CONGRESS OF THE FEDERATED STATES OF MICRONESIA

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COMMITTEE ON
EXTERNAL AFFAIRS

STANDING COMMITTEE REPORT NO. 22-42

RE: C.A. No. 22-110 (P.C. No. 22-293)/EXAFF

SUBJECT: VETO OVERRIDE

JULY 22 2022

The Honorable Wesley W. Simina
Speaker, Twenty-Second Congress
Federated States of Micronesia
Fifth Special Session, 2022

Dear Mr. Speaker:

Your Committee on External Affairs, to which was referred Presidential Communication No. 22-293, regarding the veto of Congressional Act No. 22-110, entitled:

> "AN ACT TO AMEND SECTION 504 OF TITLE 10 OF THE CODE OF THE FEDERATED STATES OF MICRONESIA (ANNOTATED), FOR THE PURPOSE OF CLARIFYING THAT ALL SUBSEQUENT COMMITMENTS FOR ACTION BY THE FSM MADE PURSUANT TO RATIFIED INTERNATIONAL AND MULTILATERAL TREATIES WHERE THE FSM IS A SIGNATORY COUNTRY REQUIRE RATIFICATION BY CONGRESS, AND FOR OTHER PURPOSES.",

begs leave to report as follows:

The intent and purpose of this Act are expressed in its title.

Your Committee has reviewed Congressional Act. No. 22-110, and the accompanying veto message as set forth in Presidential Communication No 22-293. Your Committee responds to the reasoning as delineated in the veto message by the President as follows:

The veto message by the President in Presidential Communication No. 22-293 discusses the power of the President of the Federated

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States of Micronesia to conduct foreign affairs under Article X, Section 2(b) of the FSM Constitution, however, this memorandum does not provide on point authority for the claim that Congressional Act. No. 22-110 restricts or impinges on this power in any way. To begin it is important to note the full citation of Article X, Section 2(b) of the FSM Constitution reads that the President has the power "to receive all ambassadors and to conduct foreign affairs and the national defense in accordance with national law;"

It is the Congress of the Federated States of Micronesia that has the power to ratify treaties under Article IX, Section 2(b) of the FSM Constitution. This is the section of the FSM Constitution that Title 10, Section 504 of the FSM Code bases its authority on and it is this specific portion of the FSM Code whose amendment is the subject of Congressional Act. No. 22-110. The power to ratify treaties is expressly delegated to Congress under Article IX, Section 2(b). Substantive international and multilateral treaties must be ratified by Congress to go into force, this includes later substantive amendments, such as protocols which deal with international affairs and multilateral agreements. This has been well understood for many years as evidenced by the many subsequent substantive protocols amending existing ratified treaties that have been transmitted to Congress by the President for separate ratification. It is the intention of Congress simply at this time to memorialize this power with specificity in a short addition in a new Title 10, Section 504 (4) which reads as follows:

> "(4) Notwithstanding subsection (1) of this Section, all subsequent major substantive commitments, particularly those of diplomatic or foreign relations significance, for action by the FSM made pursuant to ratified international and multilateral treaties, including but not limited to climate change agreements, are also subject to ratification by Congress."

The Committee would like to emphasize that nothing in Title 10, Section 504 (3) has been amended and this section remains in force as follows:

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> "(3) Nothing contained in this section shall be construed as diminishing the authority of the President, the Secretary of External Affairs, or their authorized representatives, to negotiate and conclude international agreements which require ratification by Congress."

The Committee agrees that the FSM Constitution grants the President to conduct foreign affairs in accordance with national law. One case cited by the President, Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000), is a case where the FSM Supreme Court deferred to the Executive Branch in a determination of sovereign immunity stating that the status of a foreign sovereign is a matter for the executive branch determination. Though generally discussing the President's power to conduct foreign affairs this does not speak to the specific matter at hand.

The most salient case cited in the President's veto override message is Pacific Foods & Servs. Inc. v. National Oceanic Res. Magt. Auth., 17 FSM R. 181 ("Pacific Foods"). Here the FSM Supreme Court voided the interpretation of Title 24, Section 405 of the FSM Code requiring "fishing assess agreements" be ratified by Congress. Here the FSM Supreme Court reasoned, as cited in the President's veto override, that "an 'access agreement' is a treaty…But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals-not treaties." *Pacific Foods.*, p. 189. The commercial agreements which are the subject of *Pacific Foods* are of a completely different nature from the subsequent major substantive commitments of diplomatic, foreign relations and climate change nature under international and multilateral treaties that the new Title 10, Section 504(4) addresses, and is thereby completely distinguished.

As set forth above your Committee has made clear that the new Section 504(4) of Title 10 of the FSM Code neither vests in Congress any power to conduct foreign affairs, or to enforce or

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implement treaties. The Committee has determined that there are no legal impediments or errors in Congressional Act No. 22-110, and that the veto by the President has been based on matters of policy only.

Based on careful review of Congressional Act No. 22-110 and the veto message the Committee on External Affairs finds no legal impediment or defect with the Act. Therefore, your Committee recommends overriding the veto of Congressional Act No. 22-110.

Respectfully submitted,

Paliknoa K. Welly, chairman

Tiwiter Aritos, vice chairman

Isaac V. Figir, member

Esmond B. Moses, member

Dion G. Neth, member

Victor V. Gouland, member

Robson U. Romolow, member

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Isaac V. Figir, member

Esmond B. Moses, member

Dion G. Neth, member

Victor V. Gouland, member

Robson U. Romolow, member

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RE: C.A. No. 22-110 (Pub. No. 22-993)/MRAEP

SUBJECT: VETO MESSAGE

JULY 25, 2022

implementing treaties. The Committee has determined that there are no legal impediments or errors in Congressional Act No. 22-110, and thus the veto by the President has been based on matters of policy only.

Based on careful review of Congressional Act No. 22-110 and the veto message the Committee on External Affairs finds no legal impediment or defect with the Act. Therefore, we recommend overriding the veto of Congressional Act No. 22-110.

Respectfully submitted,

Helena K. Reilly, chairman	Walter Arjoe, vice chairman
Isaac W. Pilgin, member	Edward C. Moss, member
Dion G. Webb, member	Victor V. Goel, member
Robson D. Tomolow, member	

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Victor V. Gouland, member

Robson U. Romolow, member