IN THE SUPREME COURT OF GUAM

IN RE: REQUEST OF *I MAGA'LÅHEN GUÅHAN* EDDIE BAZA CALVO RELATIVE TO THE INTERPRETATION AND APPLICATION OF ORGANIC ACT SECTION 1423b AND WHAT CONSTITUTES THE AFFIRMATIVE VOTE OF THE MEMBERS OF *I LIHESLATURAN GUÅHAN*

Supreme Court Case No.: CRQ17-001

OPINION

Cite as: 2017 Guam 14

Request for Declaratory Judgment Pursuant to
Section 4104 of Title 7 of the Guam Code Annotated
Argued and submitted on September 12, 2017
Hagåtña, Guam

Appearing for Petitioner
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BEFORE: KATHERINE A. MARAMAN, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; JOHN A. MANGLONA, Justice *Pro Tempore*.

MARAMAN, C.J.:

[1] Petitioner *I Maga'låhen Guåhan* Eddie Baza Calvo (the "Governor") has filed a petition seeking a declaratory judgment pursuant to 7 GCA § 4104 regarding the interpretation of section 1423b of the Organic Act of Guam, various provisions of Guam statutory law, and the Standing Rules of the 34th Guam Legislature. *See In re Request of I Maga'låhen Guåhan Eddie Baza Calvo Relative to the Interpretation & Application of Organic Act Section 1423b & What Constitutes the Affirmative Vote of the Members of I Liheslaturan Guåhan* [hereinafter *In re Request of Calvo*], CRQ17-001, Req. for Decl. J. (June 9, 2017) (the "Petition"). For the reasons discussed below, we find that this court has jurisdiction to hear the Petition and that 2 GCA § 2104 and section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature (the "Standing Rules") are inorganic.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] On April 11, 2017, the Governor recommended a bill to Respondent *I Mina'trentai Kuattro Na Liheslaturan Guåhan* (the "Legislature") bearing the title: "An Act to Add § 1512.4 to Article 5, Chapter 1, Title 5, Guam Code Annotated, Relative to Authorizing the Issuance of General Obligation Tax and Revenue Anticipation Notes of the Government of Guam" (the "Proposed Act"). Req. for Decl. J. (7 [GCA] § 4104) at 2 ¶ 4 (June 9, 2017). The Proposed Act, had it been signed into law, would have permitted the Government of Guam to issue up to $75 million of tax and revenue anticipated notes (TRANs) in each of the 2017, 2018, and 2019 fiscal years.

[3] The Proposed Act was introduced by the Legislature's Committee on Rules as Bill 1(1-S) and referred to the Legislature's Committee on Appropriations and Adjudication. The Governor called the Legislature into a special session to consider Bill 1(1-S), and after debate, the Legislature voted on it. Of the fifteen members of the Legislature, fourteen were present but only thirteen voted. Seven voted in favor of Bill 1(1-S), and six voted against it. The Speaker of the Legislature then declared the measure had failed to pass on the basis that 2 GCA § 2104 and the Standing Rules require a minimum of eight affirmative votes to pass any legislation. Following an exchange of letters between the Governor and the Legislature, the Governor filed the Petition seeking four declarations regarding the interpretation of various provisions of the Organic Act and Guam law, including a declaration that Bill 1(1-S) had appropriately passed.

[4] In an Order dated July 7, 2017, the court stated that it believed it likely had jurisdiction over the Governor's first claim regarding "the interpretation of section 1423b of the Organic Act of Guam as it relates to what constitutes the affirmative vote of the members of the Guam Legislature sufficient to pass a bill." *In re Request of Calvo*, CRQ17-001, Order at 2 (July 7, 2017). The court, however, found that questions regarding "the interpretation of section 1423i of the Organic Act" were not "appropriately before" the court. *Id.* The court thereafter directed "the parties . . . to address the first issue raised by the Governor, but not the second, as we decline to consider the latter." *Id.* The court heard argument in this matter on September 12, 2017.

II. JURISDICTION

[5] This court has original jurisdiction over requests from the Governor of Guam to issue a declaratory judgment "as to the interpretation of any law, federal *or* local, lying within the

jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of *I Maga'låhi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively." 7 GCA § 4104 (added by Guam Pub. L. 29-103:2 (July 22, 2008)); *see also* 48 U.S.C.A. § 1424-1(a); *In re Request of I Mina'Trentai Dos Na Liheslaturan Guåhan Relative to the Use of Funds from the Tax Refund Efficient Payment Trust Fund*, 2014 Guam 15 ¶ 12 [hereinafter *In re Tax Trust Fund*] (citation omitted). For the reasons discussed below, we have jurisdiction to hear the Petition.

III. STANDARD OF REVIEW

[6] Because the court sits as a court of original jurisdiction, *see* 48 U.S.C.A. § 1424-1(a), we address each of the legal issues presented by the Petition in the first instance. The party alleging inorganicity of a statute bears the burden of showing that enacted legislation is contrary to, or inconsistent with, the Organic Act. *See In re Request of Governor Carl T.C. Gutierrez, Relative to the Organicity & Constitutionality of Pub. L. 26-35*, 2002 Guam 1 ¶ 41 [hereinafter *In re Request of Gutierrez*] (collecting cases). We begin any analysis regarding the organicity of a statute "with the general rule that legislative enactments are presumed to be [organic]." *Id.* (collecting cases); *see also In re Request of Governor Felix P. Camacho Relative to the Interpretation & Application of Sections 6 & 9 of the Organic Act of Guam*, 2004 Guam 10 ¶ 33 [hereinafter *In re Request of Camacho I*]. "[T]he validity of acts is to be upheld if at all possible with all doubt resolved in favor of legality[,] and [inorganicity] will be decreed only when no other reasonable alternative presents itself." *In re Request of Gutierrez*, 2002 Guam 1 ¶ 41 (citations and internal quotation marks omitted). Nevertheless, "the court must declare a

legislative enactment [inorganic] if an analysis of the [organicity] claim compels such a result." *Id.* (citations omitted).

IV. ANALYSIS

[7] The Government of Guam was created by, and derives its authority from, the Organic Act. *See* 48 U.S.C.A. § 1421a ("The government of Guam shall have the powers set forth in this chapter . . . ."). In other words, "[t]he Organic Act serves the function of a constitution for Guam." *Underwood v. Guam Election Comm'n*, 2006 Guam 17 ¶ 16; *see also Haeuser v. Guam (Dep't of Law)*, 97 F.3d 1152, 1156 (9th Cir. 1996); *Snow v. United States*, 85 U.S. 317, 319-20 (1873). Section 1423b of the Organic Act states the following:

> The legislature shall be the judge of the selection and qualification of its own members. It shall choose from its members its own officers, *determine its rules and procedure, not inconsistent with this chapter*, and keep a journal. *The quorum of the legislature shall consist of a simple majority of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.*

48 U.S.C.A. § 1423b (emphases added).

[8] The Governor asserts that pursuant to section 1423b, only two requirements are necessary for a bill to be ratified by the Legislature: (1) the presence of a quorum and (2) the affirmative vote of the majority of the present and voting members. *See* Pet'r's Br. at 9 (July 12, 2017). Title 2 GCA § 2104, however, provides that "[n]o bill shall be passed by *I Liheslaturan Guåhan* with less than eight (8) affirmative votes of its members." 2 GCA § 2104 (2005). Similarly, the Standing Rules state that "[u]nless otherwise required by the laws of Guam or under these Rules, any action(s) which can be taken by *I Liheslaturan Guåhan* requires an affirmative vote of eight (8) Members." Standing R. 34th Guam Leg. § 1.02(d)(4). Because the

current membership of the Legislature consists of fifteen members, in situations where less than the full membership of the Legislature votes on proposed legislation, the eight-vote requirement of section 2104 and the Standing Rules sets a higher bar for the passage of legislation than what is set forth in the Organic Act.

[9] The parties do not dispute the two requirements set forth in 48 U.S.C.A. § 1423b have been met on the facts of this case. *See* Pet'r's Br. at 13, 16-17; Resp't's Br. at 18-20 (Aug. 10, 2017) (not disputing the presence of a quorum or the number of members present and voting). Rather, the parties dispute whether or not *additional* requirements for the passage of legislation can be mandated beyond those contained in section 1423b, and whether these additional requirements can be harmonized with section 1423b. The Governor argues section 1423b sets both a floor and a ceiling to the requirements necessary to pass legislation, and thus, additional requirements are contrary to this provision. *See* Pet'r's Br. at 24. In the Petition, the Governor seeks the following three declarations from the court:

> A. That § 1423b of the Organic Act of Guam is defined as requiring a majority of the members of the Guam Legislature present and voting when a quorum is present, and that such number may be less than eight (8) votes, notwithstanding as required by 2 GCA § 2104.
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> B. That § 1423b of the Organic Act of Guam supersedes 2 GCA § 2104 to the extent that § 2104 conflicts with § 1423b.
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> C. That pursuant to § 1423b of the Organic Act of Guam, Bill 1(1-S) was passed by the 34th Guam Legislature with a majority of 7 out of 13 affirmatives votes cast by the members present and voting.

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Pet. at 9.[1] The Legislature, in opposition, argues that additional requirements for the passage of legislation are not prohibited so long as they may be harmonized with section 1423b. *See, e.g.*, Resp't's Br. at 18-20, 28-29.

A. The Court Has Jurisdiction to Consider the Petition

[10] As a threshold issue, the Legislature argues the court does not have jurisdiction to consider the Petition. *Id.* at 5-17.

> [T]o pass jurisdictional muster, a party seeking a declaratory judgment [under 7 GCA § 4104] must satisfy three requirements: (1) the issue raised must be a matter of great public importance; (2) the issue must be such that its resolution through the normal process of law is inappropriate as it would cause undue delay; and (3) the subject matter of the inquiry [must be] appropriate for section 4104 review.

In re Request of Gutierrez, 2002 Guam 1 ¶ 9; *see also* 7 GCA § 4104. The parties do not dispute that the first prong of this test is satisfied. *See* Resp't's Br. at 5. Rather, the Legislature argues that the second prong is not met because no undue delay would result from requiring the Petition to go through the normal legal process. *Id*. at 13-17. The Legislature additionally claims that the third prong is not met because the question presented by the Petition does not affect the powers and duties of the Governor or the executive branch. *See* Resp't's Br. at 6-13. We consider each of these disputed prongs in turn and find them satisfied. We therefore have jurisdiction to hear the Petition.

[1] The Governor's Opening Brief frames these declarations slightly differently, but the substance of the proposed declarations is the same. *See* Pet'r's Br. at 2. The Governor has abandoned his request for a fourth declaration set forth in the Petition. *Compare* Pet. at 9, *with* Pet'r's Br. at 2.

1. Consideration of These Issues Through the Normal Process of Law Would Cause Undue Delay

[11] "A declaratory judgment may be issued" under the court's section 4104 jurisdiction "only where 'the normal process of law would cause undue delay.'" *In re Tax Trust Fund*, 2014 Guam 15 ¶ 25 (quoting 7 GCA § 4104). "[T]he issue of undue delay . . . lacks bright line demarcation. The question requires one to estimate, as a practical matter, the *relative* difference in speed for an issue depending on whether it travels the 'normal processes of law' route, or that provided by 7 GCA § 4104." *In re Request of Governor Carl T.C. Gutierrez for a Declaratory Judgment as to the Organicity of Guam Pub. L. 22-42*, 1996 Guam 4 ¶ 7 [hereinafter *In re Organicity of Guam Pub. L. 22-42*] (emphasis added). "This standard bears the additional requirement that the anticipated delay be undue, that is to say, excessive or inappropriate." *Id.* In other words, we must (1) measure the delay relative to the time that would be consumed by litigating the issue through the "normal process of law" and (2) determine whether this delay is "excessive or inappropriate." *See id.* We have found this test to be met "where matters involved the separation of powers relating to the Legislature's budget bill and the Governor's management of the executive branch." *In re Tax Trust Fund*, 2014 Guam 15 ¶ 26 (citations omitted).

[12] The Legislature's assertion that no undue delay exists short of crisis is misplaced. The Legislature argues Bill 1(1-S) is merely a mechanism to pay tax refunds sooner rather than later for fiscal years 2017, 2018, and 2019, implicitly contending the matter will be moot when tax refunds are paid in those years. *See* Resp't's Br. at 16-17. This misapprehends the proper inquiry for two reasons. First, the assessment of delay is not relative to what would have happened had Bill 1(1-S) clearly passed, but rather relative to the "normal process of law"—that

is, relative to litigating the case through the lower courts. *See In re Organicity of Guam Pub. L. 22-42*, 1996 Guam 4 ¶ 7. Litigating the case through multiple future fiscal years—potentially into 2019, or later—would be excessive. Second, the evaluation of the appropriateness of the delay should focus not on the effects of Bill 1(1-S), had it passed, but on the question posed, which is what the proper quorum and voting thresholds are to enact law. Thus framed, it is unmistakable that litigating the case through normal processes would cause undue delay. Litigation would likely be time-consuming, and this delay is inappropriate in light of the questions presented, which weigh heavily in favor of quick resolution to avoid uncertainties that could plague the lawmaking process in the absence of finality.

[13] In 1997, the Legislature sought guidance from this court regarding the same issues presented in the Governor's Petition in the case *In re Request of the Twenty-Fourth Guam Legislature for Declaratory Judgment as to the Implementation of the Initiative Order of Dismissal Reducing Members of the Twenty-Fifth Guam Legislature*, 1997 Guam 15 ¶ 4 [hereinafter *In re Initiative Order*]. That case was ultimately dismissed without prejudice—and without consideration of the underlying merits—when the Legislature passed a bill that revoked the court's jurisdiction to hear the question presented. *Id.* ¶¶ 22, 23. We stated in dicta in that case, however, that the failure to address the substantially identical questions at issue here would result in undue delay. *Id.* ¶ 12. While the Legislature attempts to distinguish this case on a factual basis, *see* Resp't's Br. at 15-16, the factual differences pointed to by the Legislature do not minimize the exigency presented by the issues here that will continue into future fiscal years, if not beyond. Equally as important, the foundational question of whether certain legislation has passed presents a uniquely exigent question that, if not decided quickly, has potential to impede

functions of legislative and executive governance. We see no reason to deviate from our previous statement in *In re Initiative Order*, and we find that failing to address the Petition under our section 4104 jurisdiction in favor of the normal process of law would result in undue delay.

2. The Subject Matter Raised by the Petition is Appropriate for Section 4104 Review

[14] The Legislature next argues the Petition is not appropriate for section 4104 review. Title 7 GCA § 4104 states, in relevant part, that the Legislature or Governor:

> may request declaratory judgments from the Supreme Court of Guam as to the interpretation of any law, federal *or* local, lying within the jurisdiction of the courts of Guam to decide, and upon any question affecting the powers and duties of *I Maga'låhi* and the operation of the Executive Branch, or *I Liheslaturan Guåhan*, respectively.

7 GCA § 4104. In *In re Request of Gutierrez*, we held that this provision should be read disjunctively in that it "permits the Governor to ask the Supreme Court for: (1) an interpretation of an existing law that is within its jurisdiction to decide; *or* (2) an answer to any question affecting his powers and duties as governor and the operation of the executive branch." 2002 Guam 1 ¶ 11 (emphasis added); *see also In re Tax Trust Fund*, 2014 Guam 15 ¶ 12 (using similar language); *In re Request of I Mina'Trentai Dos Na Liheslaturan Guåhan Relative to the Power of the Legislature to Prescribe by Statute the Conditions & Procedures Pursuant to Which the Right of Referendum of the People of Guam Shall be Exercised*, 2014 Guam 24 ¶¶ 9, 14, 34, 42 [hereinafter *In re Right of Referendum*] (using similar analysis). The Legislature asks the court to revisit this holding and find that section 4104 should be read conjunctively rather than disjunctively. Resp't's Br. at 8. The Legislature then argues the *second* requirement is not met

by the Petition because the Governor impermissibly introduces a question "strictly over the authority and operation of the Legislature" rather than the executive branch. Pet'r's Br. at 5-6.

[15] We decline the Legislature's invitation to reconsider our holding in *In re Request of Gutierrez* and its progeny. Even assuming that section 4104 should be read conjunctively, the question of whether or not legislation has validly passed necessarily impinges on the operation of the executive branch, and the Governor's powers and duties, because "issues involving separation of powers are 'undoubtedly the type of matter that can be addressed in a request . . . under section 4104.'" *In re Tax Trust Fund*, 2014 Guam 15 ¶ 15 (quoting *In re Request of Gutierrez*, 2002 Guam 1 ¶ 24). Some "law lies in a gray area where the Governor's and the Legislature's powers overlap, and this . . . appears to be precisely the type of subject matter over which section 4104 intends to grant jurisdiction." *Id.* ¶ 18 n.1. Section 4104 permits expedited review of the non-requesting party's operations where those operations "impinge" on the operations of another branch of government. *See In re Tax Trust Fund*, 2014 Guam 15 ¶ 15. For example, we have previously found section 4104 jurisdiction appropriate when the Legislature has requested a review of actions taken by the executive branch, in light of specific statutes. *See id.* ¶ 54 (finding it appropriate to "interpret the statute as it relates to the alleged actions of the Governor" but declining to "opine on whether the Governor . . . violated . . . provisions in fact . . ."); *In re Request of I Mina'Bente Sing'ko Na Liheslaturan Guåhan Relative to the Application of the Earned Income Tax Credit Program to Guam Taxpayers*, 2001 Guam 3 ¶¶ 29-30 (holding executive branch must enforce Earned Income Tax Credit). The present case is an apt corollary to these cases.

[16] Here, in order to determine the executive branch's ability to issue TRANs, the Governor is requesting the interpretation of 2 GCA § 2104 and the Standing Rules vis-à-vis the Organic Act. While the "dividing lines among the three branches 'are sometimes indistinct and are probably incapable of any precise definition,'" *Zemprelli v. Daniels*, 436 A.2d 1165, 1168 (Pa. 1981) (quoting *Stander v. Kelley*, 250 A.2d 474, 482 (Pa. 1969)), the ability of the executive branch to issue TRANs is directly dependent on first determining whether legislation has duly passed. The executive branch's operations are therefore quintessentially "impinged" by the uncertainty over whether Bill 1(1-S) was validly passed or not, in light of what quorum and bill-voting thresholds are required in order to validly enact law *generally* under 2 GCA § 2104, the Standing Rules, and the Organic Act. *See Baker v. Carr*, 369 U.S. 186, 211 (1962) ("[W]hether a matter has in any measure been committed by the Constitution to another branch of government . . . is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court . . . ."). To contrast, the Governor is not presenting a *premature* question about an aspect of legislation that has plainly *not* passed; nor is he presenting a question that relates solely to *internal* legislative rules and proceedings. *See infra* Part IV.C.3. Rather, the Governor is asking the core, fundamental question of whether a bill was validly passed *at all* pursuant to certain statutory language. This interpretive question plainly has ramifications for the Governor's powers and duties, as well as the operations of the executive branch, including the Governor's authority to sign any such passed legislation into law, *see* 48 U.S.C.A. § 1423i, and his obligation to faithfully execute the law, *see* 48 U.S.C.A. § 1422.

[17] The Governor's powers, duties, and obligations necessarily hinge on determining whether legislation has been validly enacted or not. *Cf. United States v. Ballin*, 144 U.S. 1, 3 (1892)

(entertaining question of whether an act was validly enacted); *Zemprelli*, 436 A.2d at 1170 ("The definition of a constitutional majority . . . is not merely a procedural detail of concern only to the Senate, but rather represents, in the context of the separation of powers principle, a significant 'check'. . . ."). The Governor's enforcement and administrative powers and duties are derived from, and to some extent overlap with, the legislative process, which itself depends on how local law and the Organic Act are interpreted. Accordingly, section 4104 review is appropriate even if a conjunctive test is adopted. We therefore have jurisdiction to consider the substance of the Petition.

B. This Case Presents a Question of Organicity, Not Preemption

[18] "Guam's self-government is constrained by the Organic Act, and the courts must invalidate Guam statutes in derogation of the Organic Act." *Haeuser*, 97 F.3d at 1156; *see also In re Request of Gutierrez*, 2002 Guam 1 ¶ 36 ("[T]he Legislature is prohibited from enacting laws that are inconsistent with the Organic Act . . . ."); 48 U.S.C.A. § 1423a ("The legislative power of Guam shall extend to all rightful subjects of legislation not inconsistent with the provisions of this chapter . . . ."); 48 U.S.C.A. § 1423b (permitting Legislature to "determine its rules and procedure, not inconsistent with this chapter"). The court has previously referred to this principle as "organicity." *See, e.g.*, *In re Request of Gutierrez*, 2002 Guam 1 ¶¶ 4, 28; *In re Request of Camacho I*, 2004 Guam 10 ¶¶ 1, 33.

[19] The Governor argues that the Organic Act preempts any inconsistent Guam statute or Standing Rule. *See* Pet'r's Br. at 17-20. In opposition, the Legislature also briefly discusses preemption. *See* Resp't's Br. at 23-25. The doctrine of preemption, however, is not implicated by the question before the court. Rather, the question presented to the court is purely one of

organicity. *See Ferris v. Higley*, 87 U.S. 375, 378, 383-84 (1874) (considering the question of whether an act of the territorial legislature was inconsistent with the territory's organic act and stating "[t]here remains then *only* the further inquiry whether it is inconsistent with any part of the organic act itself"; not engaging an analysis of preemption (emphasis added)).

[20] The doctrine of preemption derives from the Supremacy Clause of the United States Constitution. *See, e.g., Bank of Guam v. Guam Banking Bd.*, 2003 Guam 9 ¶ 9. It is made applicable to Guam pursuant to the second phrase of 48 U.S.C.A. § 1423a, which prohibits local territorial laws "inconsistent with . . . the laws of the United States applicable to Guam." 48 U.S.C.A. § 1423a; *see also St. Thomas-St. John Hotel & Tourism Ass'n v. Gov't of the U.S. Virgin Islands*, 218 F.3d 232, 237-38 (3d Cir. 2000) (finding preemption "principles are made applicable to the laws of the Virgin Islands through the Revised Organic Act, which authorizes the Virgin Islands legislature to enact territorial laws that are 'not inconsistent with . . . the laws of the United States made applicable to the Virgin Islands.'" (citation omitted)). The Organic Act *itself*, however, is the source of authority for the Legislature to act. It is not parallel federal legislation "applicable to Guam" that governs the same general issue as local Guam legislation. 48 U.S.C.A. § 1423a.

[21] Use of the term preemption by the parties, in this case, is intended to implicate a fundamentally different concept—*i.e.*, that powers of the Government of Guam are necessarily limited by the Organic Act and Congress did not vest the Government of Guam with authority to pass legislation or rules inconsistent therewith. This principle is expressly set forth in the first phrase of 48 U.S.C.A. § 1423a, which prohibits any law "inconsistent with the provisions of this chapter" (*i.e.*, inconsistent with the Organic Act). If any local laws or rules violate this

provision, the statute or rules are said to be inorganic. While this court has on at least one occasion applied preemption doctrine to local Guam laws, it has done so only where the local territorial law conflicted with a separate, parallel federal law that had been made applicable to Guam. *See generally Bank of Guam*, 2003 Guam 9. In contrast, the parties are debating in this case whether the territorial law conflicts with the very law empowering the Territory to act. *Cf. Clayton v. Utah Territory ex rel. Dickson*, 132 U.S. 632 (1890) (not mentioning preemption in discussing the conflict between local territorial law and organic act); *Springer v. Gov't of the Philippine Islands*, 277 U.S. 189, 209 (1928) (same). For these reasons, we focus our analysis solely on the issue of organicity, as the doctrine of preemption is not implicated.

C. The Requirements of 2 GCA § 2104 and Section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature are Inorganic

[22] The substance of the Petition requires this court to determine whether the numerical threshold of eight affirmative votes set forth in 2 GCA § 2104 for the passage of legislation conflicts with section 1423b of the Organic Act, which provides that legislation must be approved by the affirmative vote of the majority of the members present and voting. There is little doubt that in certain situations section 2104 sets a higher threshold for the passage of legislation than the Organic Act otherwise requires. Because we consider the voting requirements set forth in the Organic Act to be substantive law—not a mere procedural requirement—we are compelled to find that section 2104, and its corollary at section 1.02(d)(4) of the Standing Rules, are both inorganic.

1. The History of the Organic Act and 2 GCA § 2104

[23] The Organic Act was enacted on August 1, 1950, in order "[t]o provide a civil government for Guam." Organic Act of Guam, Pub. L. No. 81-630, 64 Stat. 384, 384 (1950) (codified as amended at 48 U.S.C.A. § 1421 *et seq.*). While the original version of the Organic Act created and empowered the Legislature, the portion later codified as section 1423b did not contain any majority-vote requirements for the passage of legislation. *See generally id.* Section 19 of the original version of the Organic Act, later codified as 48 U.S.C.A. § 1423i, set forth a specific congressional review regime for all local laws passed by the Government of Guam. This section provided in pertinent part that:

> All laws enacted by the legislature shall be reported by the Governor to the head of the department or agency designated by the President under section 3 of this Act, and by him to the Congress of the United States, which reserves the power and authority to annul the same. *If any such law is not annulled by the Congress of the United States within one year of the date of its receipt by that body, it shall be deemed to have been approved*.

Organic Act of Guam § 19, 64 Stat. at 389 (codified as amended at 48 U.S.C.A. § 1423i) (emphasis added).

[24] Nearly eighteen years after Guam's initial civilian government was established by the Organic Act, the Legislature passed Public Law 9-218, which added section 1102.2 to the Government Code of Guam. *See* Guam Pub. L. 9-218 (July 24, 1968). Section 1102.2 provided that "[n]o bill shall be passed by the Legislature with less than eleven affirmative votes." *Id.* This was later codified as 2 GCA § 2104. 2 GCA § 2104, Source.

[25] Less than a year later, on September 11, 1968, Congress amended the Organic Act. *See* Guam Elective Governor Act, Pub. L. No. 90-497, 82 Stat. 842 (1968). The 1968 amendments

were intended to, among other things, serve "as a further extension of the principles of local self-government to the Territory of Guam . . . ." H.R. Rep. No. 90-1521 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 3564, 3564. The amendments were intended to "represent[] a significant step forward in the development of full local self-government in the territory of Guam, and toward the fulfillment of the political aspirations of the people of Guam." *Id.*; *see also id.* at 3565 (1968 amendments are "the latest in [a] series of steps designed to grant to the people of Guam an increasing share in the government of their island.").

[26] While the 1968 amendments made multiple changes to the Organic Act, two are particularly important for purposes of addressing the Petition. First, Congress repealed that portion of section 1423i that deemed territorial laws not otherwise annulled by Congress as implicitly approved by Congress within one year after receipt. *See* Guam Elective Governor Act § 8(b), 82 Stat. at 847. Second, section 1423b was amended to add the following provision:

> The quorum of the legislature shall consist of eleven of its members. No bill shall become a law unless it shall have been passed at a meeting, at which a quorum was present, by the affirmative vote of a majority of the members present and voting, which vote shall be by yeas and nays.

See id. § 6(b).

[27] For roughly the next thirty years following the 1968 amendments, no significant changes were made to the Organic Act or local law regarding the legislative process. In 1998, however, following a popular referendum that lowered the number of members of the Legislature from twenty-one to fifteen, *see* 3 GCA § 6101 (2005), the Legislature amended 2 GCA § 2104 to correspondingly lower the number of votes required to pass legislation from eleven to eight. *See* Guam Pub. L. 24-213 (June 4, 1998); *see generally In re Initiative Order*, 1997 Guam 15 ¶¶ 3-10

(providing background of circumstances following passage of the referendum). Roughly five months later, Congress passed further amendments to the Organic Act that, among other things, amended section 1423b by striking the word "eleven" from the quorum requirements and replacing it with the words "a simple majority." Guam Organic Act Amendments of 1998, Pub. L. No. 105-291, § 3, 112 Stat. 2785, 2785 (1998).

2. Congress Did Not "Approve"—Either Explicitly or Implicitly—the Validity of Section 2104

[28] Before addressing the actual text of the Organic Act, 2 GCA § 2104, and the Standing Rules, the court must first address whether Congress has "approved" section 2104. If Congress has, in fact, "approved" of section 2104, the court need not address its organicity as Congress has already definitively settled any question concerning its validity. *See, e.g.*, *Ramsey v. Chaco*, 549 F.2d 1335, 1338 (9th Cir. 1977) (finding Congress "approved" of local legislation and law was therefore valid regardless of whether it conflicted with the Organic Act). Based upon the legislative history and amendments to both section 2104 and the Organic Act, Congress has not definitively resolved this question.[2]

[2] The Governor argues in support of his position that the 1968 amendments to the Organic Act "effectively repealed" section 2104. Pet'r's Br. at 18. Congress has never—in either the 1968 amendments or any subsequent amendments—explicitly annulled 2 GCA § 2104. Although the "approval" procedure under the original 1950 Organic Act has since been repealed, under the current iteration of 48 U.S.C.A. § 1423i, "[t]he Congress of the United States reserves the power and authority to annul" any local Guam law passed by the Legislature. 48 U.S.C.A. § 1423i. "Nothing is better settled than that repeals, and *the same may be said of annulments*, by implication, are not favored by the courts, and that no statute will be construed as repealing a prior one, unless so clearly repugnant thereto as to admit of no other reasonable construction." *Cope v. Cope*, 137 U.S. 682, 686 (1891) (collecting cases) (emphasis added); *see also Sumitomo Constr., Co. v. Gov't of Guam*, 2001 Guam 23 ¶ 16 (stating that "[r]epeals by implication are disfavored" and courts can avoid finding an implied repeal "if the two statutes can be reconciled" (citations omitted)); *cf. United States v. Angcog*, 190 F. Supp. 696, 700 (D. Guam 1961) (finding Organic Act did not implicitly abrogate presidential executive order). "Implied repeals can be found in two instances: '(1) where provisions in the two acts are in irreconcilable conflict', or '(2) if the later act covers the whole subject of the earlier one and is clearly intended as a substitute.'" *Sumitomo Constr.*, 2001 Guam 23 ¶ 16 (quoting

[29] The Legislature argues that Congress has either approved of, or acquiesced in, the existence of section 2104. Resp't's Br. at 25-27. To support its position, the Legislature relies upon the Ninth Circuit's decision in *Ramsey v. Chaco*, 549 F.2d 1335 (9th Cir. 1977). *Id.* In *Ramsey*, a Guam resident challenged a tax rebate program enacted by the Legislature, the precursor to which dated back prior to the 1968 amendments to the Organic Act. *See* 549 F.2d at 1338. At the time of enactment of this tax rebate program, the Organic Act stated any law that was "not annulled by the Congress of the United States within one year of the date of its receipt by that body, . . . shall be deemed to have been approved." *See id.*; *see also* Organic Act of Guam § 19, 64 Stat. at 389 (codified as amended at 48 U.S.C.A. § 1423i). The court noted that the challenged legislation was passed after this provision was removed from the Organic Act, but "only the percentage of taxes rebated" was amended. *See Ramsey*, 549 F.2d at 1338. "The original law granting tax rebates was passed by the Guam legislature and submitted to Congress while th[e] pre-1968 version [of the Organic Act] was still in effect, and Congress failed to annul the law within the one-year period." *Id.* Accordingly, the court held that "Congress' failure to annul the original rebate bill within one year constituted an implied approval under former Section 19 of the Organic Act." *Id.* Therefore, "[d]espite its possible conflict with the Organic Act, the original rebate law was implicitly ratified by Congress' inaction, and the Guam

People v. Quinata, No. CR-81-0004A, 1982 WL 30546, at *2 (D. Guam App. Div. June 29, 1982)). Because a decision whether Congress implicitly repealed section 2104 focuses on whether its terms conflict with the Organic Act, an analysis of whether there was an implied repeal collapses into an analysis of section 2104's organicity. We therefore need not separately address this argument, as we discuss whether section 2104 is in conflict with the Organic Act at length below.

legislature's later alteration of the specific rebate percentages did not give rise to a possible independent violation of the Organic Act . . . ." *Id.*

[30] *Ramsey* is distinguishable from the facts presented here in one important respect. Unlike in *Ramsey*, the precursor to present-day 2 GCA § 2104 was adopted less than a full year before the 1968 amendments to the Organic Act. Because of this, the ratification provision contained in the pre-amended version of section 1423i of the Organic Act was not completely satisfied before its repeal. Therefore, the court cannot say that Congress "approved" 2 GCA § 2104's precursor legislation under this authority. *See Bordallo v. Camacho*, 416 F. Supp. 83, 85 (D. Guam 1973) (finding that post-amendment iteration of section 1423i "does not serve to validate or authenticate . . . a properly enacted law"), *aff'd*, 520 F.2d 763 (9th Cir. 1975).

[31] The Legislature alternatively asserts that Congress's acquiescence to the continued existence of section 2104 is proof of its validity. Resp't's Br. at 27-29. This argument, however, goes too far. Courts have in the past noted that Congress's acquiescence to local Guam legislation, "especially of [such] a long duration, lends added credibility to [its] validity." *Id.* at 86; *cf. Nixon v. Reid*, 67 N.W. 57, 59 (S.D. 1896) (considering 25-year period where act of a territorial legislature was in force). Regardless, the United States Supreme Court has been clear that this is, at best, a "weak foundation" to rely upon to find local legislation organic. *Springer*, 277 U.S. at 209. We hesitate to adopt the interpretive rule advocated by the Legislature outside of "case[s] of doubtful construction" because it is "more applicable to questions relating to the construction of a statute than to matters which go to the power of the Legislature to enact it." *Clayton*, 132 U.S. at 642. Moreover,

> [a]t all events, it can hardly be admitted, as a general proposition, that, under the power of congress reserved in the organic acts of the territories to annul the acts of their legislatures, the absence of any action by congress is to be construed to be a recognition of the power of the legislature to pass laws in conflict with the act of congress under which they were created.

Id.

[32] For all of these reasons, Congress has not definitively settled the questions presented in the Petition. We must therefore independently examine section 2104 and the Standing Rules to determine whether they conflict with the Organic Act.

3. Section 2104 and the Standing Rules are in Conflict with the Organic Act

[33] A determination of whether a local territorial law is in derogation of the Organic Act begins with an examination of the statutory text. *See In re Request of Camacho I*, 2004 Guam 10 ¶ 38 (examining phrase "general supervision and control"); *cf. Sumitomo Constr.*, 2001 Guam 23 ¶ 17 ("It is a cardinal rule of statutory construction that courts must look first to the language of the statute itself." (citation omitted)). The court interprets both local statutes and the Organic Act according to their plain meaning. *See Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23 ("In cases involving statutory construction, the plain language of the statute must be the starting point." (citing *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982))); *see also In re Tax Trust Fund*, 2014 Guam 15 ¶ 48 (same); *In re Request of Camacho I*, 2004 Guam 10 ¶ 38 (applying dictionary definition of the word "control"). Moreover, where possible, we construe statutes to avoid organic infirmities. *See In re Request of Gutierrez*, 2002 Guam 1 ¶ 41. The United States Supreme Court has held that an organic act itself—not just the territorial law at issue—must be read, where it is "susceptible of [such] a construction," in a manner "that will avoid [any] conflict" with local law. *Snow*, 85 U.S. at 322. Thus, the court must find legislative enactments

valid unless their inorganicity is "clearly apparent." *See In re Request of Camacho I*, 2004 Guam 10 ¶¶ 61, 70.

[34] Under a plain meaning analysis of 48 U.S.C.A. § 1423b and 2 GCA § 2104, no *absolute* conflict exists. While section 1423b requires a majority vote, section 2104 and the Standing Rules set a slightly higher threshold for enacting legislation where certain circumstances are present—*i.e.*, when less than the full membership of the Legislature is present and voting. This does not result in a pure conflict in the classic sense of the term. *See, e.g., Greater New Haven Prop. Owners Ass'n v. City of New Haven*, 951 A.2d 551, 559 (Conn. 2008) ("[M]erely because a local ordinance . . . provides higher standards than a statute on the same subject does not render it necessarily inconsistent with the state law." (citations omitted)); *City of Fairmont v. Schumaker*, 375 S.E.2d 785, 787 (W. Va. 1988) ("A higher standard of constitutional protection [in a state constitution] is neither an inconsistency nor a conflict [with the federal constitution]."). Put differently, there are no situations in which section 2104 and the Standing Rules permit legislation to pass without also satisfying the majority vote requirement of section 1423b.[3]

[3] Were that the case, then section 2104 would be plainly inorganic. *See La. Fed'n of Teachers v. State*, 118 So. 3d 1033, 1062-63 (La. 2013) (finding legislation unconstitutionally passed because "[w]hile the 51 votes in favor of SCR 99 represented a majority of the members *then present*, the total favorable vote fell two votes short of the 'majority of the members *elected*' as required by Article III, § 15(G)"); *Norman v. Ky. Bd. of Managers of World's Columbian Exposition*, 20 S.W. 901, 902 (Ky. 1892) (finding law was not constitutionally passed where legislature's interpretation of constitutional vote provisions permitted a lower threshold for passing final legislation than what state constitution demanded); *Gilliam Cnty. v. Dep't of Entvl. Quality*, 837 P.2d 965, 973 (Or. Ct. App. 1992) ("The Committee [empowered to pass certain legislation by statute] is composed of only 16 legislators, 8 from each house, and therefore could not constitute '[a] majority of all the members elected to each House.' No laws can constitutionally be enacted by the process described in the statute." (citations omitted)), *rev'd on other grounds sub nom. Or. Waste Sys., Inc. v. Dep't of Entvl. Quality* , 511 U.S. 93, 108 (1994).

[35] This, however, does not end our analysis. Unlike the cases noted above, the relevant provisions at issue in this case go to the very foundation of the Legislature's lawmaking authority, which is "the kind of basic subject matter usually addressed by constitutional provision rather than legislation." *Alaskans for Efficient Gov't, Inc. v. Alaska*, 153 P.3d 296, 300 (Alaska 2007). "The Organic Act serves the function of a constitution for Guam," *Underwood*, 2006 Guam 17 ¶ 16 (citation omitted), and "Guam's territorial legislature cannot redefine terms used in" the Organic Act, *Limtiaco v. Camacho*, 549 U.S. 483, 489 n.2 (2007). As the strong weight of authority in other jurisdictions indicates, where the organic framework of a government sets forth specific requirements for the passage of legislation, these requirements set both a floor and a ceiling; additional requirements set by statute will be voided as contrary to the terms of the constitutional framework. *Cf. Ritchie v. Richards*, 47 P. 670, 672 (Utah 1896) ("Constitutional provisions prescribing modes of enacting laws should be observed.").

[36] Only two courts have directly addressed the question of whether a majority vote provision for the passage of regular legislation contained in a state constitution is tantamount to a mere procedural requirement or a substantive provision that operates as both a floor and a ceiling preventing the adoption of any additional requirements.

[37] The Governor relies heavily upon the first case to address this issue, *Alaskans for Efficient Government, Inc. v. State*, 153 P.3d 296 (Alaska 2007). In that case, an Alaskan non-profit corporation[4] attempted to get an initiative petition placed on the ballot that would have,

[4] We note the Legislature attempts to distinguish *Alaskans for Efficient Government* on the basis that the petition was brought by a non-profit corporation. *See* Resp't's Br. at 19. But this claimed distinction is immaterial because the issue before the court was whether a legislative supermajority vote to pass tax-related bills conflicted

among other things, required a supermajority vote for the legislature to pass tax-related bills. *See id.* at 297. The lieutenant governor, however, refused to certify the petition because he believed its supermajority-voting requirement would violate the Alaskan constitution had the voters approved of the petition. *Id.* In addressing the substance of the lieutenant governor's position, the court found that "[b]y giving the legislature the duty to adopt procedural rules for enacting law, while spelling out the precise vote required to enact bills as law, [the Alaskan Constitution] unmistakably signals that Alaska's constitutional framers intended the majority-voting provision to be a substantive requirement instead of a mere procedural rule." *Id.* at 300. The court specifically rejected the argument that the majority-vote provision was intended "to set a floor, not a ceiling: to require at least a majority vote while allowing laws imposing stricter requirements." *Id.* Thus, the court concluded that "the majority-vote requirement operates as a constitutionally based subject-matter restriction, prohibiting the enactment of any law that proposes to modify the majority-vote standard." *Id.* at 302.

[38] The Washington Supreme Court recently reached the same conclusion in *League of Education Voters v. State*, 295 P.3d 743, 745-46 (Wash. 2013) (en banc). There, the court held a statute imposing a supermajority-voting requirement on certain legislation conflicted with the simple majority-voting requirements of the constitution and was therefore void. *Id.* at 752. The court found that under a "commonsense understanding," the "plain language" in the constitution stating that "[n]o bill shall become a law unless on its final passage . . . a majority of the members elected to each house be recorded thereon as voting in its favor" means that "any bill

with the Alaskan constitution; that it was brought by a non-profit was insignificant to the constitutional and statutory analysis. *See Alaskans for Efficient Gov't*, 153 P.3d at 297.

receiving a simple majority vote will become law." *Id.* at 749-50. The court also relied upon "an informal principle . . . favoring a simple majority vote for ordinary legislation" and found that "the constitutional language and history in this case illustrates that the framers never intended ordinary legislation to require a supermajority vote." *Id.* The court noted that reading the Washington Constitution as setting only a floor for the passage of legislation "would fundamentally alter our system of government, and such alteration is possible only through constitutional amendment." *Id.* Therefore, the court held that the Washington Constitution "prohibits either the people or the legislature from passing legislation requiring more than a simple majority for the passage of . . . ordinary legislation." *Id.* at 753.

[39] Both of these courts relied, in part, on the existence of different voting requirements contained elsewhere in their jurisdiction's respective constitutions. As noted by the *Alaskans for Efficient Government* court, the "constitutional framers, well aware of their ability to require more stringent voting requirements, included such requirements in the Alaska Constitution for laws dealing with various subjects." 153 P.3d at 301; *see also League of Educ. Voters*, 295 P.3d at 751. The *Alaskans for Efficient Government* court found that these more stringent voting requirements elsewhere in the Alaska Constitution "a[re] convincing evidence of the framers' intent to include provisions in the Alaska Constitution describing all instances in which supermajority votes could be required to enact a bill." 153 P.3d at 301. Like both the Alaska and Washington Constitutions, the Organic Act also sets forth various situations in which more than a majority vote is necessary for the Legislature to undertake specific action. *See, e.g.*, 48 U.S.C.A. §§ 1422a, 1423i.

[40] In another similar case, the Pennsylvania Supreme Court in *Zemprelli v. Daniels* found that what constitutes a constitutional "majority" is "not appropriate subject matter for legislative rulemaking." 436 A.2d at 1170; *cf. Bd. of Trustees of Sch. Dist. of Fairfield Cnty. v. State*, 718 S.E.2d 210, 211 (S.C. 2011) ("We further note the premise that, *absent a constitutional provision to the contrary*, the legislature acts and conducts business through majority vote." (emphasis added)). In *Zemprelli*, the Pennsylvania Senate had voted to seat an executive appointee by a vote of 25 in favor to 22 against. 436 A.2d at 1166. Under normal circumstances, the Pennsylvania Senate has 50 members, but the number in office at the time of this vote was only 48. *Id.* The Pennsylvania Constitution provided that senate confirmation required an affirmative vote by "(a) majority of the members elected to the Senate," and under Senate rules, a "majority of the Senators elected shall mean a majority of the Senators elected, living, sworn, and seated." *Id.* (citing Senate Rule XXII, subparagraph 8, 104 Pa. Code § 11.22(i)). One senator objected after the vote, arguing the "majority of the members elected to the Senate" should be read to mean all 50 senators, regardless of whether or not all 50 were currently seated, thus requiring 26 votes for senate confirmation. *Id.*

[41] After determining that this was not a political question left solely to interpretation by the state senate, *see id.* at 1170, the court rejected the objecting senator's arguments, indicating it would be "irrational" to require a vote that—at least in some instances—would require more than a majority:

> In our view, to compute a majority based on a number greater than the total voting group, even where, as here, the potential for ambiguity may exist, would be irrational. The purpose of Article IV, section 8(a) in requiring a majority of "members elected" would appear to be to ensure that the entire body of the Senate participates in the executive appointment confirmation process,

> rather than just a quorum. Thus, if in the instant situation the two persons not in office at the time of the vote on Respondent Daniels' nomination were instead merely absent, petitioners' method of computing a majority would have been correct. To include among the number of individuals charged with the responsibility of reviewing the qualifications of the Governor's nominees, senators-elect or former senators, neither entitled to vote in the Senate, would in no way enhance the ability of the Senate to advise and consent. What it would do, however, is cause Article IV, section 8(a) to require greater than a majority vote whenever there was a vacancy in the Senate. This would place a proportionately greater burden on the executive branch when a vacancy or vacancies exist in the Senate, which could in turn encourage needless delay in filling appointive positions.

Id. at 1171.

[42] While *Zemprelli* dealt with the requirements to confirm executive appointments, not the requirements to pass legislation, the reasoning is persuasive. The court's decision stems in part from the fear that legislative rulemaking imposing additional requirements for undertaking legislative action greater than what are set forth in the organic law has the potential to throw carefully-calibrated constitutional requirements into disarray. *See id.* at 1170 ("The definition of a constitutional majority . . . is not merely a procedural detail of concern only to the Senate . . . . When the Constitution clearly sets forth the manner in which something shall be done, that procedure must be followed to the exclusion of all others, including a procedure which the legislature may prefer." (citations and internal quotation marks omitted)). This same concern is plainly apparent when considering the full ramifications of section 2104. If, for example, several members of the Legislature were to suddenly resign or pass away and replacement members were not appointed and seated immediately, the eight-vote requirement in section 2104 would be transformed into a supermajority-vote requirement.

[43] Other authority also strongly suggests that section 2104 is inorganic. *See, e.g.*, *Howard Jarvis Taxpayer's Ass'n v. City of San Diego*, 15 Cal. Rptr. 3d 457, 464-65 (Ct. App. 2004) (finding a supermajority-voting requirement regarding amendments to a city charter conflicted with state constitutional provision that stated such charters may be amended by majority vote); *Brawner v. Curran*, 119 A. 250, 254 (Md. 1922) ("But in the act under consideration the Legislature has added a new qualification or condition to the passage of Legislation in addition to and entirely dehors anything in the Constitution. . . . The effect of that provision is not in any way to amend the Constitution, but to violate it."). In *Ballin*, for example, the United States Supreme Court indicated in dicta that the constitutional requirement of the presence of a majority to create a quorum could not be altered:

> The constitution provides that 'a majority of each [house] shall constitute a quorum to do business.' In other words, when a majority are present the house in [sic] in a position to do business. Its capacity to transact business is then established, created by the mere presence of a majority, and does not depend upon the disposition or assent or action of any single member or fraction of the majority present. All that the constitution requires is the presence of a majority, and when that majority are present the power of the house arises.

144 U.S. at 5-6 (1892); *cf. Powell v. McCormack*, 395 U.S. 486, 550 (1969) (finding Congress could not impose additional qualifications on its members beyond those prescribed in the Constitution).

[44] Additionally, courts have repeatedly held that one legislature cannot attempt to bind future legislatures by imposing higher standards for the passage or repeal of specific legislation. *See, e.g.*, *Atlas v. Bd. of Auditors*, 275 N.W. 507, 509 (Mich. 1937) ("The power to amend and repeal legislation as well as to enact it is vested in the Legislature, and the Legislature cannot restrict or limit its right to exercise the power of legislation by prescribing modes of procedure

for the repeal or amendment of statutes; nor may one Legislature restrict or limit the power of its seccessors."); *State ex rel. Stenberg v. Moore*, 544 N.W.2d 344, 348-49 (Neb. 1996) (same). This general principle strongly suggests that were a future Legislature—as opposed to the Governor—intent on challenging section 2104's organicity as an invalid restriction on its lawmaking authority, we would likely be compelled to find section 2014 inorganic for this reason. Such a situation is not far-fetched, as the Legislature has previously requested that this court weigh in on the identical question presented by the Governor in the Petition. *See In re Initiative Order*, 1997 Guam 15 ¶ 9 n.3.

[45] Although we ultimately did not reach the merits in *In re Initiative Order*, one aspect of that case bears particular consideration. We noted that in 1997, the 24th Guam Legislature adopted "Resolution No. 97-37, which directed the submission to Congress of a proposed amendment to the Organic Act" that "called for the legislative quorum to be defined as a majority of the legislators *and the number of votes required to pass Guam's laws to be that set by Guam lawmakers*." *In re Initiative Order*, 1997 Guam 15 ¶ 9 n.3 (emphasis added). The portion of this proposed amendment related to the number of votes necessary to pass legislation would have, of course, been unnecessary if the Legislature was already permitted to set such a number, as 2 GCA § 2104 purports to do. Notably, Congress did *not* adopt such a rule in its 1998 amendments to the Organic Act. *See* Guam Pub. L. 24-213.

[46] We must construe the Organic Act "in light of legislative intent," *In re Tax Trust Fund*, 2014 Guam 15 ¶ 48 (citation omitted), which requires us to "look to the legislative history," *In re Right of Referendum*, 2014 Guam 24 ¶ 13 (citation omitted). The history of the Organic Act provides clear indication from Congress that each successive amendment was intended to

provide greater self-governance to Guam. *See, e.g.*, H.R. Rep. No. 90-1521 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 3564, 3564. But, Congress's refusal to adopt Resolution No. 97-37 when it could have done so in its 1998 amendments to the Organic Act is weighty evidence that Congress intended to reserve the authority to set the number of votes necessary to pass legislation for itself.

[47] The fact that the Organic Act empowers the Legislature to "determine its rules and procedure, not inconsistent with this chapter," does not change our analysis. 48 U.S.C.A. § 1423b. In *Ballin*, the Court was asked to determine whether a House Rule counting members present but not voting for purposes of establishing a quorum was constitutional. 144 U.S. at 5. The court noted that "[t]he constitution empowers each house to determine its rules of proceedings," but Congress "may not by its rules ignore constitutional restraints or violate fundamental rights . . . ." *Id.* Moreover, "there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained." *Id.* Ultimately, "[t]he constitution has prescribed no method of making th[e] determination [of whether a quorum is present], and it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact." *Id.* at 6.

[48] Other courts have also expressly held the legislature is permitted to adopt internal rules to determine whether the requirements of a state constitution have been met, subject to constitutional constraints. *See, e.g.*, *Heimback v. State*, 454 N.Y.S.2d 993, 998 (App. Div. 1982) (finding that the state legislature is permitted to make its own rules for determining when a quorum is present in a case where the "rules and custom" for making this determination "are a reasonable and practical interpretation of the constitutional requirement"); *Integration of Bar*

Case, 11 N.W.2d 604, 617 (Wis. 1943). Put differently, the internal procedures of the Legislature are generally fully within its ambit. *See, e.g.*, *Brown v. Hansen*, 973 F.2d 1118, 1123-24 (3d Cir. 1992) (ruling court could only assess whether legislature complied with external law—*i.e.*, the U.S. Virgin Islands Revised Organic Act—not internal legislative rules). None of these cases, however, altered the actual number of votes necessary for the passage of final legislation. Indeed, the court in *Alaskans for Efficient Government* distinguished internal Alaskan legislative rules on this basis:

> To support its position that section 14's majority-vote clause just sets a minimal level for enacting bills into law, AFEG further cites numerous instances in which the legislature has adopted rules establishing voting requirements, including some rules requiring supermajority votes. Yet all of the cited rules either deal with non-substantive matters relating to internal legislative procedures or simply mirror substantive voting requirements expressly included in the Alaska Constitution. AFEG identifies no rule that alters any provision of the constitution specifying the votes for enacting a bill; nor does AFEG cite any rule establishing a supermajority requirement for enacting any bill not already covered by supermajority requirements set out in the constitution's text. And AFEG points to no authority suggesting that the legislature, the Department of Law, or this court has ever interpreted the constitution to allow a rule of this sort.

Alaskans for Efficient Gov't, 153 P.3d at 301; *see also Powell*, 395 U.S. at 543 ("Congress, by the Federal Constitution, are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and by them only." (quoting 17 annals of Cong. 871 (1807))). The distinction between cases such as *Alaskans for Efficient Government* and *League of Education Voters* and those deferring to legislative rulemaking is clear—determining *how* or *whether* the necessary votes exist is within the legislature's authority

while *altering* the necessary number of votes needed for approval is not. *See Ballin*, 144 U.S. at 5-6.

[49] As noted above, this court must presume that local territorial legislation is organic and read that legislation and the Organic Act in harmony, where possible. Here, doing so is not possible. While 2 GCA § 2104 and the Standing Rules do not present an *absolute* conflict with the Organic Act, the jurisprudence at both the federal and state levels weighs strongly in favor of finding an *actual* conflict exists. As we noted in *In re Right of Referendum*, "[t]he primary purpose of [section 1423b] is to set the requirements for the Legislature's passage of bills . . . ." 2014 Guam 24 ¶ 30. With Congress having set these requirements, the Legislature is not at liberty to reinterpret them more stringently. *See Limtiaco*, 549 U.S. at 489 n.2. We therefore find that 2 GCA § 2104 and section 1.02(d)(4) of the Standing Rules are inorganic. *See In re Request of Gutierrez*, 2002 Guam 1 ¶ 41 ("[T]he court must declare a legislative enactment unconstitutional if an analysis of the constitutional claim compels such a result." (citations omitted)).

V. CONCLUSION

[50] For the reasons discussed above, we find that the court has jurisdiction to consider the Petition and further find that 2 GCA § 2104 and Standing Rule § 1.02(d)(4) are inorganic. Nevertheless, for the reasons set forth in our July 7, 2017 Order, we decline to address whether Bill 1(1-S) was appropriately passed as requested in the Petition. *See In re Request of Calvo*, CRQ17-001, Order at 2 (July 7, 2017); *see also In re Tax Trust Fund*, 2014 Guam 15 ¶ 54 (finding it appropriate to "interpret the statute as it relates to the alleged actions of the Governor"

but declining to "opine on whether the Governor . . . violated . . . provisions [of the statute] in fact"). We therefore make the following declarations:

(1) Pursuant to 48 U.S.C.A. § 1423b, when a quorum is present as defined under this provision, if proposed legislation receives "the affirmative vote of a majority of the members present and voting," it shall be deemed to have passed, and no further requirements necessary to pass legislation may be imposed; and

(2) Title 2 GCA § 2104 and section 1.02(d)(4) of the Standing Rules of the 34th Guam Legislature are inorganic in that they seek to impose an additional requirement for the passage of legislation beyond that which is required by 48 U.S.C.A. § 1423b; and

(3) Title 2 GCA § 2104 and section 1.02(d)(4) are invalid and void.

A judgment incorporating these declarations will be separately issued.

/s/
F. PHILIP CARBULLIDO
Associate Justice

/s/
JOHN A. MANGLONA
Justice *Pro Tempore*

/s/
KATHERINE A. MARAMAN
Chief Justice