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UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

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Arnold Davis, on behalf of himself and all others similarly situated,

Plaintiff,

v.

Guam, Guam Election Commission, et al.

Defendants.

Civil Case No: 11-00035

Plaintiff's Objections to Recommendation

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COMES NOW the Plaintiff, Arnold Davis, pursuant to Rule 72(b)(2) and provides this Court the following timely objections to the Report and Recommendation RE: Motion to Dismiss (Document No. 44) (Hereafter, "Report"). Fed. R. Civ. P. 5(b)(2)(E), 6(a)(1)(C), 6(d), 72(b)(2).

SUMMARY OF OBJECTIONS

As discussed in greater detail below, plaintiff objects to the Report for the following reasons. First, the Report was issued without any opportunity for plaintiff to be heard, and contains other recommendations unrelated to any pending motion before this Court. Second, and as a consequence, the Report ignores the possibility that preventing a citizen from *registering* to participate in the political process is an injury, and that the "case or controversy" over the infliction of that injury is unambiguously "ripe" because it already has occurred and is ongoing. Indeed, decades of history and case law demonstrate that this injury is the core historic harm addressed by civil rights protections. Third, plaintiff has standing because he and those similarly situated are excluded from full participation in the political process. Fourth, explicit statutory language makes plaintiff's claims ripe. Fifth, even if the denial of registration does not make this claim ripe, the Report is still in error. And sixth, adopting the Report would create impractical results in election cases.

PROCEDURAL AND FACTUAL HISTORY

This matter is before the Court on the Magistrate's Report containing the recommendation that plaintiff's case be dismissed because it is not ripe for adjudication.

Plaintiff sought to register so that he may fully participate in the Political Status Plebiscite as established by 1 GCA § 2110 (hereafter the "plebiscite"). Plaintiff's complaint states he was

prevented from registering to participate because he is not a "native inhabitant." Compl. ¶ 21. Plaintiff has an interest in the status of Guam, its inhabitants and its territory, and the content of any communication to the Federal government and United Nations that describes the results of the plebiscite. Because of this interest, he seeks to cast a vote in the plebiscite. But because he does not have the requisite ancestral bloodlines to a "native inhabitant," as defined by 1 GCA § 2102 and § 2110, his registration was denied. *Id.* Other United States citizens on Guam who are not "native inhabitants," have also been denied registration for the plebiscite, including whites and Asians. *Id.* ¶¶ 15, 18. The definition of "native inhabitants" was intentionally designed to favor Chamorros, a racial group, and disfavor other racial groups. *Id.* ¶¶ 9, 15. Plaintiff alleges that statute responsible for the denial of his registration also has a racially discriminatory effect, and violates multiple federal civil rights statutes and the Fifteenth Amendment. *Id.* ¶¶ 28-29, 33-34, 39-40. All of these factual allegations must be accepted as true for purposes of this motion.

Trial is set for April 2013. Discovery is set to close on December 21, 2012.

OBJECTIONS

I. Plaintiff had no opportunity to be heard on ripeness and the Report contains other recommendations about matters not before the Court.

Defendants' Motion to Dismiss was filed on December 2, 2011. The motion did not raise the issue of ripeness. On the effective final day of filing plaintiff's response to the motion, December 30, 2011, a Motion for Leave to File an Amicus Brief was filed by Anne Perez Hattori supporting dismissal with a ripeness argument not made by the defendants.

In plaintiff's response to the Motion to Dismiss, he included this footnote: "Anne Perez Hattori, on the effective final business day of filing for this opposition, filed a motion for leave to file an amicus brief. She says that she asserts arguments not raised by the defendant, and accordingly, are not addressed in this opposition. The amicus brief simultaneously claims this action is both premature, as well as late." Opp. and Reply to Motion to Dismiss at 2, n. 2.

Though amicus was able to persuade the Magistrate this case was not ripe, she notably failed to persuade the defendants. "The Attorney General is not convinced of the argument that this controversy is not ripe merely because the conditions precedent and date of the future plebiscite are uncertain, or because the plaintiff has not been threatened with imminent prosecution under the criminal provisions of the statute." Def. Rep. to Opp. to Mot. to Dismiss, at 3 (Document 24).[1]

After defendants' reply was filed January 10, 2012, both parties initiated discovery over the ensuing months. On April 6, 2012, the Magistrate granted leave to the amicus to file the brief containing the ripeness arguments, leave plaintiff opposed. No provision was included in the Magistrate's order of April 6 allowing plaintiff to be heard on the merits of the ripeness arguments. Six months after the Motion to Dismiss was filed, and without any opportunity of plaintiff to be heard on the issue of ripeness, the Report was issued recommending that defendant's Motion to Dismiss (Document 17, December 2, 2011) be granted on the basis of ripeness.

Plaintiff objects to the Report because plaintiff had no opportunity to be heard on the issue of ripeness.[2]

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1 The Report inaccurately describes footnote one of defendant's memorandum in support of the motion to dismiss as raising ripeness. The footnote merely provides legislative history for Public Law 27-106:VI:23 and describes a defect in the statute and the fact that the statutory threshold has not been reached. Given the defendants' statement quoted in the text, the footnote cannot plausibly be interpreted as raising a ripeness argument.

2 In a February 21, 2012 scheduling conference, both the defendants and plaintiff offered to provide oral argument if the briefs were inadequate to rule on defendant's motion to dismiss. Given that the plaintiff's response did not

Oddly, the Report also erroneously supports dismissal under a laches theory. The Report's conclusions are supported "by the fact Plaintiff did not file his complaint until more than 11 years after the creation of the Decolonization Registry. More importantly, Plaintiff waited more than 11 years since the plebiscite vote was restricted." The Report dooms plaintiff for waiting too long to file a complaint, while also punishing him for filing a complaint too soon. Though it is irrelevant, in fact, plaintiff has been fighting his inability to register in a myriad of ways for years.

Defendants have not asserted a laches defense. Moreover, in election cases, laches applies "when a plaintiff has delayed bringing a suit to the *detriment* of the defendant." *Perry v. Judd*, __ F. Supp.2d __, 2012 WL 113865, *2 (E.D.Va. 2012) (emphasis added). Laches is an affirmative defense that must be asserted, and defendants have not done so. Fed.R.Civ.P. Rule 8(c)(1). Plaintiff therefore also objects to the Report's consideration of the purported late timing of plaintiff's complaint.

II. The Report errs by ignoring the central importance of registration in civil rights jurisprudence when it found this case unripe.

The heart of the Report is the following statement on page 8: "A denial of one's right to register to vote in [the plebiscite] election would be justiciable only if such election was imminent." The Report cites no authority for this proposition, and, to plaintiffs' knowledge, none exists. It is wrong. A racially discriminatory denial of the right to register is a separate and distinct injury that plaintiff has suffered. Since plaintiff already has tried to register, and has been denied the right to do so – and would be denied again were he to make an effort to do so again – the controversy

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contain *any* substantive response to the ripeness argument because of the late date of the amicus filing, and further, that the defendants' *singular position on ripeness was that the argument was unconvincing*, it would seem particularly deleterious to the correct resolution of this case to have heard virtually nothing from the actual parties on the ripeness issue before issuing the Report. Plaintiff renews his previously stated offer to be heard fully if the briefs submitted by the plaintiff and defendant are insufficient for the Court to resolve the motion before it.

before this Court is eminently ripe. The Report errs in finding that neither the enactment of a discriminatory registration statute, nor the actual denial of registration based on race was itself a ripe injury.[3] Simply, the Report contains a pervasive and fundamental error: the denial of plaintiff's *registration* is the immediate, real, tangible, concrete and illegal harm challenged in the complaint.

The conclusions to the contrary in the Report defy decades of civil rights history and jurisprudence. Adoption of the Report would shrink the meaning and scope of election-related civil rights protections, an outcome federal courts have shunned for over five decades.

As shown in Part IV, below, the fact that Congress has passed various relevant statutes identifying a right to register means that violation of that right creates an Article III injury. In fact, denial of *registration* was the core evil addressed by the civil rights movement and ultimately the Voting Rights Act. The jurisprudence arising out of the civil rights movement is an unbroken history of the struggle to *register* by adding one's name the list of people fully able to participate in the political process. *Louisiana v. United States*, 380 U.S. 145, 153 (1965) (invalidating arbitrary registration denials); *United States v. Atkins*, 323 F.2d 733 (5th Cir. 1963) (error to deny injunction in registration denial); *Reddix v. Lucky*, 252 F.2d 920 (5th Cir. 1958) (cancelling registration creates question of fact under §§ 42 U.S.C. 1971 and 1983); *United States v. Mississippi*, 339 F.2d 679, 682 (5th Cir. 1964) (registration practices held to be illegal under § 42 U.S.C. 1971); *United States v. Louisiana*, 225 F. Supp. 353, 356 (E.D. La. 1963), *aff'd*, 380 U.S. 145 (1965) (facially race-neutral registration prerequisites invalidated); *United States v. Clement*, 358 F.2d 89, 91 (5th Cir. 1966) (invalidating barriers to registration); *United States v. Mayton*, 335 F.2d 153, 156-7 (5th Cir. 1964) (otherwise facially insufficient registration instruments sufficient to secure

3 Plaintiff also believes this case was ripe when 1 GCA § 2110 became effective. See part III, *infra*.

registration); *United States v. Wood*, 295 F.2d 772 (5th Cir. 1961) (injunction required against state criminal prosecution of those encouraging registration); *United States v. Raines*, 189 F.Supp. 121, 133 (M.D. Ga. 1960) (42 U.S.C. §1971(a) "forbids any distinction in the voting process based on race or color, *irrespective of whether such distinction involves an actual denial of the vote.*") (emphasis added); *United States v. Association of Citizens Councils of La., Inc.*, 196 F. Supp. 908, 909 (W.D. La. 1961) (seeking reinstatement of "registration" under 42 U.S.C. § 1971); *United States v. McElveen*, 180 F.Supp. 10, 13 (E.D. La. 1960) (discriminatory application of registration statute is unconstitutional even when statute is not facially discriminatory); *United States v. Alabama*, 192 F. Supp. 677, 682-83 (M.D. Ala. 1961), aff'd, 304 F.2d 583 (5th Cir. 1962), aff'd per curium, 371 U.S. 37 (1962) (racially discriminatory effects in registration procedures illegal).[4]

United States v. Raines involved claims brought under 42 U.S.C. §1971(a), as has the case before this Court. Section 1971(a) "forbids any distinction in the voting process based on race or color, *irrespective of whether such distinction involves an actual denial of the vote.*" *United States v. Raines*, 189 F.Supp. at 133. (emphasis added). In short, the Report's contention that a denial of registration would be justiciable only if the election were imminent is just plain wrong.[5]

In fact, the black voters seeking to register in *Raines* faced decidedly better circumstances in 1959 Georgia than does the plaintiff in his effort to participate in the plebiscite. Georgia at least maintained the pretense of the possibility of registration, even though they used different colored

4 These cases barely scratch the surface of litigation to secure the right to register and fully participate in the political process that was the central issue in pre-1965 civil rights jurisprudence. For additional information *see* Steven F. Lawson, "Prelude to the Voting Rights Act: The Suffrage Crusade, 1962 – 1965," 57 S.C.L.Rev. 889 (2006).

5 The other causes of action in plaintiff's complaint, Section 2, Section 1971(b), the Organic Act and the Fifteenth Amendment similarly protect the procedures and practices used in the entire process, not merely ultimate vote denial.

registration forms and different tests as between black and white citizens. In Guam, thousands are outright banned from registration for the plebiscite on pain of jail. Regardless, in *Raines*, the *registration process itself* made the claim ripe and whether or not there was ultimately a denial of a vote was deemed irrelevant by the court.

The district court in *Raines* relied on *Lane v. Wilson*, 307 U.S. 268, 272 (1939). In *Lane*, the Court confronted Oklahoma's legislative response to *Guinn v. United States*, 238 U.S. 347 (1915). In *Guinn*, the Court found an ancestral test to be unconstitutional. Much like the ancestral tests contained in 1 GCA § 2102 and § 2110, the ancestral test in *Guinn* unconstitutionally set eligibility to register to participate in the political process. After losing in *Guinn*, Oklahoma enacted a registration test which allowed anyone to register who voted in 1914, or, who registered during a twelve day window ending on May 11, 1916. Both blacks and whites could freely register during the twelve days, and thereafter registration was terminated for everyone forever.

Echoing the ripeness analysis in the Report, Oklahoma argued there was no registration law to challenge after May 11, 1916, and since there was no actual registration law in effect, plaintiffs lacked standing.

The Supreme Court rejected Oklahoma's charade. "We cannot avoid passing on the merits of plaintiff's constitutional claims. . . . The [Fifteenth] Amendment nullifies sophisticated as well as simple minded-modes of discrimination." 307 U.S. at 274. The Report's recommendation that this case is not ripe because no election is set fails for the same reason as in *Lane*.[6]

In *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008), the issue was the requirement on Florida's voter registration form that applicants provide a driver's

6 Though the issue is not now before this court, it is noteworthy that the registration scheme invalidated in *Lane* provided more opportunity for blacks to register in Oklahoma than does the registration scheme challenged in this case provides plaintiff.

license or social security number. Plaintiffs challenged the state registration statute as being preempted by the Help America Vote Act of 2002, (codified at 42 U.S.C. § 15301 et seq.) Florida argued that no registrations were in fact denied and therefore the case was not ripe. *Id.* at 1160.

The court disagreed with Florida. "The Supreme Court has long since held that where the enforcement of a statute is certain, a pre-enforcement challenge will not be rejected on ripeness grounds." *Id.* at 1164. The Eleventh Circuit held that the claims were ripe because the registration requirements "were automatic for all new voter registrants, there is no doubt that the statute will be enforced." *Id.* Of course, 1 GCA § 2110 has already been enforced against plaintiff and will automatically be enforced against anyone else failing to meet the definition of "native inhabitant," particularly if they seek to participate fully in the political process by registering.

The Report fails to recognize the immediate and concrete harm plaintiff suffered when he was denied registration. Instead, the Report erroneously concludes the case will not be ripe unless the plebiscite is firmly set or imminent.

III. The case is ripe because plaintiff's right to fully participate in the political process has been proscribed, and even criminalized.

The Report further errs by concluding this case is not ripe after plaintiff and others who are not "native inhabitants" were excluded from fully participating in the political process by the *enactment* of 1 GCA § 2102 and § 2110. Plaintiff alleges that limitations on registration and voting for the plebiscite are racially discriminatory in both intent and effect. Those allegations must be taken as true at this stage of the proceedings. The Supreme Court and the Ninth Circuit have held that citizens who are treated unequally by their government, even if they suffer no

tangible penalty or would receive no tangible benefit from equal treatment, have suffered a cognizable Article III injury, and thus have a ripe case.

In *Catholic League for Religious and Civil Rights v. San Francisco*, 624 F.3d 1043 (9th Cir. 2010), the Ninth Circuit found the Catholic plaintiffs had standing after the San Francisco City Council passed a resolution denouncing Catholic doctrine. Plaintiffs argued that they had standing because the "stigmatizing resolution leaves them feeling like second-class citizens of the San Francisco political community, and expresses to the citizenry of San Francisco that they are." *Id.* at 1052. The plaintiffs did not allege any tangible harm, but only a psychological stigmatic harm. *Id.* at 1047. They argued that the resolution cast them as "outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community." *Id.* at 1053. *See also, e.g., Heckler v. Mathews*, 465 U.S. 728, 739-40 (1984) (holding that man had standing to challenge exemption for women, but not similarly-situated men, to rule requiring reduction of Social Security benefits under certain circumstances even though Congress had provided that if the exemption were unconstitutional, it should be eliminated for women rather than also provided to men; "[T]he right to equal treatment guaranteed by the Constitution is not co-extensive with any substantive rights to the benefits denied the party discriminated against. Rather, . . . discrimination itself, by perpetuating 'archaic and stereotypic notions' or by stigmatizing members of the disfavored group as 'innately inferior' and therefore as less worthy participants in the political community, can cause serious noneconomic injuries to those persons who are personally denied equal treatment solely because of their membership in a disfavored group.").

Davis and those similarly situated are being treated unequally and stigmatized by being characterized as second class citizens by 1 GCA § 2102 and § 2110. It is this stigmatization which also makes this case ripe for resolution.

The Ninth Circuit also noted "Standing is emphatically not a doctrine for shutting the courthouse door to those whose causes we do not like." *Catholic League ,* 624 F.3d at 1049. "The cause of the plaintiffs' injury here is not speculative: it is the resolution itself." *Id.* at 1052. 1 GCA § 2102 and § 2110 create a large group of second-class citizens on Guam who are unable to participate fully in the political process. The statutes themselves, in so excluding plaintiff, make this case ripe.

The Report also erroneously finds that this case is not ripe because the plaintiff has not been subject to imminent criminal sanction. "When contesting the constitutionality of a criminal statute, it is not necessary that the plaintiff first expose himself to actual arrest or prosecution to be entitled to challenge the statute that he claims deters the exercise of constitutional rights." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979); *see also*, *Steffel v. Thompson,* 415 U.S. 452, 459 (1974). Plaintiff has an "intention to engage in a course of conduct . . . but [is] proscribed by statute" and therefore his claims are ripe. *Babbitt*, 442 U.S. 298. Further, the statute here is not old and moribund, and the Attorney General has not disclaimed any right to prosecute violators. *See, e.g., id.* at 302 (holding that the plaintiffs had standing when defendants did not disclaim the right to prosecute them in the future); *Doe v. Bolton*, 410 U.S. 179, 188 (1973) (holding that doctors had standing to challenge recent Georgia abortion statute where it was "recent and not moribund").

IV. The Report's recommendation on ripeness contradicts statutory language protecting the right to register.

As shown above, the discriminatory denial of registration is a distinct and separate Article III injury. But even if it were not such an injury on its own, Congress may enact statutes creating legal rights, the invasion of which causes injury and thus creates a ripe case, even if no injury would exist without the statute. The Report errs because it entirely fails to consider the language of the statutes invoked by plaintiff in this action and whether those statutes create legal rights the violation of which automatically creates a case or controversy.

This principle that Congress may create legal rights that suffice for Article III purposes was used by the D.C. Circuit in *Zivotofsky v. Secretary of State*, 444 F.3d 614 (D.C. Cir. 2006), to hold that a person born in Jerusalem had standing to challenge the State Department's refusal to place "Israel" on his American passport. Congress passed a statute granting that statutory right to those born in Jerusalem, just as it gives plaintiff statutory rights which he alleges have been violated in this case. "When a plaintiff is the object of government action (or foregone action) . . . there is ordinarily little question that the action or inaction has caused him injury." *Id.* at 618.

The court held that Zivotofksy had standing even though whether his passport said "Jerusalem" or "Israel" was entirely irrelevant to his ability to use it to travel, and no one would be able to distinguish a person born in Jerusalem from a person born in Tel Aviv. *Id.* Even if a government action results in no ultimate effect, a statute may create a ripe case or controversy.

Here, the statutes and constitutional provisions underlying this case contain explicit language at odds with the ripeness conclusions in the Report.

42 U.S.C. § 1971(a)(1) states that "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, . . . shall be entitled

and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude." Section 1971(a)(1) makes *qualification* statutes for any existing election the benchmark in judging whether someone is "entitled" to participate in "any" other future elections. *Qualification* standards are implicated by § 1971(a)(1), not actual voting.

42 U.S.C. § 1971(a)(2) prohibits the creation of separate registration eligibility classes, as plaintiff has alleged Guam has done. Guam cannot, "in determining whether any individual is qualified under State law or laws to vote in *any* election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals." Contrary to the conclusions in the Report, a case is ripe under 42 U.S.C. § 1971(a)(2) as soon as different *qualification procedures* or *standards* are used, not when the plebiscite date is set.

Section 2 of the Voting Rights Act states: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a). Further, "voting" is defined in the statute to "include all actions necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration . . . " 42 U.S.C. § 1973*l*(c). Again, Section 2's focus is on *qualifications or prerequisites* to voting. The word "prerequisite" plainly envisions a requirement removed in time from actual elections.

Further, the Report never once addresses the language of the Organic Act, another statute plaintiff has alleged has been violated. "No qualification with respect to property, income, political opinion, or any other matter apart from citizenship, civil capacity, and residence shall be

imposed upon any voter." 48 U.S.C. § 1421b(m). Again, contrary to the focus of the Report, § 1421b(m) focuses on *qualifications*, not actual voting. Nor does the Organic Act limit its reach. It explicitly applies to "any" voter, not just voters in elections other than the plebiscite.

Moreover, the Organic Act broadly proscribes *any* racial discrimination, not just racial discrimination in regularly scheduled elections. "No discrimination shall be made in Guam against any person on account of race, language, or religion, nor shall the equal protection of the laws be denied." 48 U.S.C. § 1421b(n). The Report entirely ignores § 1421b(n), a provision under which plaintiff has sued. *Any* government action which is done on account of racial discrimination makes plaintiff's case ripe. Plaintiff has alleged that he is the victim of racial discrimination in the registration requirements of 1 GCA § 2102 and § 2110, and therefore the Report is plainly in error.

V. Even if a discriminatory denial of registration were not a separate injury, the report's "ripeness" recommendation would still be wrong.

The Report also disregards other Guam statutes that support ripeness. The election which the Report characterizes as not "imminent" enjoys the benefit of a statute commanding an extensive publicity campaign using government funds. 1 GCA § 2109. GovGuam has already spent taxpayer funds on the plebiscite.

Note also that Section 2109(b), enacted in September 2011, vests discretionary power to set the election date:

> Upon consultation with I Maga'lahen Guåhan and I Liheslaturan Guåhan the Commission on Decolonization and the Guam Election Commission shall determine the date for the conducting of a Political Status Plebiscite, which shall take place following the completion of the public education program for the purposes of fulfilling the educational outreach provisions of this Chapter.

1 GCA § 2109(b). The Report makes no mention of the discretionary powers to set the plebiscite date contained in § 2109(b). Whether § 2109(b) *replaces* the older statute containing the seventy percent registration trigger (P.L. 27-106:VI:23), or *adds to it* is unclear. Both interpretations are supportable. What is most important, however, is that the chain of events has already commenced leading to a plebiscite – including registration, expenditure of government funds and plans for a government funded "education" campaigns to support the plebiscite. *See,* P.L. 24-296.

VI. The Report Would Lead To Counterintuitive and Impractical Results

Finally, the Report's conclusion that a racially-discriminatory refusal to register is not justiciable unless the election is imminent would lead to unsettling results. If, for example, a state announced "whites only" registration process for an election five years hence – say a U.S. Senate opening or some similar state office with a long term – such a "whites only" registration process could never be challenged in federal court under the rationale of the Report, provided the "whites only" policy was rescinded before the election. *McConnell v. FEC*, 540 U.S. 93, 226 (2003) (noting that U.S. Senator's alleged injury was "too remote temporally to satisfy Article III standing" where Senator brought suit challenging a statute in 2003 but would not be affected by the challenged statute until "45 days before the Republican Party primary election in 2008."). If that sounds wrong – and it is – it can only be because the Report is wrong.

So, too, the Report ignores the practical implications of its analysis. The Election Commission could announce at some point that the plebiscite will be held six months hence. The case would surely be ripe at that time, but if plaintiff were obligated to wait until then before commencing a lawsuit, this Court, much less the Ninth Circuit, barely would have time to address

the issues before the election. *E.g.*, *Laroque v. Holder*, 650 F.3D 777, 788 (D.C. Cir. 2011) (holding that complaint alleging that candidate intended to run for city council in nineteen months stated sufficiently imminent injury; "a contrary holding 'would place courts and candidates in an untenable position.' . . . While federal litigation can take months, even years, . . . campaigns for local office rarely span multiple years."). Thus, the Report's conclusion would "impos[e] burdens on the courts by requiring them to expedite the litigation." *Id.* "Nothing in Article III requires us to impose such an undesirable set of options on candidates and courts." *Id.* at 788-89.

Conclusion

Characterizing this case as unripe treats the plebiscite statutes as a recurring Will-o'-the-Wisp. The promise of the plebiscite conjures a sort of racially-charged future event that excludes nearly every non-Chamorro citizen, but which recedes untouchable upon examination by the excluded victims. Thus, the ever elusive plebiscite serves to mobilize one group of citizens, while excluding entirely another group of citizens. It is no accident that the mobilized citizens who are eligible to participate in the plebiscite are mostly from one racial group, while those excluded are mostly different races. The divisions these plebiscite statutes have created are not only ripe, they are rotted. It is time the merits of plaintiff's claims are fully heard by this Court.

The case is ripe and the Report's conclusions to the contrary are in error.

Respectfully submitted,

_____J. Christian Adams/s/_____
J. Christian Adams
Counsel for Plaintiff

Date: July 2, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the forgoing Opposition and Reply to Motion to Dismiss on counsel for the Defendants by providing a copy to Robert M. Weinberg, Assistant Attorney General through the Electronic Case Filing System on July 2, 2012, which provides an electronic copy of the same to rweinberg@guamattorneygeneral.com.

_____J. Christian Adams/s/_____
J. Christian Adams
Counsel for Plaintiff