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SECOND CONGRESS OF THE FEDERATED STATES OF MICRONESIA

THIRD REGULAR SESSION, 1982 C.R. No. 2-87

A RESOLUTION

Urging the Department of the Interior to resolve the jurisdictional issues now dividing the judiciaries of the Federated States of Micronesia and the Trust Territory of the Pacific Islands by limiting to appellate review the Trust Territory High Court's role in the Federated States' court system, and to take other appropriate action to minimize controversy and promote cooperation between the two judicial systems.

WHEREAS, the Federated States of Micronesia is a fully formed constitutional government striving for self-determination pursuant to its own interests and the declared policy of the United States Government; and

WHEREAS, an efficient, self-governing judicial system with powers broad enough to ensure a truly effective administration of justice is essential to the forging of an independent nation under constitutional government; and

WHEREAS, the Supreme Court of the Federated States of Micronesia is a fully functioning tribunal, certified to exercise its jurisdiction by the High Court of the Trust Territory and manned by two eminently qualified justices; and

WHEREAS, harmonious interaction between the two court systems is essential to the smooth and orderly transition of duties to the new Supreme Court that is contemplated by United States Department of the Interior Secretarial Order No. 3039; and

WHEREAS, this desired spirit of cooperation is further evidenced by the joint order entered into by the Chief Justices of the High Court and the Supreme Court which establishes joint cooperation to assure the Supreme Court's immediate exercise of the full scope of its jurisdiction and guarantees its right to determine that scope; and

WHEREAS, events of late have sadly demonstrated the apparent lack of purpose of the Trust Territory High Court to maintain the cooperation needed to effectuate the full scope of jurisdiction of and the proper transition of functions to the Federated States Supreme

Court, thereby undermining the effort toward constitutional self-rule; and

WHEREAS, one such event took the form of an order by the High Court, sitting alone in an ex parte proceeding, directing a stay of all further proceedings in a civil action decided by the Supreme Court; and

WHEREAS, another such event took the form of the High Court's unwillingness to disclose publicly, upon request of the Supreme Court, the financial resources available to the High Court for transference to the Supreme Court and the State courts as prescribed in United States Department of the Interior Secretarial Order No. 3039; and

WHEREAS, another such event took the form of the High Court's apparent unwillingness to transfer pending High Court cases of Federated States jurisdiction to the Supreme Court as required by United States Department of the Interior Secretarial Order No. 3039; and

WHEREAS, another such event took the form of High Court unwillingness to support the joint agreement to share personnel and facilities with the Supreme Court at Ponape and otherwise to promote a smooth working relationship with the High Court on Ponape; and

WHEREAS, another such event took the form of High Court Associate Justice E. F. Gianotti's action in the State of Truk wherein he went forward with criminal cases before jurisdiction had been resolved in contravention of the procedures jointly established by the two court

systems for determining jurisdiction and in contravention of the order by then High Court Associate Justice Mamoru Nakamura staying any High Court action until jurisdiction is resolved by the Supreme Court's Appellate Division; and

WHEREAS, another such event took the form of Associate Justice Gianotti's issuance of summary criminal contempt charges in the Truk criminal cases against the Federated States of Micronesia Attorney General's Office without any basis whatsoever; and

WHEREAS, another such event took the form of Associate Justice Gianotti's disruptive behavior in the State of Ponape wherein he has repeatedly demonstrated an inability or unwillingness to cooperate with the Supreme Court in sharing the limited Court facilities by setting trials and preempting courtroom space without consulting the Supreme Court and by attempting to monopolize Court personnel to the detriment of Supreme Court administration, all done in contravention of agreement between the High Court and the Supreme Court; and

WHEREAS, Associate Justice Gianotti's recent actions continue an evident pattern toward undermining relations with the Federated States, a pattern beginning some 3 years ago wherein, amid unsettling controversy, he was subjected to congressional investigation, removed from Truk by the Department of the Interior, and disqualified by the High Court from presiding over any cases handled by the Micronesian Legal Services Corporation, an agency which since its inception has enjoyed the overwhelming support of the Micronesian

people; and

WHEREAS, the continued presence of Associate Justice Gianotti in the Federated States will lead inexorably to continued divisiveness between the High Court and the Supreme Court; and

WHEREAS, it is the sense of the Congress of the Federated States of Micronesia that in order to assure the development of the full scope of Supreme Court jurisdiction, it is necessary that Associate Justice Gianotti be removed from all judicial matters arising in or otherwise affecting the Federated States of Micronesia; and

WHEREAS, the continued involvement of the Trust Territory High Court in the immediate judicial affairs of the Federated States will intensify divisiveness between the two court systems, will retard the natural development of Supreme Court jurisdiction, will obstruct the desired growth of constitutional self-rule, and will exascerbate an already critical situation; and

WHEREAS, the Supreme Court of the Federated States of Micronesia is absolutely capable of carrying out all National judicial duties without the inhibiting involvement of the Trust Territory High Court; and

WHEREAS, there is no legitimate reason for the Trust Territory High Court to continue to handle legal matters which are within the declared and inherent jurisdiction of the Federated States Supreme Court; and

WHEREAS, the Trust Territory High Court can best serve the Federated States by performing its natural function in this transition

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period as an appellate review court, as contemplated by United States Department of the Interior Order No. 3039; and

WHEREAS, the transition to constitutional self-government is a difficult process, and the direct involvement in National judicial affairs by the High Court is bound to turn a difficult process into a mounting struggle; and

WHEREAS, it behooves all appropriate officials to make every effort to facilitate a smooth and orderly transition to constitutional self-rule; now, therefore,

BE IT RESOLVED by the Second Congress of the Federated States of Micronesia, Third Regular Session, 1982, that the United States Department of the Interior is urged to resolve the jurisdictional issues now dividing the judiciaries of the Federated States and the Trust Territory by limiting to appellate review the High Court's role in the Federated States' court system; and

BE IT FURTHER RESOLVED that the United States Department of the Interior is urged to promote the essential harmony between the Trust Territory court system and that of the Federated States by removing Associate Justice E. F. Gianotti from any and all involvement with official matters arising in or otherwise affecting the Federated States of Micronesia; and

BE IT FURTHER RESOLVED that certified copies of this resolution be transmitted to the President of the Federated States of Micronesia, the Secretary of the Department of the Interior, the Director of Territorial Affairs, the chairman of the United States Senate Committee

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on Energy and Natural Resources, the High Commissioner of the Trust Territory of the Pacific Islands, the Chief Justice of the Supreme Court of the Federated States of Micronesia, and the Chief Justice of the High Court of the Trust Territory of the Pacific Islands.

Date: May 27/82

Introduced by: _____
Hirosi Ismael