people of the Commonwealth.

¶ 3 For instance, contrary to the desire of the Governor, the Attorney General decided not to appeal the decisions in *Radich v. Guerrero*, Civ. No. 1:14-CV-00020 (D. N. Mar. I. Sept. 20, 2016), and *Murphy v. Guerrero*, Civ. No. 1:14-CV-00026 (D. N. Mar. I. Sept. 28, 2016).

¶ 4 In December 2016, the United States Court of Appeals for the Ninth Circuit issued a decision in *Davis v. Commonwealth Election Comm’n*, 844 F.3d 1087 (9th Cir. 2016), holding that Article XVIII, Section 5(c), of the NMI Constitution violates the Fifteenth Amendment of the United States Constitution. The Governor and the Commonwealth Election Commission (“CEC”) desired to appeal the *Davis* decision to the United States Supreme Court.

¶ 5 In a letter to the Governor, the Attorney General, citing various reasons, declined to petition the United States Supreme Court for a writ of certiorari in *Davis*. Prior to sending the letter to the Governor, the Attorney General met with a private attorney who presented a draft petition for writ of certiorari for his review.

¹ At oral arguments, upon question, the parties stated they had no objections about Justice Manglona sitting as a panel member.

² The facts and procedural history are from Joint Petitioners’ Stipulated Statement of Facts.

¶ 6 Because the Attorney General did not pursue the petition for writ of certiorari, the Governor and CEC, without obtaining the consent of the Attorney General, directed the private counsel to file a petition for writ of certiorari. The private counsel then filed the petition for writ of certiorari with the United States Supreme Court on behalf of CEC, the Chairwoman of the CEC, the Executive Director of CEC, and the Governor.

¶ 7 Subsequently, the Attorney General wrote to the Clerk of the United States Supreme Court, informing what the Attorney General identified as an “unauthorized filing” of a petition for writ of certiorari in *Davis*. Citing the NMI Constitution, the Attorney General stated he had the exclusive authority to represent the Commonwealth and its officials, and that he neither consented to the private attorney’s representation of the Commonwealth officials nor the filing of the petition.

¶ 8 In a letter, the Governor, with the concurrence of the CEC Chairwoman and Executive Director, wrote to the Clerk of the United States Supreme Court, stating the petition was in fact authorized by him and CEC. In the letter, the Governor disagreed with the Attorney General’s assertion of exclusive authority to represent Commonwealth officials and direct litigation involving the executive branch, stating “[a]s head of the executive branch, I reject [the Attorney General’s] efforts as unconstitutional.”

¶ 9 On November 13, 2017, Joint Petitioners submit two certified questions to resolve the conflict between the Governor and the Attorney General.

II. JURISDICTION

¶ 10 “Whenever a dispute arises between or among Commonwealth officials who are elected by the people or appointed by the governor regarding the exercise of their powers or responsibilities under this constitution or any statute, the parties to the dispute may certify to the supreme court the legal question raised, setting forth the stipulated facts upon which the dispute arises.” NMI CONST. art. IV, § 11.

¶ 11 The Governor and Attorney General are elected Commonwealth officials. This dispute arose regarding the exercise of their powers under the NMI Constitution, and the parties certified two questions regarding the dispute. Accordingly, under Article IV, Section 11 of the NMI Constitution, we have jurisdiction.

III. STANDARDS OF REVIEW

¶ 12 Joint Petitioners submit two certified questions: 1) whether the attorney general may decline to appeal an adverse judgment despite the wishes of the governor or a client government agency; and 2) whether the governor or client agency may hire, without a grant of authority from the attorney general, outside counsel to prosecute the appeal. We review certified questions de novo. *Bank of Saipan v. Carlsmith Ball Wichman Case & Ichiki*, 1999 MP 20 ¶ 5. The certified questions involve interpretation of the NMI Constitution, which we also review de novo. *Commonwealth v. Bergonia*, 3 NMI 22, 35 (1992).

IV. DISCUSSION

A. *Constitutional Construction*

¶ 13 “A basic principle of constitutional construction is that language must be given its plain meaning.” *N. Marianas Coll. v. Civil Serv. Comm’n*, 2007 MP 8

¶ 9. We “apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended.” *Camacho v. N. Marianas Ret. Fund*, 1 NMI 362, 368 (1990) (citation and internal quotation marks omitted). “[W]e must read constitutional language in the context of the entire provision at issue. . . . In the event that a constitutional provision is ambiguous, we must attempt to ascertain and give effect to the intent of the drafters of the provision.” *Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6 (internal citation and quotation marks omitted).

¶ 14 The powers of the governor and the attorney general are enumerated in Article III, Section 1 (“Section 1”) and Section 11 (“Section 11”) of the NMI Constitution, respectively. Section 1 provides: “The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the laws.” NMI CONST. art. III, § 1. Section 11 provides:

There is in the Commonwealth government an Office of the Attorney General to be headed by an attorney general. The Office of the Attorney General is established as an independent agency within the executive branch of the Commonwealth government. The attorney general shall be elected at large within the Commonwealth for a term of office of four years. The Attorney General shall be the Chief Legal Officer of the Commonwealth government and shall be responsible for providing legal advice to the governor and executive departments (including public corporations and autonomous agencies), representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

NMI CONST. art. III, § 11.

¶ 15 As written, neither Section 1 nor 11 answers whether the attorney general may decline to appeal an adverse judgment despite the wishes of the governor or a client government agency. Likewise, Sections 1 and 11, plainly read, do not state whether the governor or client agency may hire, without a grant of authority from the attorney general, outside counsel to prosecute the appeal.

¶ 16 Because the constitutional provisions, as written, do not resolve the certified questions, we must attempt to ascertain and give effect to the intent of the drafters of the provision. In so doing, we may “rely upon committee recommendations, constitutional convention transcripts, and other relevant constitutional history.” *Palacios v. Yumul*, 2012 MP 12 ¶ 5. In particular, the Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands (“Analysis”) is an “extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution

presents an ambiguity.” *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71. “The Analysis is a memorandum, approved by the Constitutional Convention following the adoption of the constitution in 1976, that provides an explanation of each section in the Commonwealth Constitution and summarizes the intent of the convention in approving each section.” *Dep’t of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 7 (citation omitted).

B. Analysis

¶ 17 The Governor argues the Analysis is no longer relevant in discerning the framers’ intent when interpreting Section 11 because it was subsequently amended by House Legislative Initiative 17-2 (“HLI 17-2”). He argues the Northern Marianas Constitutional Convention could not have contemplated the changes that would be brought by the passage of HLI 17-2 when the Analysis was drafted.

¶ 18 HLI 17-2 was passed in 2012.³ Prior to HLI 17-2, the governor appointed the attorney general who was subject to the governor’s political influence and interference. HLI 17-2, § 1. The Commonwealth Legislature, in its resolve to change the relational dynamic between the governor and the attorney general, passed HLI 17-2. *Id.* The purpose of HLI 17-2 was to create an independent attorney general’s office, free of any political influence or interference. *Id.* The Legislature found:

[T]he Office of the Attorney General is charged with prosecuting all violations of Commonwealth law and is one of the most integral offices of the Commonwealth of the Northern Mariana Islands. As such, the Office of the Attorney General should be free of any political influence or interference. The present system of the governor appointing the attorney general with the advice and consent of the Senate subjects the attorney general to removal at any time by the governor and proscribes independence of the attorney general to enforce the laws of the Commonwealth. The Legislature further finds that in order for the attorney general to function independently and ensure the enforcement of Commonwealth laws to the fullest extent, and be accountable to the people of the Commonwealth, it has become necessary to amend Article III, Section 11 of the Northern Mariana Islands Constitution to authorize the election of attorney general.

HLI 17-2, § 1.

¶ 19 Prior to HLI 17-2, Section 11 read:

The governor shall appoint an Attorney General with the advice and consent of the Senate. The Attorney General shall be a resident and a domiciliary of the Commonwealth of the Northern Mariana

³ HLI 17-2 was passed by the House of Representatives on January 26, 2012 and was passed by the Senate on March 7, 2012.

Islands for at least three years immediately preceding the date on which the Attorney General is confirmed. The Attorney General shall be responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

HLI 17-2 later amended Section 11 as follows:

~~The governor shall appoint an Attorney General with the advice and consent of the Senate. The Attorney General shall be a resident and a domiciliary of the Commonwealth of the Northern Mariana Islands for at least three years immediately preceding the date on which the Attorney General is confirmed.~~ There is in the Commonwealth government an Office of the Attorney General to be headed by an attorney general. The Office of the Attorney General is established as an independent agency within the executive branch of the Commonwealth government. The attorney general shall be elected at large within the Commonwealth for a term of office of four years. The Attorney General shall be the Chief Legal Officer of the Commonwealth government and shall be responsible for providing legal advice to the governor and executive departments (including public corporations and autonomous agencies), representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law.

HLI 17-2, when plainly read, established the attorney general's autonomy and made him accountable to the people. This is demonstrated by instituting the Office of the Attorney General as an independent agency, designating the attorney general as the Chief Legal Officer of the Commonwealth Government, and having the attorney general as an elected position. Other than creating accountability and independence for the office, HLI 17-2 retained a substantial portion of Section 11's prior text. In particular, it preserved the original text which specifies the responsibilities of the attorney general: "The Attorney General . . . shall be responsible for providing legal advice to the governor and executive departments . . . representing the Commonwealth in all legal matters, and prosecuting violations of Commonwealth law." NMI CONST. art. III, § 11. We, therefore, conclude the Analysis remains a persuasive authority in interpreting Section 11, except to the extent it discusses the governor's appointment authority over the attorney general.

¶ 20 With this backdrop, we find the answers to the certified questions in the Analysis. First, it makes clear the attorney general has discretion in prosecuting both criminal and civil actions and may decline to prosecute appeals when a court renders an adverse judgment. *See* Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 70, 89. "[Section 1] does not limit the attorney general's power to decline to prosecute cases where a judgment is made that the evidence or resources available are inadequate. The attorney general may decline to prosecute appeals if a statute is declared unconstitutional

by the trial court.” Analysis of the Constitution, *supra* at 70. The placement of this discussion in the Analysis is noteworthy. Section 1 analyzes the governor’s executive power and duty to implement and enforce legislative enactments and to faithfully execute laws. This section, as the framers of our Constitution explains it, limits the governor from interfering with the attorney general’s power to prosecute cases. In other words, it is the governor’s power that is limited—not the attorney general’s power—when deciding whether to prosecute a case, whether it be civil or criminal at the trial or appellate level. Second, it plainly states the executive departments may not, without a grant of authority from the attorney general, hire an outside counsel to represent them. Analysis of the Constitution, *supra* at 89. “Executive departments and the governor may also seek advice from outside counsel on any matter. This section does prevent executive departments from engaging outside counsel to represent the department in any legal matter without a grant of authority from the attorney general.” Analysis of the Constitution, *supra* at 88–89. As such, we hold the attorney general may decline to appeal an adverse judgment despite the wishes of the governor or a client government agency, and the governor or client agency may not hire outside counsel to prosecute an appeal without a grant of authority from the attorney general.

¶ 21 The original language in the NMI Constitution gives the attorney general expansive control in directing the Commonwealth’s legal business, *see* Analysis of the Constitution, *supra* at 88–89, and veritably reflects the framers’ ostensible intent to centralize the management of Commonwealth’s legal affairs in the Office of Attorney General to maintain a consistent legal policy.⁴ For example, “the attorney general represents the Commonwealth in suits by and against the Commonwealth. This means that an executive department may prosecute a criminal or civil action *only with the consent and through the representation* of the attorney general.” Analysis of the Constitution, *supra* at 89 (emphasis added).⁵ For instance, the attorney general may decline to prosecute cases “where a judgment is made that the evidence or resources available are inadequate.” Analysis of the Constitution, *supra* at 70. Also “[a]ll decisions with respect to the handling of a case, such as whether to prosecute or to accept a plea to a lesser offense are made by or, if delegated, reviewed by the attorney general.” Analysis of the Constitution, *supra* at 89. He or she “may refuse to bring any action[,]” and “the discretion not to prosecute is complete.” Analysis of the Constitution, *supra* at 89.

¶ 22 Conversely, the governor is not afforded the same power and responsibility. The governor’s responsibility to “faithfully execute laws” as stated in Section 1 is explained as “carry[ing] out the directions of the legislature

⁴ “In all but five states, the governor and other separately elected enforcement officials cannot exercise control over the attorney general analogous to the control exercised by the President over the U.S. Attorney General at the federal level.” Gregory F. Zoeller, *Duty to Defend and the Rule of Law*, 90 Indiana L.J. 536 (2015).

as expressed in laws that are enacted and . . . [being] responsible for actions of his subordinates in carrying out the laws.” Analysis of the Constitution, *supra* at 70; *see* Report to the Convention of the Committee on Governmental Institutions at 14 (October 22, 1976) (“The Committee’s proposed language would make the governor responsible for the faithful execution of the laws. The Committee believes that, as the chief executive officer of the Commonwealth, the governor would possess the resources to enforce its laws and to implement the policies set by the legislature.”). In other words, the governor cannot arbitrarily suspend the enforcement of laws passed by the legislature. And the duty to faithfully execute laws ceases once the law is repealed, amended, or declared unconstitutional by a court. *See* Analysis of the Constitution, *supra* at 70 (“Once a law is passed, the executive branch must enforce it *until* it is repealed, amended, or declared unconstitutional by a court.”) (emphasis added). Within the bounds of this duty, the governor has the “general authority to . . . promulgate executive orders, rules and regulations, to inspect, monitor and investigate so as to ensure compliance, to spend moneys for goods and services pursuant to legislative authorization, to collect revenue, and to prosecute or bring other legal action against those who violate laws or other regulations.” Analysis of the Constitution, *supra* at 69–70. Nevertheless, nothing in the NMI Constitution suggests the governor has the power to unilaterally override the attorney general’s authority, discretion, or representation.

¶ 23 The attorney general’s authority, discretion, or representation, however, is not wholly unfettered. *In re San Nicolas*, 2013 MP 8 ¶ 13. First, the attorney general “cannot act arbitrarily and capriciously or scandalously.” *Sec’y of Admin. & Fin. v. Attorney Gen.*, 326 N.E. 334, 339 (Mass. 1975). When carrying out his or her constitutional duty of providing legal advice to the governor and executive departments, the attorney general’s advice must be prompt, competent, and informed. *See generally* MODEL RULES OF PROF’L CONDUCT R. 1.4.⁶ In particular, the attorney general must not engage in delay tactics or gamesmanship when advising the governor or other executive departments regarding appeals. This is because time is of the essence in filing an appeal. The governor or other executive departments need reasonable time and opportunity to review the attorney general’s advice and to decide a course of action, whether it involves filing a petition or an extension of time to file appeal. Second, the attorney general has limited discretion when representing the Commonwealth in suits against the Commonwealth. The attorney general “may not . . . refuse to defend [the] Commonwealth against any action.” Analysis of the Constitution, *supra* at 89. In other words, the attorney general has an affirmative duty to defend. The duty to defend includes defending the Commonwealth—the sovereign—and its

⁶ The American Bar Association Model Rules of Professional Conduct (“Model Rules”) are applicable in the Commonwealth. *Tenorio v. Superior Court*, 1 NMI 112, 126 n. 8 (1990). The attorney general and the assistant attorney generals are subject to Model Rules. *See Commonwealth v. Lot No. 21805 R/W*, 2013 MP 5 ¶ 11 (reviewing the attorney general and the assistant attorney general’s conduct under Model Rules of Professional Conduct).

actors as well as defending the validity of Commonwealth statutes, Constitution, and the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. This duty to defend is paramount and must not be abdicated conveniently because a failure to defend may result in binding legal precedent rendering written law unconstitutional. The attorney general must, therefore, balance his duty to defend with clear controlling precedent and lack of good-faith argument. It is only when the attorney general has fulfilled his constitutional duty to defend and the court renders an adverse judgment against the Commonwealth, he or she can then exercise discretion in prosecuting the appeal. *See* Analysis of the Constitution, *supra* at 70.⁷ This discretion, however, must be sparingly exercised. The attorney general must guard the validity of the written laws, unless doing so would be frivolous. To do otherwise would undermine the rule of law. Last, the attorney general is subject to checks and balances by the Office of Public Auditor, *see* NMI Const. art. III § 12,⁸ subject to judicial review, *In re San Nicolas*, 2013 MP 8, subject to impeachment by the Legislature, NMI CONST. art. III, § 11(h),⁹ and remains accountable to the people of the Commonwealth. HLI-17-2, § 1.¹⁰ In *In re San Nicolas* 2013 MP 8 and *In re Ogumoro*, 2015 MP 10, we noted and reaffirmed that under certain circumstances, courts have inherent authority to disqualify the attorney general and appoint a special prosecutor to safeguard justice. *In re San Nicolas*, 2013 MP 8 ¶ 20; *In re Ogumoro*, 2015 MP 10 ¶¶ 15–16. By the same token, we note that in rare circumstances where the attorney general fails to fulfill his or her constitutional duty; or fails to exercise or abuses the discretion in prosecuting cases or appeals or in representing the governor, executive departments, or the Commonwealth, courts have the inherent authority to

⁷ An exception to the attorney general’s duty to defend the authority to settle cases after consulting with the executive departments involved. Analysis of the Constitution, *supra* at 89.

⁸ “The public auditor shall audit the receipt, possession and disbursement of public funds by the executive, legislative and judicial branches of the government, an instrumentality of the Commonwealth or an agency of local government and shall perform other duties provided by law.” NMI CONST. art. III, § 12; *see also* 1 CMC § 7847(b) (“If the Public Auditor has reasonable grounds to believe the Governor or Attorney General has violated federal or Commonwealth criminal law, the Public Auditor may use the legal counsel . . . or retain special counsel . . . for purposes of investigating and prosecuting, if necessary, the criminal law violations.”).

⁹ “The attorney general is subject to impeachment as provided in article II, section 8, of this Constitution for treason, commission of a felony or crime of moral turpitude, corruption, or neglect of duty.” NMI CONST. art. III, § 11(h).

¹⁰ “[I]n order for the attorney general to function independently and . . . be accountable to the people of the Commonwealth, it has become necessary to amend Article III, Section 11 of the Northern Mariana Islands Constitution to authorize the election of the attorney general.” HLI 17-2, § 1.

disqualify and appoint a special prosecutor.¹¹ We note, however, that a petition must be filed to disqualify the attorney general. This is, in part, because issues involving the authority of the governor and the attorney general must be reviewed on a case by case basis.

C. Joint Petitioners' Arguments

¶ 24 Both parties extensively argue their positions by citing to case law from various jurisdictions. The Attorney General argues we should adopt Florida, Illinois, and Montana's interpretations of their constitutions, which state the attorney general, as chief legal officer, possesses all common law powers including plenary control over the legal representation of the government.

¶ 25 The Governor argues we should adopt California, Louisiana, and Pennsylvania's interpretations of their constitutions. Such constitutions state the attorney general does not have the exclusive authority to represent the government even though designated as chief legal officer. Additionally, the Governor argues we should adopt the West Virginia and Hawaii model which treats the relationship between the attorney general and the governor as that of an attorney-client relationship. The Joint Petitioners' arguments, while novel, are unpersuasive.

¶ 26 First, "when presented with a question of constitutional interpretation we are duty-bound to give effect to the *intention of the framers* of the NMI Constitution." *Dep't of Pub. Lands*, 2010 MP 14 ¶ 17 (emphasis added) (internal citations omitted). Here, the Analysis provides ample commentary addressing the framers' intent in regard to the certified questions. Thus, in this case, we need not look to other jurisdictions for guidance.

¶ 27 Second, we need not determine whether the attorney general, as Chief Legal Officer, possesses all common law powers. The Analysis, which interprets the original text of the NMI Constitution—written before the term "Chief Legal Officer" was adopted—amply answers the certified questions. In other words, the text of the NMI Constitution—not common law powers—bestows the attorney general the power and responsibility to prosecute cases and appeals and to represent the Commonwealth.

¶ 28 Third, we find unreasonable to assume the NMI Constitution was based upon the cases cited by Joint Petitioners because our legislative history is silent as to which jurisdiction the framers sought guidance from in drafting the NMI Constitution.

V. CONCLUSION

¶ 29 For the foregoing reasons, we hold the attorney general may decline to appeal an adverse judgment despite the wishes of the governor or a client government agency, and the governor or client agency may not hire, without a

¹¹ We note the courts' inherent power to disqualify and appoint, without addressing whether they can do so *sua sponte*.

grant of authority from the attorney general, outside counsel to prosecute the appeal.

SO ORDERED this 26th day of June, 2018.

/s/

JOHN A. MANGLONA
Associate Justice

/s/

PERRY B. INOS
Associate Justice

CASTRO, C.J., concurring:

¶ 30 I write separately to underscore the fine line between the “legal affairs” and the “public policy decisions” of the Commonwealth. In criminal cases, the attorney general has an unfettered discretion in filing, prosecuting, and appealing the case. “[U]nder the established separation of powers rules, absent evidence of selective or discriminatory prosecutorial intent, or an abuse of prosecutorial discretion, the judiciary is powerless to interfere with the prosecutor’s charging authority.” *State v. Krotzer*, 587 N.W. 2d 252, 254 (Minn. 1996).

¶ 31 Under the original provision of the NMI Constitution, the attorney general was “responsible for providing legal advice to the governor and executive departments, representing the Commonwealth in *all legal matters*, and prosecuting violations of Commonwealth law.” NMI CONST. art. III § 11 (emphasis added). The attorney general served at the pleasure of the governor who determined public policy decisions for the people. This provision was carried over to the constitutional amendment, House Legislative Initiative 17-2, so that the attorney general no longer serves under the pleasure of the governor. The policy decisions, therefore, still remain with the governor.

¶ 32 It is important to note that the amendment came about as a result of the unprecedented actions by former Attorney General Edward T. Buckingham (“Buckingham”).¹² Briefly, in 2012, the Office of the Public Auditor obtained a penal summons against then-Attorney General Buckingham. Buckingham failed to personally appear for his arraignment, and instead, sent the Chief of the Civil Division of the Attorney General’s Office to represent him. The public auditor petitioned the trial court to disqualify the Office of Attorney General and to appoint him as a special prosecutor. The trial court granted the petition.¹³ House Legislative Initiative 17-2 was therefore passed to create an independent office of attorney general, free from political interference.

¹² I take judicial notice that around September 2012, impeachment proceedings were brought against the former Governor Benigno R. Fitial in the Commonwealth Legislature for an alleged misconduct in public office. *Commonwealth v. Benigno R. Fitial*, No.14-0051 (Order Granting Dismissal Without Prejudice & Declaring the Statutory Prosecutorial Authority of the Off. of the Pub. Auditor is Divested Once Gov. No Longer Serves in an Official Capacity & Such Authority Thereby Becomes Exclusive to the Off. the Att’y General or Special Prosecutor Appointed by the Ct. at 2). Also on August 3, 2012, Office of the Public Auditor obtained a penal summons based on criminal information against former Attorney General Edward T. Buckingham. *In re Buckingham*, 2012 MP 15 ¶ 2. In 2014, former Attorney General Buckingham was found guilty of public corruption. In 2016, Ambrosio T. Ogunoro was convicted for conspiracy to commit theft of services and misconduct in public office for his role in preventing former Attorney General Buckingham from being served with penal summon in 2012. *Commonwealth v. Ogunoro*, 2017 MP 17 ¶ 2.

¹³ See *In re San Nicolas*, 2013 MP 8 ¶¶ 1–5.

The Legislature finds that the Office of the Attorney General is charged with prosecuting all violations of Commonwealth law and is one of the most integral offices of the Commonwealth of the Northern Mariana Islands. As such, the Office of the Attorney General should be free of any political influence or interference. The present system of the governor appointing the attorney general with the advice and consent of the Senate subjects the attorney general to removal at any time by the governor and proscribes independence of the attorney general to enforce the laws of the Commonwealth. The Legislature further finds that in order for the attorney general to function independently and ensure the enforcement of Commonwealth laws to the fullest extent, and be accountable to the people of the Commonwealth, it has become necessary to amend Article III, Section 11 of the Northern Mariana Islands Constitution to authorize the election of attorney general.

HLI 17-2, § 1. The amendment, however, did not divest the governor of his policy decision-making authority but strengthened the attorney general’s authority to direct and handle the “legal affairs” of the Commonwealth.¹⁴

¶ 33 Accordingly, the attorney general has absolute discretion in filing, prosecuting, and appealing a criminal case. In civil cases, however, where the issue touches upon or threatens the “integrity of the Covenant” or the “NMI Constitution,” the attorney general—while he has the authority to exercise his discretion—should defer to the governor whether to appeal an adverse judgment because that involves public policy decision-making authority which the governor has been elected by the people to so decide.

/s/

ALEXANDRO C. CASTRO
Chief Justice

¹⁴ The attorney general indicated a number of reasons for deciding against appealing the *Davis* and *Radich* decisions to the United States Supreme Court, including likelihood of success, cost of appeal and attorney’s fees, and potential threat to the NMI Constitution itself.