

March 17, 2017, 9:00 a.m. 34th Guam Legislature Public Hearing of Resolution No. 51-34 (LS) and 52-34 (LS)

Oral Testimony

V.S. T. M. Terlaje

Sinot Aguon, you may also have a up here (Vice Speaker pointing to the table with presenters seated). Attorney Phillips, you may proceed. [01:33:43]

Attorney M. Phillips [01:33:50]

Buenas dias Madam Chair and members of the committee and this legislature. I think most of what could be said, has been said. I want to make sure; I'm clear for the record that I am in support of both resolutions and the causes behind them.

I think if we start with an agreement, there can be no legitimate authority without the consent of the governed. Then the equation is simple. It really comes up to that hasn't been done yet. And so, without the consent of the government, anywhere, this is not unique to the Chamoru people. You cannot have legitimate authority. Now, that does not mean that you cannot have an opinion and we received an opinion recently by someone that currently enjoys the power to render opinions. But of course, it's confined to a system and this is not new for our people.

It wasn't new in 1898, when there was a pledge that the native inhabitants would have their futures determined by the Congress. That hasn't been done. It's the same definition of Native Inhabitants, I can assure you. Nothing was done in 1936 & '37 when their pleas and there was a rejection from the Native Inhabitants and many years in between. Even in 1949, when the, basically the military governor interfered with [the] legitimate process, that Speaker Won Pat and many assemblymen and senators had the courage to commence. It took a lot of courage. When the military governor interfered, he had the authority to do that, but he did not have the legitimate authority. And so, obviously, history changed.

But one thing our people didn't do in 1898, and the early 1900s, 1917, [19]36, 1949, was they didn't run and I think in part because of these issues, they were extremely educated, on a day to day basis of what was going on. They didn't run, but they also understood that certain people and certain positions of power were entitled to their opinion, but it didn't legitimize it. And that will always be the case.

The example given, I think are very, very simple, but, they're not complete. You could go on, and on, and on, and probably provide for the record of a thousands of examples like, 'Wait, how come over here its okay. Over here it's not okay? And so, Madam Chair's one of the attorney that argued the Chamorro Land Trust Act, the implementation. If we had not won that day that would not mean that it's not correct. It's would just mean you did not win that day. If you ask me back then, did I expect to win that case? I did expect to win that case. If you ask me in the current situation that Guam faces before the District Court, would I have expected to win or an attorney, the case that we are talking about. The answer is no.

But it doesn't change right and wrong. It can't change right or wrong, because it's not based on an interpretation that a court system is not legitimate. We don't even enjoy the same judge, so to speak, that States enjoy. But even if we did, it still would not be legitimate and therefore you really have no authority. Because you don't have the consent of the government. The blessing that comes with the consent is it benefits everybody.

[And] I take very seriously, what Senator San Nicolas's comments. Because I read those in the case, honestly whether it's just as someone from Guam or an attorney, it bothered me, as kind of different. I'll just say it was different. And, it's not a secret that the Chamorro Land Trust Act is supposed to benefit the Chamorro people on Guam. It's not a secret. And it's not a secret that the Chamorro Self-Determination is for the Chamorro people.

Where I think the misconception is very similar to Affirmative Action in the past, especially when it was mostly needed, Civil Rights and many other things. Treaties with Native Americans tribe that did and currently do reside in America is it's for everybody. Everybody benefits. When you have a displaced Native Inhabitant group, as a people, as we do on Guam; when you have a unique people being extinguished and that is prevented because you're preserving a homeland for them, everybody wins. Everybody wins.

But of course, that's policy. And someone would be right in saying, 'You know Mike that is your opinion.' It is. But I'll tell you where I don't believe there's a debate and that is until there's the consent to the governed, there can be no legitimate authority. And we need legitimate authority. To the extent that people step forward and say, 'I agree, I'll put my signature there.' Well, we have the Treaty in 1898 when that was promised. We have the U.N. Charter where that was promised. And I think, like myself, if you signed a document and you're pledging that you can be held to this, it's a commitment, then I should be able to hold you to it.

All we're doing is holding, in this case, the United States to commitments that they made. But even if they didn't make these commitments, everything you heard here today would still be correct. Even without it. But what adds, as they say sometimes, fuel to the fire, is [are] these commitments have been made over and over again. What are you going to do, go to court and find the U.N. Charter unconstitutional? You can't. They're at the same level. Even dealing within that system, you're going to find that inconsistencies.

And so, you've got to ask yourself, 'What are we going to do?' Well, I'm going to tell you, the adversity that we face today, ladies and gentlemen, is nothing, compared to what the Chamorros and anybody on Guam faced over the last 100 years. Nothing. It's nothing. That doesn't mean your responsibility is not as immense, maybe even more, because you are at a pivotal point in history today.

But, at the same time, just think back at the consequences that would befall a Chamorro leader or any public servant back then when those decisions were made. I can assure you, that even though they're not well covered, they're not well documented, with Speaker Won Pat and those that supported his acts, not very much is written of them. But they were

courageous. There were consequences. I can tell you that there were consequences for B. J. Bordallo and F. B. Leon Guerrero going to Congress and saying what needed to be said. Those were not covered very well. And it's obvious, because those that write history are usually the people that are in control.

And so, today and tomorrow, you have to decide. Well, if, for example, these two (2) identical programs: the right to self-determination and the Chamorro Land Trust Act. If they came from the Congress of the United States the chances of any challenge succeeding in the courts, very minimal. It's almost certain that they would pass muster even within the federal system. But it's the same program. It doesn't make it wrong. Because of the fact, the people of Guam decided on their own. That they're going to get things going and they're going to have the Chamorros exercise self-determination. It doesn't make it wrong that the Chamorro people and everybody on Guam decided that we're going to have a Chamorro Land Trust Act.

It's not constitutional in the sense like with Hawaii, where it came from the Congress and it was negotiated, I'm assuming, and it is part of their constitution. But it's the same thing. And so, you would ask yourself, 'Why would want to run from a fight over a program, that if you do it, it's called constitutional. If I do it, it's called unconstitutional. Words are the same, everything's the same.'

And if I can, I would like to end in one thought, because it's something that surprised me, but it's stuck me over these many, many years. I think it was 1992 or 1994. I was at the Democratic National Convention. And I was told to link up with a congressman name Mike Honda. I had no idea who he was. And it ended up he was he was pretty much a living legend.

[And] he's pretty much one of the prime individuals responsible for the compensation for Japanese-Americans that were wrongfully interred. But what's not written very often is the fact that as a Japanese-American, he refused to support a bill of reparations that didn't contain language saying, 'Not one Japanese-American was ever found to be a traitor.' Not one. So, he was asked, 'Why would you stall a bill that's going to give everything else that he's wanted, just because he wanted just that one phrase.' He said, 'Because 50 to 100 years from now, there's going to be a little Japanese-American girl in a classroom and someone's going to say, 'You're people were traitors.' And if we don't empower her to say, 'That's not true.' And as part of the law, we make it very clear, that not one Japanese-American was ever found to be a traitor. We leave that little girl vulnerable.'

And that's where we are today. We've heard the stories of our selling their land and all that. It's comical. But in 50 to 100 years, it may not be. Because again, the person who writes history is the person in charge. And they actually are trying to convince our people that after the war we wanted to sell our land and we gave it willingly and all that. It's fairy tales. Fairy tales.

But as the generations go, we don't empower our people with that written history to be clear. That's not what happened. It seems to me you're a little bit embarrassed of history

and you should be. But the point is, we all know that, but those that come after us won't know.

The worst thing we could do is when someone writes a letter. And really ladies and gentlemen, it's some person in the department. We do it here and they do it there. They've done it for years and both sides. We've had the United States federal government sign off on the Articles that everybody on Guam voted for in the Commonwealth Draft Act. Everybody that was entitled to vote was allowed to vote for the Chamorro Land Trust Act. Was allowed to vote for Chamorro Self-Determination, and the majority did. Now, is that perfect legitimacy and the consent of the governed? Well, it's a lot further than one person in court and it'll take you a lot further than one bureaucrat in D.C. I would suggest. But on top of that, it was reviewed by Congress and the Task Force that was put together by the Congress and the Executive Branch at one point signed off on those Articles. So, again, is that necessary, relevant in a court of law? I don't know, that's a different form. But when we're discussing, you know, the good and the bad here, I think it merits the discussion, 'Wait a minute, at one point you guys signed off these programs.' And for more years that you opposed it, you have supported it. And that Chamorro Land Trust Act looks awfully identical to the Hawaiian Home Commission Act. And how does that survived? People say, it's Rights Kayatano.

And I promise to end with this. Rights Kayatano had very little to do with the actual act as much as it did over governance. And they basically said it, 'If you hold an election in our system, I don't see why everybody can't, you know, have a part in governing.' That didn't destroy the act. It just talked about the governance. And so, those are two (2) separate things. Again, the heart of the challenge of the Chamorro Land Trust Act is not governance, it's the act itself.

It's the recognition that there are certain people that will benefit. I believe everybody benefits, but of course, there is a designation of a group of people that Native Inhabitants that have been referred to in different ways and defined in different ways over the years, where we are talking about the same group of people.

Again, whether it's in their system or our system and whether certain people currently have power render certain decisions doesn't determine the legitimacy of that and it doesn't change whether it's right or wrong. But, your decision today, really, like Mike Hondas' refusal to accept reparations for Japanese-Americans without that specific language saying not a single Japanese-American was ever found to be a traitor.

You are able to make that decision today. Because you'll ensure that your grandchildren and great grandchildren and all of our descendants are never told that, 'Oh no, no you guys agreed that there was something wrong here.' And somehow unconstitutional is equated with immoral or wrong or without legitimacy and in fact in many cases it's not.

I humbly ask you take your responsibility very seriously, as I know you do. And I appreciate all of you that are here today. But I just want to make sure that you don't think that your acts even if it results in another court loss or somehow not as important as those

that were made by Vice Speaker Won Pat and the many, many Guam Leaders that came before that Congress and with that I thank you so much for your time.

Si Yu'us Ma'ase[01:48:03]

V.S. T. M. Terlaje [01:48:03]

Thank you very much Attorney Phillips and I'd like to thank you for your work in getting the Chamorro Land Trust implemented in 1995. Si Yu'us Ma'ase.