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JAN 12 2026

ASSISTANT CLERK OF COURTS  
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT  
of the  
REPUBLIC OF THE MARSHALL ISLANDS

<p><b>IN THE MATTER OF:</b> The 46th Nitijela Constitutional Regular Session, Petition for Declaratory Judgment,</p> <p>By: BERNARD ADINIWIN, In his capacity as Attorney General, Petitioner,</p> <p>v.</p> <p>BRENSON S WASE, In his capacity as Speaker of the Nitijela, Respondent</p>	<p><b>CIVIL ACTION NO. 2025-00282</b> <b>HCT/CIV/MAJ</b></p> <p><b>ORDER PURSUANT TO PETITION FOR DECLARATORY JUDGEMENT</b></p>
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TO: Hon. Bernard Adiniwin, Attorney General, Petitioner  
Maniana Muller, Assistant Attorney General, Counsel for Petitioner  
Lorna Macanawai, Assistant Attorney General, Counsel for Petitioner  
Brenson S Wase, in his capacity as Speaker of the Nitijela, Respondent  
Joe Lomae, Legislative Counsel, Counsel for Respondent

**I. Overview; Procedural Background**

1. On September 25, 2025, the Attorney General filed a 'Petition for Declaratory Judgement; Declaration of the Attorney General; Certificate of Service' (the 'Petition'), seeking ...Declaratory Judgement declaring Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*]<sup>1</sup> of the Public Lands and Resources Act [9 MIRC 1] unconstitutional under Article II [*Bill of Rights*], Section 5 [*Just Compensation*] of the Constitution of the Republic of the Marshall Islands... (the 'Constitution') (Petition at 1, italics removed).

<sup>1</sup> While the difference is small, we note that the title to Section 105 in Petitioner's Exhibit A is '*Title to Land-fills and lands reclaimed from marine areas*' where the published title for the Public Lands and Resources Act [9 MIRC 1] is '*Title to land-filled [sic] and land reclaimed from marine areas*.' We use Petitioner's title throughout.

The Petition alleges a justiciable issue appropriate for redress by the Court citing ‘concrete’ and ‘imminent’ injury to the Government of the Republic of the Marshall Islands and its people on the basis that Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands and Resources Act (the ‘Public Lands Act’) would ‘...compel the transfer of reclaimed lands created with public or donor resources to private adjoining landowners, contrary to donor conditions and constitutional directives’ (Petition at 3). In addition to petitioning the Court for declaratory judgement, the Attorney General seeks declaratory relief without, however, identifying the relief it seeks (Petition at 1, 3, 10).

2. Respondent filed its ‘Respondent’s Answer and Response Brief’ (‘Respondent’s Answer’) on October 3, 2025, opposing the Petition for ‘fail[ing] to establish a justiciable controversy, overstat[ing] an alleged conflict with constitutional provisions, and disregard[ing] the safeguards under both the Constitution of the Republic of the Marshall Islands and the Compact Trust Fund Agreement’ (Respondent’s Answer at 1). Following a Rule 16 Pre-trial Conference on Monday, November 24, 2025, oral argument was heard on Tuesday, December 2, 2025 and again on Thursday, December 4, 2025.

3. For the reasons set out following, the Petition is GRANTED IN PART and DENIED IN PART. As further set out below, Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act is found to be unconstitutional in part and upheld in part.

## **II. Jurisdiction**

4. The Attorney General (the ‘Petitioner’) has standing to bring the Petition pursuant to Article I (*Supremacy of the Constitution*) Section 4(a) (*Enforcement of this Constitution*) of the Constitution under which:

**Section 4. Enforcement of this Constitution.**

- (a) The Attorney General, acting in the name of the people of the Republic of the Marshall Islands... shall have standing to complain of [a violation of this Constitution] in a *case or controversy* that is the subject of an appropriate legal proceeding. (Italics added.)
- (b) ...

Noting particularly the limitation that such standing pertains solely to a 'case or controversy,' discussed below, this basis is admitted in Respondent's Answer at 2 and accepted by the Court.

5. Turning to subject matter jurisdiction, the Attorney General then asserts that the Court 'has jurisdiction over questions of constitutional interpretation under Article VI [*The Judiciary*] Section 1 [*The Judicial Power*] of the Constitution' (Petition at 2), admitted but only in part by Respondent which accepts that the Court has jurisdiction over constitutional interpretation pursuant to Article VI (*The Judiciary*) Section 1 (*The Judicial Power*)<sup>2</sup> yet asserts that 'jurisdiction is contingent on a proper justiciable controversy' (Respondent's Answer at 2). Although Respondent's point is noted, the jurisdictional limitation asserted appears to relate not to Article VI (*The Judiciary*) Section 1 (*The Judicial Power*) powers, but to the case-or-controversy limitation above-referred; and/or to Rule 57 (*Declaratory Judgement*) of the Marshall Islands Rules of Civil Procedure, discussed next, that references the Special Court Proceedings Act at Section 202 (*Authority of Courts to Render [Declaratory Judgement]*) which, in line with the foregoing, authorizes the courts '*in a case of actual controversy* within its jurisdiction' (italics added) to issue declaratory judgement.

6. With the Petition grounded in a request for the Court to find Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act unconstitutional vis-à-

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<sup>2</sup> Respondent in fact cites Article V (*The Executive*), Section 1 (*Executive Authority and Collective Responsibility of the Cabinet*) but this is presumed to be in error (Respondent's Answer at 2).

vis the Constitution's Article II (*Bill of Rights*) Section 5 (*Just Compensation*) clause, the Court finds it has subject matter jurisdiction pursuant to:

- (i) Constitution Article I (*Supremacy of the Constitution*) Section 3(1) (*Interpretation and Application of the Constitution*) which outlines provisions in 'interpreting and applying this Constitution' by a court;
- (ii) Constitution Article I (*Supremacy of the Constitution*) Section 4 (*Enforcement of this Constitution*) which grants that 'any court of general jurisdiction, resolving a *case or controversy* implicating a provision of this Constitution, shall have power to make all orders necessary and appropriate to secure full compliance...' (italics added);
- (iii) Constitution Article VI (*The Judiciary*) Section 3 (*The High Court*) which establishes the general jurisdiction of the High Court over controversies of law and fact in the Republic of the Marshall Islands; and
- (iv) The Judiciary Act 1983 [27 MIRC 2] Section 211 (*Jurisdiction of the High Court*) which grounds the jurisdiction of the High Court *inter alia* in the foregoing Article II (*Bill of Rights*) Section 5 (*Just Compensation*) and Article VI (*The Judiciary*) Section 3 (*The High Court*) and notes in its Section 211(2) (*Jurisdiction of the High Court*) in particular that 'the High Court has jurisdiction in... the adjudication of title to land or any interest in land.'

### **III. Declaratory Judgement; Finding of Standing**

7. Having cleared general jurisdictional hurdles, the Attorney General further brings this action pursuant to Rule 57 (*Declaratory Judgement*) of the Marshall Islands Rules of Civil Procedure which also requires the petitioner to establish an 'actual controversy' in line with the case-or-controversy threshold above. Rule 57 (*Declaratory Judgement*) reads as follows:

**Rule 57. Declaratory Judgement.**

These rules [of civil procedure] govern the procedure for obtaining a declaratory judgement under [the Special Court Proceedings Act] 30 MIRC Section 202 (*Authority of Courts to Render [Declaratory Judgement]*). The existence of another adequate remedy does not preclude a declaratory judgement that is otherwise appropriate. [...]

The above-referred Special Court Proceedings Act [30 MIRC 2] (the 'SCPA') gives the High Court or a District Court authority to 'declare the rights and other legal relations of any interested

party seeking such declaration' (SCPA Section 202 (*Authority of Courts to Render*)). That authority, however, is limited to cases of 'actual controversy' within the jurisdiction of that court. SCPA Section 202 (*Authority of Courts to Render*) is as follows:

**Section 202. Authority of courts to render.**

*In a case of actual controversy within its jurisdiction*, the High Court or a District Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgement or decree and shall be reviewable as such. Further necessary or proper relief based on a declaratory judgement or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgement. (Italics added.)

8. The case-or-controversy requirement limits judicial power to *actual disputes* between *adverse parties* that have concrete stakes in the outcome.<sup>3</sup> Invoked by Petitioner in asserting the justiciability of its claim, the standard is set out in *Halferty & Kabua v. Republic* (Civil Action No. 2024-00303) ('*Halferty*') where, in *denying* the existence of a case or controversy, the High Court wrote that that a 'case or controversy' must be 'real and relate to an injury suffered by a person(s) which is the result of a violation... by a private individual or public official' (*Halferty* at 6), referencing the Marshall Islands Supreme Court holding in *Momotaro et al. v. Benjamin*, 2 MILR 237, 241 (2004) ('*Momotaro*') that the controversy 'should touch the legal relations of parties having adverse legal interests' (*Halferty* at 6-7). Further elaborating the standard, the Attorney General sets out that 'petitioners must demonstrate standing, a causal connection between the alleged injury and the challenged provision, and that the injury is redressable by a favorable judgement' (Petition at 2).

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<sup>3</sup> As there is little appreciable difference between a 'case or controversy' and an 'actual controversy' for our purposes we use both terms here. A 'case' is a specific legal proceeding whereas a 'controversy'—including an 'actual controversy'—is a broader term that nonetheless denotes a justiciable dispute.

9. Most cogently, *Halferty* references US Supreme Court case *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) ('*Lujan*'), which summarized the case-or-controversy requirements of standing as follows:

*[The] [irreducible] constitutional minimum of standing* requires that plaintiff have suffered an *injury in fact*, which is an *invasion of a legally protected interest* [that] is *concrete and particularized* and *actual or imminent* rather than *conjectural or hypothetical*; that there be a *causal connection* between the injury and the conduct complained of *so that the injury is fairly traceable to the challenged action of the defendant* and not the result of the independent action of some third party who is not before the court; and that it be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. (Italics added.)<sup>4</sup>

Petitioner asserts it has met these requirements writing that '[t]he controversy is not hypothetical' (Petition at 3); and that '[t]he injury to the Government and the people of the Republic is concrete and imminent' (Petition at 3) with '[t]he injury... directly traceable to Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] of the [Public Lands Act] which mandates automatic vesting of title' (Petition at 3). While the matter arises from legislative debate surrounding the Government's applications for funding in respect of 'donor-funded reclamation projects' (Petition at 3)—such legislative debate and the funding examples provided putting the Petition very close to outlining an hypothetical rather than an actual controversy—ultimately the Court finds that Petitioner has standing through the legal injury it identifies in the 'compel[led] transfer of reclaimed lands... to private adjoining landowners'

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<sup>4</sup>This summary is more specifically stated as follows in *Lujan*:

...the irreducible constitutional minimum of standing contains three elements. First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, *id* at 756, 104 S.Ct. 3327; *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, 2210, 45 L.Ed.2d 343 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740-741, n.16, 92 S.Ct. 1361, 1368-1369, n.16, 31 L.Ed.2d 636 (1972); and (b) 'actual or imminent, not 'conjectural' or 'hypothetical,'" *Whitmore, supra*, 495 U.S. at 155, 110 S.Ct. at 1723 (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 102, 103 S.Ct. 1660, 1665, 75 L.Ed.2d 675 (1983)). Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly... trace[able] to the challenged action of the defendant, and not... the result [of] the independent action of some third party not before the court.' \*561, *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42, 96 S.Ct. 1917, 1926, 48 L.Ed.2d 450 (1976). Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.' *Id.* at 38, 43, 96 S.Ct. at 1924, 1926.

(Petition at 3). Establishing this compulsory transfer of title as a legal injury—the violation of a legal right—requires a presumption that the challenged Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act is unlawful which is the very question brought to the Court to answer, but where that finding can be made—as we find that it can, discussed next—the vesting of title to land-fills and reclaimed lands in private adjoining landowners regardless of the circumstance of their creation or of other laws to the contrary, sufficiently outlines an identifiable loss to the people of the Marshall Islands as represented by Petitioner in this suit.

10. Cited in *Halferty*, Article 1 (*Supremacy of the Constitution*) Section 3(1) (*Interpretation and Application of this Constitution*) of the Constitution provides for the Court to ‘look to the decisions of the courts of other countries having constitutions similar... to the [Marshall Islands] Constitution’ (*Halferty* at 6), and this apparent paradox of having to establish standing to challenge a law when the injury depends on the law’s illegality is resolved by US courts’ assuming that the law in question is illegal for purposes of the standing analysis. The principle was articulated in *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168 (1975) which held that, in determining whether plaintiffs have standing to challenge the legality of an action, ‘it must be assumed that the action is in fact contrary to some rule of law’ (*id*); separating standing from a merits analysis, the US Supreme Court established in *Warth v. Seldin* that ‘Article III [case or controversy]<sup>5</sup> standing does not depend on whether the plaintiff’s legal theory is correct (*Atwood v. Peterson*, 936 F.3d 835 (2019))),’ the fundamental principal being

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<sup>5</sup> In the United States, the case or controversy standard stems from its Constitution at Article III, Section 2, Clause 1 which limits judicial power to actual cases or controversies (U.S.C.A. Const. Art. III §2, cl. 1).

that standing ‘in no way depends on the merits of the plaintiff’s contention that particular conduct is illegal’ (*id.*).

11. Countering this argument, Respondent denies that the ‘government is compelled by Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] to transfer donor-funded reclamations’ (Respondent’s Answer at 2) asserting that Article II (*Bill of Rights*) Section 5(3) (*Just Compensation*) ‘requires that all government reclamations serve a public purpose’ (Respondent’s Answer at 2) and that ‘Compact Trust Fund<sup>6</sup> safeguards, by requiring proof of government title or authority, ensure compliance with this limit’ (Respondent’s Answer at 2). In both Respondent’s Answer and in oral argument, Respondent ‘denie[d] that invalidation of Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] is necessary’ (Respondent’s Answer at 3), arguing that ‘[a] narrow construction limiting Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] to private and community reclamations, avoids any constitutional conflict’ (Respondent’s Answer at 3). The Court has considered both parties’ arguments at length, however, and refers to the wording of Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) which (discussed further in the next section) reads:

Section 105. Title to Land-Filled and Land Reclaimed from Marine Areas.  
*Notwithstanding the provisions of any law to the contrary*, title to new land created through ‘land-fill’ or other land reclamation processes, from marine areas below the ordinary high-water mark, by the government, or by any other person, corporation or other legal entity, for any purpose whatsoever, *shall vest in the owners of the adjoining land or lands*. (Public Lands Act Section 105 (*Title to Land-Filled and Land Reclaimed from Marine Areas*) (italics added)).

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<sup>6</sup> Respondent here refers to the Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands regarding the Compact Trust Fund, signed October 16, 2023 and entering into force May 1, 2024 (the ‘Compact Trust Fund Agreement (2023)’ included at Exhibit E to the Petition and comprising Petitioner’s prime example of potential funding lost in the event the controversy around Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act is not resolved.

Paraphrased here, the wording of the contested provision is that *overriding any other law to the contrary, title to land-fill or other new lands created from marine areas below the ordinary high-water mark for any purpose whatsoever, vests in the owners of the adjoining lands*. First, the lead-in by its terms purports to override any other law to the contrary—including the Constitution and particularly Article II (*Bill of Rights*) Section 5(3) (*Just Compensation*) thereof. Second, while the provision may equally vest title to new lands in the *government* in instances where the *government* is the adjoining landowner, pursuant to Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) there will almost certainly be instances where the government's default ownership of the marine areas below the ordinary high-water mark will be forced to cede the new lands created to *private* adjoining landowners.

12. Respondent's alternative to providing a 'narrow read' that avoids constitutional pitfalls was to suggest removing the words 'by the government' (and ancillary words) so that the provision would instead read:

Section 105. Title to Land-Filled and Land Reclaimed from Marine Areas.  
Notwithstanding the provisions of any law to the contrary, title to new land created through 'land-fill' or other land reclamation processes, from marine areas below the ordinary high-water mark, ... by any ... person, corporation or other legal entity, for any purpose whatsoever, *shall vest in the owners of the adjoining land or lands*. (Public Lands Act Section 105 (*Title to Land-Filled and Land Reclaimed from Marine Areas*) (italics added)).

There are a number of issues with taking this approach, the first of which is that, unless it can be established that the words 'by the government' are of themselves unconstitutional, it is beyond the powers of the Court to remove them as if they were not there. It has not been established that these words do create of themselves a constitutional conflict. Second, even in the event a basis can be found by which the Court could strike the words 'by the government' from Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*), their removal neither addresses

the lead-in wording that continues to purport to override any other law contrary to it (including the Constitution) nor does the removal address the rest of the Public Lands Act that would continue to vest title to marine lands below the ordinary high watermark in adjoining landowners, often likely to be private landowners although the prospect remains open that such mandatory vesting of title will stay with the government and open to public purposes for the newly created land. Where such vesting of title in the *government* to such new lands is at a ‘person, corporation or other legal entity[’s]’ expense, however, as this provision would also read by removing ‘by the government,’ government ownership of the newly-created lands at another’s expense in creating it may be seen as an illegal taking for which no compensation is provided.

13. In finding standing—an actual controversy—pursuant to the preceding therefore, we can disregard the assertions that the matter ‘is not hypothetical’ (Petition at 3) or the ‘imminent’ loss of funding to which the Petition alludes through its examples. The compulsory transfer of at least some instances of reclaimed lands to the hands of private adjoining landowners pursuant to such projects means the contention is not hypothetical, albeit Petitioner’s assertion that ‘[t]he Nitijela itself, during its 46<sup>th</sup> Constitutional Regular Session, has formally requested clarification on the constitutionality of Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] ...’ (Petition at 3) does little to substantiate this. Moreover, neither Petitioner’s contention that the controversy has ‘already impaired the Government’s ability to plan and carry out reclamation projects’ (Petition at 3) nor the loss of funding caused by the compelled transfer of land to private landowners pursuant to Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*)<sup>7</sup> establishes a legal right or an injury thereto sufficient to find standing.

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<sup>7</sup> Petitioner writes that:

14. Turning to two final points here, it will be recalled, the case-or-controversy requirement limits judicial power to actual disputes between *adverse parties* that have concrete stakes in the outcome. The judicial definition of ‘adverse parties’ focuses on ‘parties who are on opposite sides of an issue raised by the pleadings or otherwise presented by the record.’ *Carey v. Schuld*t, 42 F.R.D. 390 (1967). Closer to home, the High Court found the parties ‘appropriately adverse’ in *In re: The Matter of 35<sup>th</sup> Nitijela Constitutional Regular Session, Interpretation of Constitution* (HCT Civil Action 2014-047) in a constitutional matter brought by the Attorney General against the then-Speaker of the Nitijela in respect of an interpretation of the scope and meaning of the word ‘recess.’<sup>8</sup> Taken in their representative capacities here, with the Attorney General bringing suit as Petitioner on behalf of the people of the Republic of the Marshall Islands who stand to be injured, collectively, to the benefit of some, through the compelled vesting of title to land-fills and reclaimed lands to private adjoining landowners, and Respondent on behalf of the Government which passed Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act and argues against Petitioner for its being upheld, we find the parties appropriately adverse.<sup>9</sup>

15. Lastly, it will be recalled that the Attorney General, in elaborating the case-or-controversy standard, identified a final element of standing in that ‘the injury is redressable by a favorable judgement’ (Petition at 2). Petitioner seeks declaratory judgement that Section 105

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The Government is presently engaged in donor-funded reclamation projects whose continuation depends upon resolving the legal uncertainty created by Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] of the [Public Lands Act] ... [of which] Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] automatically vest[s] title to adjoining landowners, creating an imminent conflict requiring judicial clarification (Petition at 2).

<sup>8</sup> See, March 12, 2014 ‘Order’ at 1 in *In re: The Matter of 35<sup>th</sup> Nitijela Constitutional Regular Session, Interpretation of Constitution* (the ‘35<sup>th</sup> Nitijelo’ case).

<sup>9</sup> Although the parties have taken opposing positions, the Respondent has not in fact presented a legal foundation permitting it to represent the interests of the Government here or those of private landowners who stand to lose in the event Section 105 (*Title to*

(*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act is unconstitutional with respect to Article II (*Bill of Rights*) Section 5 (*Just Compensation*) of the Constitution, to which we will turn next.

#### IV. Constitutional Considerations

16. First introduced circa 1966 and amended several times,<sup>10</sup> the Public Lands Act does a number of things:

- (i) First, it defines ‘public land’ as that which was owned or maintained by the Japanese government as such during its administration of the islands, along with such other lands as the RMI Government has either acquired or may acquire for public purposes (Public Lands Act Section 102 (*‘Public land’ Defined*)).<sup>11</sup>
- (ii) Second, it upholds the Japanese law in effect during its administration that marine areas below the ordinary high watermark belong to the RMI Government, with traditional rights granted or reestablished to build, fish and collect certain materials from the shores or reef to the extent not in conflict with the government’s inherent rights to such areas, further setting a deadline to file legal interests or title to land (Public Lands Act Section 103 (*Rights in Areas Below High Watermark*)).<sup>12</sup>
- (iii) Third, it permits the Cabinet to grant or sell certain public lands ‘for the use and occupation of privately-owned lands within the Republic by the government of the Republic.’ (Public Lands Act Section 104 (*Grant of Public Lands in Exchange for Use of Privately-Owned Lands*)).<sup>13</sup>

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*Land-Fills and Lands Reclaimed from Marine Areas*) is stricken. As such, the parties are not, strictly speaking, ‘adverse’ in this matter, with only the Petitioner having formal standing to bring the action on behalf of the people of the Marshall Islands.

<sup>10</sup> Title 9 – Public Lands and Resources, Chapter 1 – Public Lands, commencement not specified, source TTC 1966, amended by 67 TTC 1970, 67 TTC 1980, PL 2008-2 and PL 2024-6.

<sup>11</sup> TTC 1966, Section 925; 67 TTC 1970, Section 1; 67 TTC 1980 Section 1, modified.

<sup>12</sup> TTC 1966, Section 32; 67 TTC 1970, Section 2; 67 TTC 1980, Section 2, modified; Amended by PL 2024-6. With respect to the second point here, it should be noted that the wording reads as follows:

Section 103. Rights in areas below high watermark.

- (1) That portion of the law established during the Japanese administration of the area which is now the Republic, that all marine areas below the ordinary high watermark belong to the government, is hereby confirmed as part of the law of the Republic, with the following exceptions...

This may be read as the laws establishing such rights as follow (to fish weirs, traps, buildings etc.) is either *not* part of the current law of the Republic; or it may also be read that ‘all marine areas below the ordinary high watermark belong to the government... with the following exceptions’ (in fish weirs, traps etc.). The most ordinary and consistent reading of this given the exceptions that follow is that ‘all marine areas below the ordinary high watermark belong to the government’ but that the following *rights* are granted in erecting and maintaining fish weirs etc., the government’s ownership of marine areas notwithstanding.

<sup>13</sup> TTC 1966, Section 990; 67 TTC 1970, Section 3; 67 TTC 1980 [Amended by PL 2024-6].

17. In 2008, the 29<sup>th</sup> Constitutional Regular Session of the Nitijela considered the Public Lands and Resources (Reclamation Amendment) Act 2008 (Bill No. 5, PL 2008-2) (the ‘Bill’), that, among other things, went on to adopt the Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) that is challenged in this action. The Bill also proposed the current definitions, adopted with only minor modifications in the Act as follows:

- (i) ‘Adjoining lands’ refer[s] to the lands adjacent, abutting or connected to, and, or share a land boundary with the reclaimed lands.
- (ii) ‘Land-fill’ means any new land created in the manner described in paragraph (c) below and includes lands reclaimed from in-land ponds and lakes.
- (iii) ‘Lands reclaimed from marine areas below the ordinary high watermark’ or ‘reclaimed lands’ refer to new lands created where there was once water, by land-fill, or through other land reclamation processes, and which adjoin a beach frontage or foreshore, or share a land boundary with existing lands.
- (iv) ‘Marine areas below the ordinary high watermark’ refers to areas that are usually submerged at mean high tide and are located seaward of the ordinary high watermark.
- (v) ‘Ordinary high watermark’ is that mark that will be found by examining the sand or rocks on the beach frontage and foreshore and ascertaining where the presence and action of waters are so common and usual as to mark upon the sand or rocks a character distinct from that of the abutting land.

18. We do not here consider the legislative record that preceded adopting Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*), only reiterating the ultimate wording of this provision which is as follows:

Section 105. Title to land-filled and land reclaimed from marine areas. Notwithstanding the provisions of any law to the contrary, title to new land created through ‘land-fill’ or other land reclamation processes, from marine areas below the ordinary high watermark, by the government, or by any other person, corporation, or other legal entity, for any purpose whatsoever, shall vest in the owners of the adjoining land or lands.

As already touched upon, there are undoubtedly issues with this provision, the first of which is the lead-in which states '*notwithstanding the provisions of any law to the contrary...*'—by its wording permitting no exceptions including the Constitution where that may be found to be contrary to it. With the legal standard requiring the challenging party to prove beyond a reasonable doubt that the legislation is incompatible with constitutional provisions (*see, e.g., State v. Torres*, 154 N.E.3d 736 (2020)), this lead-in wording is presumptively contrary to Article I (*Supremacy of the Constitution*) in respect of both Section 1 (*This Constitution to be Supreme Law*) and Section 2 (*Inconsistency with this Constitution*) which read:

Section 1. This Constitution to be Supreme Law.

- (1) This Constitution shall be the supreme law of the Republic of the Marshall Islands; and all judges and other public officers shall be bound thereby;
- (2) ...

Section 2. Inconsistency with this Constitution.

- (1) Any existing law and any law made on or after the effective date of this Constitution, which is inconsistent with this Constitution, shall, to the extent of the inconsistency, be void.
- (2) Any other action taken by any person or body on or after the effective date of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be unlawful.

As the wording purports to override the supremacy of the Constitution, in line with Section 2 (*Inconsistency with this Constitution*) the lead-in should be considered void and of no effect within the contested Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*).

19. With respect to the remaining wording in Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*), however, to also find it unconstitutional there must be no provision of the Constitution contrary to it. Here, as brought by Petitioner, we turn to Article II (*Bill of Rights*) Section 5 (*Just Compensation*) of the Constitution which reads as follows:

### Section 5. Just Compensation.

- (1) No land right or other private property may be taken unless a law authorizes such taking; and any such taking must be by the Government of the Republic of the Marshall Islands, for public use, and in accord with all safeguards provided by law.
- (2) A use primarily to generate profits or revenues and not primarily to provide a public service shall not be deemed a 'public use.'
- (3) Land rights shall not be taken if there exist alternative means, *by land fill or otherwise*, of achieving at non-prohibitive expense the purpose to be served by such taking.
- (4) Before any land right or other form of private property is taken, there must be a determination by the High Court that such taking is lawful and an order by the High Court providing for prompt and just compensation.
- (5) Where any land rights are taken, just compensation shall include reasonably equivalent land rights for all interest holders or the means to obtain the subsistence and benefits that such land rights provide.
- (6) Whenever the taking of land rights forces those who are dispossessed to live in circumstances reasonably requiring a higher level of support, that fact shall be considered in assessing whether the compensation provided is just.
- (7) In determining whether compensation for land rights is just, the High Court shall refer the matter to the Traditional Rights Court and shall give substantial weight to the opinion of the latter.
- (8) An interest in land or other property shall not be deemed 'taken' if it is forfeited pursuant to law for non-payment of taxes or debt or for commission of crime, or if it is subjected only to reasonable regulation to protect the public welfare.
- (9) In construing this Section, a court shall have due regard for the unique place of land rights in the life and law of the Republic. (Italics added.)

This provision is the eminent domain or 'takings' clause, included as an important protection for the people of the Republic of the Marshall Islands against the taking of their land or other private property without due process through the courts and just compensation in respect thereof. The referenced Section 5(3) (*Just Compensation*) attempts to provide further protection against the taking of land by instructing would-be land takers that *they may not do so if there exist alternative means, by land-fill or otherwise....* This implies two things, however: first, either to avoid a 'taking' of private land by 'land-fill or otherwise' suggests the creation of *public* or *government* land, for example where the *government* is the adjoining landowner such that Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) vests title to such

newly-created lands in the *government* and no private land needs to be taken pursuant to an eminent domain proceeding. Alternatively, if you create land by land-fill or otherwise pursuant to Section 5(3) (*Just Compensation*), and—pursuant to Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*)—vest title to the new land in *private* landowners, then again there is no eminent domain or taking action but in fact the opposite.

20. Referenced in the Petition, Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) was considered in *Jurelang Zedkaia & Tolwij Toring vs. Marshalls Energy Company, Inc., et al.* (S.Ct. Civil Case No. 2012-001; HCT Civil Case No. 2006-157) ('MEC')—or more accurately it was *not* considered, Petitioner's contentions aside that 'the [Supreme] Court's decision that Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] does not apply to land reclaimed before 2008 shows that its scope is limited.' While Petitioner asserts *inter alia* that 'the Supreme Court has already confirmed in [MEC] that reclaimed land created by the Government on submerged areas below the high watermark is owned by the Government' in point of fact the Supreme Court's decision held that, adopted in 2008, 'Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] may not be applied retroactively absent a clear indication from the Nitijela that it intended such a result' (MEC at 7). No such indication was found and, as such, the Supreme Court upheld government ownership of the previously-submerged lands in question pursuant to Section 103 (*Rights in Areas Below High Watermark*) of the Public Lands Act, ruling that the provisions of Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) were inapplicable, regardless of their merits, demerits, or any redirection of ownership of newly created or reclaimed lands in question.

21. Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) is undoubtedly problematic—including that it is inherently contradictory, putting marine lands below the high

watermark in government hands pursuant to its Section 103 (*Rights in Areas Below High Watermark*), then vesting newly-created lands from such marine areas in the hands of adjoining landowners, be they private landowners, contrary to the government's rights to these marine lands, or government landowners where the government already has title. Beyond the lead-in language above cited however, the 'narrow read' advocated by the Respondent yields no direct conflict and the remaining wording of Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) must stand.

#### **V. Declaratory Relief Granted in Part and Denied in Part**

22. The Attorney General has brought this Petition seeking:

...Declaratory Judgement declaring Section 105 [*Title to Land-Fills and Lands Reclaimed from Marine Areas*] of the [Public Lands Act] unconstitutional under Article II [*Bill of Rights*], Section 5 [*Just Compensation*] of the Constitution... (Petition at 1, italics removed).

From the foregoing reasoning the Court is able to uphold the Petition in respect of striking the words '*Notwithstanding the provisions of any law to the contrary*,' so that Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) must heretofore be considered to read:

Section 105. Title to land-filled and land reclaimed from marine areas.

...Title to new land created through 'land-fill' or other land reclamation processes, from marine areas below the ordinary high watermark, by the government, or by any other person, corporation, or other legal entity, for any purpose whatsoever, shall vest in the owners of the adjoining land or lands.

23. The Attorney General's Petition is GRANTED IN PART by striking the words '*Notwithstanding the provisions of any law to the contrary*,' from Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act as unconstitutional. The Petition is DENIED IN PART as the remainder of Section 105 (*Title to Land-Fills and Lands Reclaimed from Marine Areas*) of the Public Lands Act is upheld.

So ordered and entered.

  
Anne Bodley, Associate Justice  
High Court of the Marshall Islands  
Date: January 12, 2026