

More arguments filed in plebiscite suit

By Brett Kelman

Pacific Daily News
bmkelman@guampdn.com

A man who is suing to stop a Chamorro-only plebiscite vote has filed new arguments opposing the government of Guam's effort to toss his lawsuit out of federal court.

The plaintiff's legal arguments state that GovGuam has presented its own plebiscite as "meaningless," and compares the Chamorro Registry to hypothetical discrimination in the American south.

In November, a class action lawsuit was filed on behalf of Guam resident Arnold Davis and others in the District Court of Guam. Davis was barred from registering for the political status plebiscite because he is neither legally nor ethnically Chamorro.

The registry requires plebiscite voters to be "native inhabitants of

Guam," which means their bloodline can be traced back to an island resident who was made an American citizen by the Organic Act of 1950.

In December, Attorney General Leonardo Rapadas argued that Davis' lawsuit was flawed because the plebiscite vote doesn't have any direct result on the future of Guam's political status. Therefore, the denial of Davis' vote has no legally cognizable "impact," Rapadas wrote.

In his response, Davis states that the plebiscite is not meaningless, and even if it was, that is not justification to allow racial discrimination.

"Defendants seek a safe harbor by arguing that the plebiscite is meaningless, that it is no more than a public opinion poll, without effect," Davis argues. "Of course, if

that were true, those advocating for the plebiscite could save the government substantial time, significant expense and the trouble of this lawsuit by conducting a private opinion poll of Chamorros and publicize the results. It is precisely the imprimatur of the government conducting this election and transmitting the results as a sovereign to another sovereign that gives the plebiscite results weight."

Davis argues that the registry still is racially discriminatory even if the voter requirement is not based on ethnic lines but rather on legal terms that just happen to parallel ethnic lines.

Otherwise, GovGuam's reasoning could justify actions that are "unquestionably illegal," Davis said.

As an example, Davis argues that GovGuam's logic could hypothetically be used by the Alabama Legislature to ascertain how state residents felt about affirmative action, but only counting the opinions of those whose ancestors attended the University of Alabama when it was founded in 1831.

"Naturally, nearly all the citizens eligible to register for this non-binding election will be of one race, but Alabama could emphasize the statutory silence in that regard," Davis argues. "After the election, government resources would be used to compile and transmit the results to the federal government. Yet no further action is contemplated on this hypothetical law, and everyone thereafter is free to ignore the results."

Davis' lawsuit continues in federal court. A summons has been issued but no court hearing has been scheduled.

LOCAL NEWS

Man charged in ukulele assault

A man who allegedly bashed his cousin in the face with a ukulele has been charged with misdemeanor family violence and assault after being arrested by police. Anson Joseph allegedly told police he struck the woman with the wooden instrument because he was angry, according to Superior Court of Guam documents. The alleged attack occurred about 7:30 p.m. Dec. 16 in a Dededo apartment, court documents state.

Guitar allegedly used to smash window

A man who allegedly smashed the window of a Sinajana home with a guitar has been arrested on suspicion of misdemeanor criminal mischief. John M. Quidachay, 34, allegedly smashed the window after an argument with his girlfriend around 2 a.m. yesterday. Quidachay allegedly admitted breaking the window, Superior Court of Guam documents state.

Pacific Daily News

New Year's weekend sends police on more disturbance calls

By Brett Kelman

Pacific Daily News
bmkelman@guampdn.com

Guam police responded to an above average number of disturbance calls over the long weekend, but reports of gunfire and home-made cannons were lower than expected.

Between 6 p.m. Friday and 6 a.m. Tuesday, police received about 97 disturbance calls but only 21 reports of gunshots and 11 reports of home-made cannon fire, police spokesman Officer A.J. Balajadia said in a press release.

Normally, on New Year's holidays, GPD gets more reports of gunfire and cannons, Balajadia said.

"It would seem not as many people reported this year," Balajadia wrote in an email. "This may be due to the community (becoming used) to it. ... It's illegal and it should be reported."

Guam has struggled with New Year's Eve gunfire for years, and in 2009 a young girl was wounded after a stray bullet struck her head, but the problem continues.

Balajadia said the number of disturbance calls increased to above average numbers but it was expected because of the holiday weekend.

Violent crimes were not abnormally high, although police did respond to five assault reports and one aggravated assault report — involving a suspect who allegedly wounded a man with a cleaver.

REPORT STATISTICS

Here are some of the other report statistics from the long weekend:

Vehicle crashes	50
DUIs	5
Riot calls	2
Terrorizing	3
Criminal sexual conduct	2
Loud music	7

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HAGA ADAI, IT'S WEDNESDAY

guampdn.com



Don't forget to vote in today's Pacific Daily News poll. Today's question:

Do you think Guam's registration for political status voting is racially discriminating?

Results from yesterday's PDN poll are on **PAGE 2**

GMH CAPACITY

▲ GMH adult beds were at 90% of capacity and maternal child beds were at 85% of capacity as of 9 p.m. yesterday. Three patients were waiting for beds. If you are in need of hospital care, you are urged to seek it immediately. For updated information, call the GMH switchboard at 647-2939 and ask for the nursing supervisor.

This box will appear on Page 1 daily. It will appear red when patients are waiting for beds.



FOOD STAMPS RESTORED

All mistakenly deducted food stamp benefits have been restored, according to Public Health.

SEE STORY, **PAGE 4**

Pacific Daily News
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Friday a GovGuam holiday

Calvo cites employee morale for executive order

TO THE POINT

▲ Gov. Eddie Calvo announces four-day holiday weekend for government of Guam employees.



Calvo

"I know this has been a rough year for the GovGuam family."

— Gov. Eddie Calvo

By Brett Kelman

Pacific Daily News
bmkelman@guampdn.com

GovGuam workers, prepare for your four-day weekend — Friday will be a holiday.

Yesterday, Gov. Eddie

In Your Voice

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Calvo announced he's made Friday a government holiday through an executive order. The order is for this year only, said governor's spokesman Troy Torres.

"I know this has been a rough year for the GovGuam family," Calvo said in a statement. "We've curtailed millions of dollars in spending that meant a suspension of your pay raises and increments. We're reorganizing

▲ See **Holiday**, Page 3

Food donations sought



Rick Cruz/Pacific Daily News/rmcruz@guampdn.com

Food bags: Volunteers place donated food items into bags at the Salvation Army's Light-house Recovery Center in Tiyan, yesterday. Food bags will be given away to residents in need on Thanksgiving Day.



PHOTOS ONLINE

▲ For more photos of the Salvation Army food preparation, go to WWW.GUAMPDN.COM.

Tax refund checks to be picked up at malls

By Shaun Bevan

Pacific Daily News
smbevan@guampdn.com

Taxpayers will have the option to pick up their tax refund checks before they're mailed out.

Gov. Eddie Calvo announced yesterday that tax refund checks will be distributed "in the first days of December" at the Micronesia Mall, Guam Premier Outlets and Agana Shopping Center, but the exact dates have yet to be confirmed, according to a press release from the governor's office.

"We need to get this money to the people fast," Calvo stated in the release. "They've waited far too long."

About 91,000 tax refund checks are expected to be released from almost \$200 million the government of Guam borrowed from the bond market.

The government of Guam will receive the bond proceeds at the beginning of next month but because of weekend overlays during the first week of December, there could be a delay in mail deliveries, the press release stated.

Distribution of the checks most likely will occur during the first weekend of the month, the release stated.

The remaining refund checks will be mailed to taxpayers. More information on the distribution time and on which documents residents should bring with them will be announced later.

Chamorro-only vote challenged

TO THE POINT

▲ Nonprofit organization files lawsuit against Chamorro-only vote for plebiscite on Guam's political status.

By Erin Thompson

Pacific Daily News
egthompson@guampdn.com

As the government of Guam struggles to get a political status vote on track, one Guam resident has filed a lawsuit to overturn a law that allows only those defined as na-

In Your Voice

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tive inhabitants to vote.

Retired Air Force officer Dave Davis, who has lived on the island since 1977, filed a suit in the District Court of Guam yesterday against the ter-

ritory of Guam, the Guam Election Commission, and election commissioners Alice M. Tajeron, Martha C. Ruth, Joseph F. Mesa, Johnny P. Taitano and Joshua F. Tenorio. Donald I. Weakly and Attorney General Leonardo Rapadas also were

▲ See **Vote**, Page 3

GREAT REBATE

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Vote : Senator calls lawsuit opportunity

▲ Continued from Page 1

named in the lawsuit, but it's unclear in what capacity Weakly was being sued.

The Center for Individual Rights, a nonprofit and civil rights advocate group based in Washington, D.C., is representing Davis in the case.

Davis said the lawsuit is meant to affirm the right of every U.S. citizen on Guam to vote on the issue of decolonization.

Under Guam law, voters in a plebiscite will be allowed to choose one of three political status options — statehood, independence or free association with the United States. Eligible voters are those who can trace their roots back to residents living on the island at the time of the passage of the Organic Act in 1950 who were made citizens by the federal law.

Denied

Davis said he tried in 2009 to add his name to the Decolonization Registry, which confirms eligible voters, but was denied because he wasn't a native inhabitant of Guam.

Maria I.D. Pangelinan, executive

director of the Guam Election Commission, said voters seeking to register aren't turned away.

"If they want to sign up, fine. If they want to perjure themselves, they can decide if they want to turn it in," she said.

The Guam Election Commission is moving forward with the task of educating the public on why they should vote, Maria Pangelinan said.

Sen. Ben Pangelinan, whose office registers voters for the plebiscite, said the vote on self-determination is reserved for those people who haven't exercised the right to determine their own political fate as a group. But the senator said the lawsuit creates an opportunity to educate the people of Guam, both those who qualify to vote for the plebiscite and those who aren't covered by the law.

"This gives us an opportunity for a greater dialogue and greater education," he said.

Long delay

The effort for a vote on Guam's political status has been stymied for years. It was supposed to have been held in 2000. The Commission on Decolonization, which oversees the plebiscite, was recently reconvened



Rick Cruz/Pacific Daily News/rmcruz@guampdn.com

Registry: Sen. Vicente "Ben" Pangelinan of the Guam Legislature waves to a passing motorist as he is photographed in front of his office in Hagåtña, yesterday.

after a decade of hiatus.

Davis said he didn't dispute the right of self-determination for the Chamorro people, but he said decolonization is a different issue.

"If you're talking decolonization, every resident of this island — if you want to call this a colony — is

a colonized person," Davis said. "Self-determination is a Chamorro issue. Decolonization is an issue for every person on this island."

Davis said it wasn't for him to explain how to separate the two issues, but said there are "lots of options" when it comes to Chamorro

self-determination.

"Chamorros could try to acquire, for example, Native American status, which they do not now enjoy," he said. "I don't believe they want to do that."

Laws violated

J. Christian Adams, an attorney with the Election Law Center in Alexandria, Va., and co-counsel in the suit, said the law allowing the plebiscite violates the Voting Rights Act of 1965, the 1950 Organic Act of Guam and other federal statutes.

"Anywhere the American flag flies, the rule of law applies," Adams said.

Although the vote is not patently "Chamorro only," because it allows anyone who lived on Guam who was made a U.S. citizen in 1950 or their descendants, regardless of race, to participate, Adams said the law would effectively bar those not of Chamorro heritage from voting.

"Federal law prohibits any racial effect. ... Even if you disguise it as an ancestry qualification, and it still has a racially discriminatory effect — meaning outcome — then it violates federal law," Adams said.

Public Works issues Route 15 ultimatum

By Brett Kelman

Pacific Daily News
bmkelman@guampdn.com

A local construction company has a week to get the Mount Santa Rosa road project back on track or GovGuam will consider the contractor in default and the contract breached.

In dueling letters sent this month, the construction company said it couldn't finish the project until GovGuam pays for finished work, but the Department of Public Works stated the finished work doesn't meet certain federal standards.

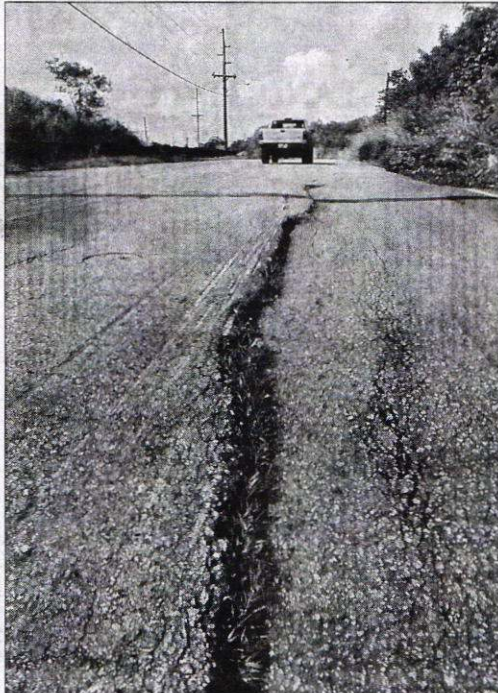
While Public Works and International Bridge Corp. disagree, long cracks along parts of Route 15 remain unfixed.

Yesterday morning, large portions of pavement remained sunken and uneven, with no ongoing roadwork in sight. However, construction crews were unloading concrete barriers to resume work.

International Bridge Corp. should have finished a small project to repair portions of Route 15 in July, but the project is only a third done, Department of Public Works Director Joanne Brown wrote in a Nov. 14 letter.

IBC did "almost nothing" for the first 14 months of the contract, Brown wrote, and the work it's done so far doesn't meet contract specifications. Liquidated damages are accruing daily, Brown wrote.

"For reasons that should be clear, the government is out of patience and finds that IBC's performance — or non-performance as it were — and its bad faith course of dealing to be grounds for holding IBC in material default of the formal contract," Brown wrote. "Nevertheless, the government also believes that it is in the best interest of the territo-



Rick Cruz/Pacific Daily News/rmcruz@guampdn.com

Pavement: A crack forms in the roadway of Route 15 as photographed yesterday. ▲ See more photos at www.GuampDN.com

ry and the parties if this matter can be somehow resolved."

This project's contract price was \$940,000. IBC was given 480 days to finish the work, which is "extremely generous" for a relatively small project, Brown wrote in her letter.

In a letter to Brown, IBC President Robert Toelkes wrote that the project has slowed because Public Works owes his company

\$400,000. Toelkes said Public Works isn't working to make payment in a timely manner, and that a "cooperative working relationship" has diminished.

In response, Brown said Public Works couldn't pay IBC for some of the work because the company installed "micropiles" — worth about \$272,000 — that don't conform to the contract specifications. Micropiles are eight-inch

columns sunk into a roadway to stabilize the asphalt. They were insufficient because they were the wrong size and their materials weren't properly verified, among other failures, said highway Administrator Joaquin Blaz, although Public Works has since determined the micropiles will work as intended.

Ultimately, Public Works has agreed not to terminate the IBC contract if a checklist that was proposed by the company was met within seven days. The list includes correcting the micropiles under debate and an updated work schedule.

"IBC will resume work on the project and will put all available resources on the project until completed," states the final task on the checklist.

Yesterday, William Toelkes, who is listed on the Guam Contractors Licensing Board website as IBC's point of contact, said his company had resumed work on the project recently, but then stopped again when word came that Public Works had planned some design changes.

He said an IBC employee who was more familiar with the project could provide detailed information, but that employee didn't have time to provide comment yesterday.

If IBC doesn't meet the demands of the checklist and Public Works follows through on holding the company in default, the Route 15 project would proceed much like a Route 2 project that fell apart earlier this year.

On that project, Hubtech International was fired by Public Works and a bonding company had to refund the money that was already paid. Ultimately, the project was taken on by a second contractor, which was more expensive but actually completed the work.

"We've curtailed millions of dollars in spending that meant a suspension of your pay raises and increments. We're re-organizing and making major changes, and you have carried the heavy burden of sacrifice. ... I want you to spend some time with your families. Rest, take a break and re-energize. I want to invest in your morale and in your health."

— Gov. Eddie Calvo

Holiday: Cost of at least \$450K

▲ Continued from Page 1

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According to Pacific Daily News files, each GovGuam holiday costs at least \$450,000 in additional taxpayer money, plus additional spending by autonomous agencies. Because of this cost, GovGuam cut six holidays in 2002, although one of them — Martin Luther King Jr. Day — has since been reinstated.

The addition of the Friday holiday is an unexpected expense after months of the Calvo administration implementing cuts and planning government downsizing. Calvo recently has announced several consolidations of GovGuam and eliminated positions in an effort to shrink costs.