QUESTION PRESENTED

Respondent Governor Felix P. Camacho (the "Governor") adopts the question presented as stated by Petitioner.

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The Governor adopts Petitioner's statement of the opinions below.

JURISDICTION

Petitioner is seeking untimely review of a Guam Supreme Court opinion issued on July 23, 2003, concerning the proper interpretation of Section 11 of Guam's Organic Act. Petitioner initially sought certiorari review by the Ninth Circuit Court of Appeals under 48 U.S.C. § 1424-2 (2000), which that court granted. However, effective October 30, 2004, Congress amended 48 U.S.C. § 1424-2 and divested the Ninth Circuit of certiorari review of final Guam Supreme Court decisions. *See* Act of Oct. 30, 2004, Pub. L. No. 108-378, 118 Stat. 2206 (codified at 48 U.S.C. § 1424-2). Yet, Petitioner failed at that time to file a petition with this Court despite the lack of jurisdiction in the Ninth Circuit.

Instead, as Petitioner admits, he waited until after the Ninth Circuit dismissed his appeal on March 6, 2006, and then on May 24, 2006, requested an extension of time from this Court to file his certiorari petition. (Pet. at 2). Justice Kennedy granted the request, and Petitioner filed his petition on July 19, 2006. But by then Petitioner already had permitted over eighteen months to pass between the time that the Ninth Circuit was divested of jurisdiction and his first filing in this Court.

This Court has held, in accordance with 28 U.S.C. § 2101(c), that the 90-day time limit for filing certiorari petitions is "mandatory and jurisdictional" and that it has

"no authority to extend the period for filing except as Congress permits." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990). Here, it is undisputed that Petitioner filed his petition more than 90 days after the Guam Supreme Court issued its decision. It also is undisputed that the Ninth Circuit ceased to have jurisdiction as of October 30, 2004. Jurisdiction lapsed and cannot be revived.

Petitioner fails to cite any precedent where this Court has accepted certiorari jurisdiction on analogous facts, or even recognized that such jurisdiction can exist. The statute cited by Petitioner, 28 U.S.C. § 2101(c), provides that a Justice of this Court may allow an extension of time to file the certiorari petition for good cause shown. *See* 28 U.S.C. § 2101(c). But Petitioner is not asking for an extension; he is asking that jurisdiction be revived after it had lapsed when no timely petition was filed. Similarly, Petitioner cites this Court's holding that the 90-day period is tolled *if* the petitioner files a timely petition for rehearing with the court below, *if* the court below decides to grant an untimely rehearing petition, or *if* the court below directs the parties to address whether rehearing should be ordered. *See Hibbs v. Winn*, 542 U.S. 88, 97-98 (2004). But in all of those situations, the court below continued to hold onto jurisdiction over the case. Here, there was no such motion filed with the Guam Supreme Court that kept the case within the lower court's jurisdiction prior to the petition being filed. Instead, the petition here was not filed until almost three years after the Guam Supreme Court rendered its decision on July 23, 2003.

The Petition should be denied or dismissed for want of jurisdiction.[1]

STATUTORY PROVISIONS INVOLVED

The Governor adopts Petitioner's statement of statutory provisions involved.

STATEMENT OF THE CASE

Petitioner seeks a grant of certiorari over a decision rendered by the Guam Supreme Court interpreting the debt limitation provision found in Section 11 of Guam's Organic Act, which is codified at 48 U.S.C. § 1423a (hereinafter "Section 11"). *See In Re Request of Governor Felix P. Camacho Relative to the Interpretation and Application of Section 11 of the Organic Act of Guam*, 2003 Guam 16. (Pet. App. at 1a-35a). That decision permitted the Guam Legislature (the "Legislature") and Governor to proceed with bond borrowing they had authorized in a duly enacted local law that primarily sought to refinance existing debt and other obligations. It is a case concerning an issue of purely local concern to Guam that does not easily lend itself to a grant of certiorari by this Court.

[1] In the section of his brief devoted to why the Petition should be granted, Petitioner also includes argument regarding why this case satisfies the case or controversy requirements of Article III of the Constitution. (Pet. at 23-25). That issue more properly falls under the jurisdiction section. But in any event, the Governor agrees with Petitioner that this case would present a case or controversy within the meaning of Article III had a timely petition been filed, although the Petition should still be denied for the reasons discussed *infra*.

I. THE LEGISLATURE AUTHORIZES THE GOVERNOR TO ISSUE BONDS

On April 28, 2003, Bill 47 (COR) became Guam Public Law ("P.L.") 27-19 by signature of the Governor. (Pet. App. at 2a). Public Law 27-19 added a new § 1512 to Title 5, Guam Code Annotated ("G.C.A."),[2] which authorized the Governor to issue bonds: (i) of up to $218,309,587 for the purpose of paying certain government of Guam obligations, and (ii) in the aggregate principal amount necessary to provide $200 million to pay the debt service on all or a portion of the Government of Guam General Obligation Bonds, 1993 Series A. *See* P.L. 27-19, § 2 (codified at 5 G.C.A. § 1512(a) and (b)).

Public Law 27-19 provided that the bonds authorized by that act "may not be issued in an amount that would cause a violation of the debt limitation provisions of 48 U.S.C. § 1423a (§ 11 of the Guam Organic Act)." P.L. 27-19, § 2 (codified at 5 G.C.A. § 1512(a)). Section 11 provides as follows with respect to the amount of indebtedness that can be incurred by the government of Guam:

> Taxes and assessments on property, internal revenues, sales, license fees, and royalties for franchises, privileges, and concessions may be imposed for purposes of the government of Guam as may be uniformly provided by the Legislature of Guam, and when necessary to anticipate taxes and revenues, bonds and other obligations may

[2] Public Law 27-19 contains several typographical errors in the codification of the Act. The correct codification is 5 G.C.A. § 1512; however, there are erroneous references to §§ 1520 and 5102. For the correct codification, *see* 5 G.C.A. § 1512, as published on the Guam Compiler of Laws website available at http://www.justice.gov.gu/CompilerofLaws/index.html.

> be issued by the government of Guam; *Provided, however*, That no public indebtedness of Guam shall be authorized or allowed in excess of 10 per centum of the aggregate tax valuation of the property in Guam. Bonds or other obligations of the government of Guam payable solely from revenues derived from any public improvement or undertaking shall not be considered public indebtedness of Guam within the meaning of this section.

48 U.S.C. § 1423a.

Subsequent to the enactment of P.L. 27-19, Petitioner, citing to Section 11, advised the Governor in a letter dated May 14, 2003 that he would not sign any contract for the issuance of bonds on the basis that such issuance would violate Section 11 of the Organic Act. (Pet. App. at 3a). Petitioner's position was based on his opinion that the government's debt-ceiling under Section 11 is based on the assessed value of property on Guam as determined by local law. (*Id.*) In other words, Petitioner concluded that the meaning of a federal law (Section 11) was dependent upon a local law (11 G.C.A. § 24102(f)).

Petitioner then refused to sign off on any bond indenture authorized by P.L. 27-19 on the asserted ground that such bonds might possibly exceed the debt-ceiling.

II. THE GOVERNOR FILES A DECLARATORY RELIEF REQUEST SEEKING THE GUAM SUPREME COURT'S INTERPRETATION OF "AGGREGATE TAX VALUATION OF PROPERTY ON GUAM" UNDER SECTION 11 OF THE ORGANIC ACT OF GUAM

On July 1, 2003, the Governor filed a request for declaratory judgment in the Supreme Court of Guam

pursuant to 7 G.C.A. § 4104. Section 4104 permitted the Governor to initiate an original action in the Guam Supreme Court for a declaratory judgment regarding the interpretation of a local statute or the Organic Act. *See* 7 G.C.A. § 4104. The Governor sought a declaratory judgment establishing that the issuance of bonds authorized in P.L. 27-19 would not violate Section 11.

The Guam Supreme Court accepted the Governor's request to decide this matter and granted Petitioner's request to intervene. (Pet. App. at 3a). The Guam Supreme Court specifically considered the issue of the meaning of "aggregate tax valuation." (Pet. App. at 5a).

The Governor and Petitioner both filed opening briefs in support of their respective positions, as well as briefs in opposition. Consistent with the position he had previously taken, Petitioner argued before the Guam Supreme Court that "aggregate tax valuation of property on Guam" must be interpreted to mean "value" as defined in local law as thirty-five percent (35%) of the appraised value of property on Guam. (Pet. App. at 7a).

After the expedited briefing was completed, the Guam Supreme Court heard oral arguments and issued an opinion on July 29, 2003. (Pet. App. at 1a-35a). Specific to the question being presented to this Court, the Guam Supreme Court held that the debt limitation set forth in Section 11 should be calculated based on the appraised value of the real and personal property on Guam currently subject to taxation. (Pet. App. at 14a-15a, 19a). The Guam Supreme Court rejected Petitioner's argument that "aggregate tax valuation" should be based upon the assessed value of real property. (Pet. App. at 11a ("After reviewing the language of Section 11, we disagree with Petitioner's

contention that *valuation* in Section 11 be interpreted as value under Title 11 G.C.A. § 24102(f).")). The Guam Supreme Court's conclusion was based upon an analysis of the plain meaning of "aggregate tax valuation of property on Guam" and a comparison of such language to the debt limitation provisions of the Virgin Islands and other jurisdictions. (Pet. App. at 10a-15a).

Finally, based on its holdings as to the meaning of "aggregate tax valuation of property on Guam" and "indebtedness," the Guam Supreme Court held that the issuance of the bonds authorized by P.L. 27-19 was proper under Section 11 of the Organic Act because Guam would remain well under its debt-ceiling. (Pet. App. at 34a-35a). The Guam Supreme Court found that the government's total current indebtedness stood at $378 million. (Pet. App. at 34a). Thus, the court concluded that even if the total amount of the bonds authorized by P.L. 27-19 were considered "new" debt, Guam's debt-ceiling of $1.114 billion would not be exceeded. (*Id.*)[3]

[3] The Guam Supreme Court never considered what would be the total indebtedness of the government of Guam had the entire amount of bonds authorized by P.L. 27-19 actually been issued because it concluded that even if all of it were considered new debt, the government's total indebtedness would still be below the federal debt-ceiling. (Pet. App. at 34a-35a). However, because $200 million of the bonds authorized by P.L. 27-19 was designated to retire the Government of Guam General Obligation Bonds, 1993 Series A, the remaining par value of which was considered by the Guam Supreme Court as a part of Guam's current indebtedness of $378 million (Pet. App. at 29a-34a), the maximum amount by which the total indebtedness would have been increased is the $218,309,857 amount set aside to pay current government expenses; i.e., the total indebtedness would have been less than $600 million.

REASONS TO DENY THE PETITION

The petition should be denied because it involves solely an issue of local concern to the Territory of Guam as to which the Guam Supreme Court rendered a well-reasoned and correct response based on the plain language of the applicable statute.

Petitioner seeks to have this Court grant certiorari over an issue of statutory interpretation as to Section 11 of the Organic Act of Guam. Although this Court has Article III jurisdiction, it also has an established practice of deferring (absent an "obvious" error) to the decisions of the highest court of a territory interpreting a federal statute that applies solely to that territory. *Pernell v. Southall Realty*, 416 U.S. 363, 366-68 (1974). Here, Section 11 applies only to the Territory of Guam. Congress has not chosen to utilize similar language in the law applicable to any other territory.[4] There is no prior federal precedent interpreting Guam's debt-ceiling under this statute, and there is no conflict among federal or state court decisions.[5] The implications of this case thus affect only Guam.

The Guam Supreme Court's decision was a simple and correct reading of the plain language of Section 11. Petitioner's essential position is that Guam's borrowing is

[4] The only federal statute to ever contain the same wording was 48 U.S.C. § 745. *See* Act of Mar. 2, 1917, ch. 145, § 3, 39 Stat. 951, 953 (Puerto Rico debt-ceiling provision). This debt-ceiling provision was deleted in 1961. *See* Act of Aug. 3, 1961, Pub. L. No. 87-121, § 2, 75 Stat. 245 (effective Dec. 10, 1961).

[5] The only previous case interpreting Section 11 is *Guam Tel. Auth. v. Rivera*, 416 F. Supp. 283 (D. Guam App. Div. 1976) (defining certain "contingency bonds" as public indebtedness).

This Court long ago adopted a rule of deference to the decisions of territorial courts where the case involved only a question of local concern. *E.g.*, *Santa Fe Cent. Ry. Co. v. Friday*, 232 U.S. 694, 700 (1914) ("We should not decide against the local understanding of a matter of purely local concern unless we thought it clearly wrong."); *De Castro v. Board of Comm'rs*, 322 U.S. 451, 454 (1944) (declining to overrule a territorial court on matters of local concern absent "clear" or "manifest" error or an "inescapably wrong" interpretation) (quoting *Sancho v. Texas Co.*, 308 U.S. 463, 471 (1940)). *See also Waialua Agric. Co. v. Christian*, 305 U.S. 91, 109 (1938) ("It is true that under the appeal statute the lower court had complete power to reverse any ruling of the [Hawaiian] territorial court on law or fact [footnote omitted] but we are of the opinion that this power should be exercised only in cases of manifest error."); *Matos v. Hermanos*, 300 U.S. 429, 432 (1937) (" 'recognizing the deference due to the understanding of local courts upon matters of purely local concern,' it becomes impossible for us to entertain 'a sense of clear error committed' by the [Puerto Rico] Supreme Court").

This Court also has established that a matter remains one of local concern even if a territorial decision involves federal law if that law (as here) is one that uniquely applies to the territory. *See Pernell,* 416 U.S. at 366-68 ("[t]his Court has long expressed its reluctance to review decisions of the courts of the District [of Columbia] involving matters of peculiarly local concern, absent a constitutional claim or a problem of general federal law of nationwide application.") (citations omitted). As this Court explained as to a land ownership provision in Puerto Rico's

Organic Act,[6] such provisions are "peculiarly concerned with local policy," and not "designed for the protection of policies having general application throughout the United States." *Puerto Rico v. Rubert Hermanos, Inc.*, 309 U.S. 543, 549-50 (1940).

Other federal circuit courts also have followed this Court's direction. For example, the First Circuit deferred to the Supreme Court of Puerto Rico's interpretation of a land use provision in the Puerto Rico Organic Act, even though that Act embodied "Congressional policy." *Campose v. Central Cambalache, Inc.*, 157 F.2d 43, 43-44 (1st Cir. 1946). And in a particularly striking case, the D.C. Circuit followed the interpretation of a federal workers' compensation statute that applied solely to the District of Columbia where that interpretation was rendered by the District's highest local court. *See Hall v. C&P Tel. Co.*, 793 F.2d 1354 (D.C. Cir. 1986). It did so even though Congress had enacted a national statute that used identical language and that had received a contrary interpretation by the federal courts. *Id.* ("this court [will] defer to the decisions of the District of Columbia Court of Appeals construing Acts of Congress that apply exclusively to the District of Columbia").

Following the precedent of this Court, the Ninth Circuit (which used to have certiorari jurisdiction over the Guam Supreme Court) has given similar deference to Guam Supreme Court rulings "on matters of local concern." *See Guam v. Guerrero*, 290 F.3d 1210, 1213-14 (9th Cir. 2002). As it has stated: "The Congressional promise

[6] As discussed elsewhere, Puerto Rico's Organic Act was later replaced with a constitution.

of independent institutions of government would be an empty one if we did not recognize the importance of the Guam Supreme Court's role in shaping the interpretation and application of the Organic Act." *Gutierrez v. Pangelinan*, 276 F.3d 539, 547 (9th Cir. 2002).

The importance of permitting Guam's Supreme Court to develop its own body of law as to the Organic Act of Guam (except where plainly erroneous) is all the more significant now given a recent Congressional enactment. When Congress originally gave Guam authorization to create a supreme court, it provided in 48 U.S.C. § 1424-2 that the territory's high court would be subject to the Ninth Circuit's certiorari jurisdiction for the first fifteen years of existence. But in 2004, Congress repealed that portion of 48 U.S.C. § 1424-2 and abolished certiorari jurisdiction to the Ninth Circuit. *See* Act of Oct. 30, 2004, Pub. L. No. 108-378, 118 Stat. 2206 (codified at 48 U.S.C. § 1424-2). The result of this Congressional action is that the relationship of the Guam Supreme Court to this Court is now much more akin to that of a state supreme court. *See* 48 U.S.C. § 1424-2 (2006) (relations between federal courts and territorial courts of Guam, including as to certiorari, "shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States").

Congress' decision to place Guam's Supreme Court on a footing that is in most respects the same as a state supreme court strongly supports deference to its interpretation of Guam's Organic Act on matters of local concern. *See Pernell*, 416 U.S. at 367-68 (deference to decision of the highest local court of the District of Columbia was supported by 1970 Congressional laws that removed

certiorari jurisdiction by the D.C. Circuit over that local court). As in *Pernell*, the appropriate course here is to permit local law to develop on a matter of local concern such as the interpretation of Guam's debt-ceiling absent some "obvious" defect requiring intervention. *See id.* (despite the fact that the Court had the power to hear the matter under Article III, it would not reverse the local court's interpretation of a federal statute applicable solely to the District absent a showing of "obvious" error). Petitioner's brief falls far short of such a showing – indeed, as explained below, Petitioner cannot demonstrate any error, obvious or otherwise. Accordingly, certiorari is not warranted.

II. THE GUAM SUPREME COURT APPLIED THE CORRECT AND PLAIN READING OF THE LANGUAGE OF THE STATUTE

The Guam Supreme Court interpreted "aggregate tax valuation of the property in Guam" in Section 11 to mean the full, appraised value of the property on Guam actually subject to taxation. (Pet. App. at 2a, 35a). The court reached this ruling after considering and rejecting Petitioner's argument below that the terms "tax valuation" in Section 11 has the same meaning as the term "value" contained in a local statute governing Guam real property taxes. (*Id.* at 11a). *See also* 11 G.C.A. § 24102(f) (which defines the term "value" as "thirty-five percent (35%) of the appraised value" of property).

The Guam Supreme Court's decision was a simple and correct reading of the plain language of Section 11. As the court recognized, "value" is distinct from the term "valuation." "Value," which is the term used in the local statute, means the "monetary worth or price of something;" in

comparison, "valuation," which is the term used in the Organic Act, means the "process of determining the value of a thing or entity." Black's Law Dictionary 1548-49 (7th ed. 1999); *accord* Webster's Third New International Dictionary 2530-31 (2002). The local Guam law assigns a monetary "value" of 35% of the sale price to Guam property. *See* 11 G.C.A. § 24102(f). But the Guam Organic Act establishes a debt-ceiling based on the total potential "tax valuation" of the property on Guam. *See* 48 U.S.C. § 1423a.

As the Guam Supreme Court recognized, "the two statues were enacted by completely different legislative bodies, and . . . § 11 [of the Organic Act] was enacted prior to 11 G.C.A. § 24102(f)." (Pet. App. at 11a-12a).[7] Thus, there was no reason to believe Congress intended to have local law define any term in the Guam Organic Act. Indeed, it is self-evident that the Legislature lacks the authority to adopt Guam law that defines terms in the federal Organic Act like "aggregate tax valuation."

Petitioner's argument is further premised on the assertion that the Guam Supreme Court has failed to give meaning to the word "tax" as modifying "valuation." (Pet. at 14). However, the Guam Supreme Court gave due consideration to this issue. As the Guam Supreme Court

[7] In so holding, the court adopted the reasoning set forth 14 years earlier in a Guam trial court decision, *Barrett-Anderson v. Crisostomo*, Civil Case No. CV0651-89 (Super. Ct. Guam Decision and Order Nov. 21, 1989). Petitioner argues that its "view accorded with the position adopted several years earlier by the Legislative Counsel, the Legislature's own internal legal adviser." (Pet. at 8). The view of former Legislative Counsel, however, was the one brought before the trial court in *Barrett-Anderson* and resoundingly rejected. The *Barrett-Anderson* decision is attached as Respondent's Appendix ("Res. App.") at 1a-21a.

correctly explained, "Congress must have meant something when it used the word 'tax' in the first part of the clause." (Pet. App. at 17a). But that meaning is simply achieved through the logical reading that "[b]y using the term tax valuation, it is clear that the debt limit is to be based on the value of the property being taxed." (*Id.*) Petitioner's effort to obtain some additional meaning from the word "tax" is unwarranted by Section 11's plain language.

As the Guam Supreme Court correctly held, Guam's ability to incur debt was related to, and should be consistent with, the "maximum power to tax granted [to the Guam government] by Congress." (Pet. App. at 14a-15a). As the court explained:

> Because Congress did not impose an assessment rate in the Organic Act, Congress clearly granted the legislature the power to impose taxes on the full market value of property. . . . Whether the [Guam] legislature chooses to levy based upon assessed values which are lower than actual value, or whether the legislature declines to tax the property at a rate necessary to satisfy the underlying obligations, are matters of policy and fiscal management. . . . The issue before us relates to the object upon which the debt limit in Section 11 is based, and basing it on appraised values is entirely consistent with the taxing authority granted to the legislature under the Organic Act.

(*Id.* at 15a).

Petitioner's strained reading of Section 11 would require that the Guam Legislature first raise Guam's property taxes from the current 35% rate before Guam

could borrow based upon the potential tax value of its property. (Pet. at 20). But the inherent interest in establishing a debt-ceiling such as Section 11 is to ensure that Guam has the *ability* to repay its debts by the particular method of taxing the property on Guam. A debt-ceiling tied to the maximum value of all property taxed achieves this end. Nothing in the statute's plain language indicates Congress meant to forbid *other* means of taxation or revenue raising to meet debt obligations.

To the contrary, Congress granted the government of Guam broad powers of taxation extending beyond property taxation. *E.g.*, 48 U.S.C. § 1421i (creating a Guam income tax); 48 U.S.C. § 1423a (permitting other forms of tax, including a sales tax). Therefore, the government of Guam can still incur indebtedness even if the Legislature chooses to assess real property taxes at 35% of its value, or not at all, because Congress intended for the Legislature to have the option to employ other forms of taxation to raise revenues and to pay off debt. For Petitioner to be correct that the debt-ceiling must be tied to the current as opposed to the potential rate of property tax assessment, one would have to completely ignore Congress' deliberate choice to grant the government of Guam broader taxation powers. *Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("The meaning of statutory language, plain or not, depends on context.") (quoting *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991)).

Petitioner further argues that the reason why the debt-ceiling should be tied to the "assessed" valuation of real property is because the level of borrowing would be otherwise "untethered to the Legislature's willingness to impose taxes on voters." (Pet. at 20). This argument, however, fails to pass the common-sense test. Taxpayers do not

pay the "assessed" value of their property in taxes, they pay the amount actually levied. Guam's assessed value of property is currently fixed at thirty-five percent, while its levy is fixed at one percent and one-quarter of one percent of the assessed value on improvements and land, respectively. 11 G.C.A. § 24103. Under Petitioner's theory, if the Legislature wanted to maximize the territorial debt-ceiling without enraging the tax-paying public, all it would need to do is increase the "assessed" value of property up to one hundred percent and decrease the rate of levy by a corresponding ratio. Thus, tying the debt-ceiling to the "assessed" valuation of real property simply does not "tether" borrowing to the Legislature's willingness to impose new taxes on voters.

The Guam Supreme Court also correctly contrasted the Organic Act of Guam to the Organic Act of the Virgin Islands, whose debt-ceiling language was enacted by the same Congress that enacted Guam's Organic Act just ten months earlier. In the Organic Act of the Virgin Islands, Congress based the debt-ceiling on "the *aggregate assessed valuation* of taxable real property." 48 U.S.C. § 1403 (enacted 1949) (emphasis added). By contrast, in the Organic Act of Guam the debt-ceiling was based on "the *aggregate tax valuation* of the property in Guam." 48 U.S.C. § 1423a (enacted 1950) (emphasis added).

The Guam Supreme Court properly concluded that had Congress intended that Guam's debt-ceiling would be limited by the "assessed" value of its property, Congress would have explicitly stated such, as it did in the Organic Act of the Virgin Islands. As the court explained: "This difference in the statutory language demonstrates that under the plain language of Section 11, the debt limit is not to be based on the *assessed* valuation of property." (Pet.

App. at 12a) (italics in original). This comparison to the language used by Congress just months earlier but not selected for Guam's Organic Act follows the same logic in the rule of statutory construction that a court will not hold that Congress enacted silently statutory language it had considered, but rejected. As this Court has stated: "'Few principles of statutory construction are more compelling than the proposition that Congress does not intend *sub silentio* to enact statutory language that it has earlier discarded.'" *Sale v. Haitian Ctrs. Council*, 509 U.S. 155, 168 n.16 (1993) (quoting with approval *Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 392-93 (1980) (Stewart, J., dissenting)).

By further contrast, there appears to be good reason why Congress tied the Virgin Islands' bond borrowing to the actual taxes assessed on real property, but not Guam's. In the federal statutes governing the Virgin Islands, Congress established the right to control and supervise that territory's real property tax system and assessment rate; Congress did not adopt similar language for Guam. *Compare* 48 U.S.C. §§ 1401-1401e (which sets out the Virgin Islands' real property tax system and creates federal oversight over the assessment rate) *with* 48 U.S.C. § 1423a (Guam's Organic Act, which simply provides that the Guam Legislature may adopt any "uniform" system of real property taxation it chooses).

Petitioner postulates that it was necessary for Congress to insert "assessed" before "valuation" in the Virgin Islands Organic Act to make sure that the Virgin Islands debt-ceiling would be tied to the "assessed valuation" of real property, not its full, appraised value because of 48 U.S.C. § 1401a, which provides that "all taxes on real property in the Virgin Islands shall be computed on the

basis of the actual value of such property." 48 U.S.C. § 1401a. (Pet. 18). There is no support in any federal law for Petitioner's conclusion. Title 48 U.S.C. § 1401a's purpose was not to define the "assessed valuation" of property as being its "full valuation." Rather, its purpose was to ensure that all real property was valued at its full value in order to correct the lack of uniformity in the Virgin Islands' real property tax scheme existing at that time. As the Third Circuit Court of Appeals explained:

> In 1936, Congress passed a bill "[t]o establish an assessed valuation real property tax in the Virgin Islands of the United States" to replace a system viewed as encouraging unproductive use of land. S. Rep. No. 74-1973, at 1 (1936). At that time, taxes were assessed at a certain amount per acre based on the land's use. Uncultivated land was taxed at a low rate, providing an incentive to keep land – even very valuable land – unproductive. *Id.* at 2 (letter of Harold L. Ickes, Secretary of the Interior, to Representative Leo Kocialkowski (May 24, 1935)). It was thought that federal legislation was needed, as the local legislature was unlikely to pass a change to a value-based tax system. S. Rep. No. 74-1973, at 6 (statement of Lawrence W. Cramer, Lieutenant Governor of St. Croix; Robert Herrick, Government Secretary, and George S. Robinson, Government Attorney).
>
> Congress took care to enter this area of law only in a limited way calculated to require a change in the overall system of property taxation to one employing uniform rates tied to actual value, but refraining from instituting permanent particular requirements.

Bluebeard's Castle, Inc. v. Government of the Virgin Islands, 321 F.3d 394, 401 (3rd Cir. 2003).

There is no historical evidence that Congress had similar concerns about the valuation of Guam real property when it enacted the Guam Organic Act, and indeed no similar language was adopted. In choosing different language to establish each territory's debt limit, Congress was granting to Guam flexibility in its borrowing not enjoyed by the Virgin Islands, just as it had granted to Guam flexibility in its real property taxation system not granted to the Virgin Islands.[8]

The Guam Supreme Court's decision also was consistent with equivalent state supreme court cases. As the Guam Supreme Court stated, when States have sought to limit their debt-ceilings to the "assessed" value of property, they have expressly stated as much. (*See* Pet. at 12a-13a). *See, e.g., Breslow v. School Dist.,* 182 A.2d 501 (Pa. 1962); *Allen v. Van Buren Township,* 184 N.E.2d 25 (Ind. 1962); *Phelps v. City of Minneapolis,* 219 N.W. 872 (Minn. 1928); *Baisden v. City of Greenville,* 111 So. 2 (Ala.

[8] Petitioner seeks to avoid this conclusion by referring to H.R. Rep. No. 81-682, at 2, 3 (1949), as indicating Congressional intent to enact a "perfecting amendment" in modifying the expression "tax valuation" to "assessed valuation" in the Virgin Islands Organic Act. (Pet. at 18-19 n.3). However, the recommendation of a perfecting amendment to H.R. 4856 was made not by a member of Congress, but in a Department of Interior report. *See* H.R. Rep. No. 81-682, at 2, 3 (1949). And the recommended language appears to have been "aggregate tax valuation of the real and personal property" within the territory. *Id.* Not only did Congress use "assessed valuation" instead of "tax valuation," it also limited the property to "taxable real property," ignoring the Department of Interior recommendation to also include personal property. *Id. Cf.* Guam Organic Act § 11 – "aggregate tax valuation of the property in Guam." Thus, the differences between the two organic acts were not the result of some "perfecting amendment" introduced by the Department of Interior; they were the result of a self-evident choice to utilize different statutory language to achieve different ends in different territories.

1927) (per curiam); *cf. City of Chicago v. Fishburn,* 59 N.E. 791 (Ill. 1901). Congress is presumed to be aware of the ordinary meaning of terms given to them by courts in a given context. *See Albernaz v. United States,* 450 U.S. 333, 341 (1981) (because Congress is "predominately a lawyer's body," it is appropriate to assume Congress knows the law and its silence should therefore be assumed to mean that it legislated with the general rule in mind). Thus, Congress' choice to use or not use such a term as "assessed" is another factor supporting the Guam Supreme Court's well-reasoned conclusion.

Petitioner cites *Board of Education v. Passey*, 246 P.2d 1078 (Utah 1952), to argue the significance of the word "tax" before "valuation" in Section 11, as contrasted with the unqualified use of the word "value" in the Utah Constitution. The question before the Utah court, however, was not whether the lack of an adjective before "value" was significant, but whether later language in the same sentence, which required "value" to be determined by the last tax assessment, modified the earlier expression of "value." *Id.* at 1079 ("The direction [in the Utah Constitution] in the phrase following that the 'value' be 'ascertained by the last assessment for State and County purposes, previous to the incurring of such indebtedness' is not a mandate that the assessed valuation upon which taxes are computed be adopted as the 'value.' What is meant by that phrase is that the last assessment is the source for finding what is the amount of the 'value.' But it does not say that the assessed valuation is the 'value.'").

In fact, the Utah court pointed to similar conclusions by other state supreme courts that also rejected the argument that "value" was modified by a later requirement in the same sentence of the relevant constitutions to

determine property values based on the last "assessment." *See id.* at 1079-80 (citing *N. W. Halsey & Co. v. City of Belle Plaine*, 104 N.W. 494 (Iowa 1905); *Hansen v. City of Hoquiam*, 163 P. 391 (Wash. 1917)). It stands to reason that if the "assessment" requirement in the same sentence of the Utah, Iowa or Washington Constitutions could not modify the earlier use of the word "value" in those *same* constitutions, it is even less conceivable that Congress would have intended that the definition of "valuation" in its federal enactment (Section 11) would be modified by the later enactment of an inferior legislative body (the Guam Legislature) defining the term "value" for local tax assessment purposes.

III. PUERTO RICO'S AND THE VIRGIN ISLANDS' HISTORY OF DEBT IS IRRELEVANT

Having failed below to introduce *any* evidence regarding *any* financial danger to the Government of Guam from the proposed borrowing, Petitioner seeks to "strengthen" his record in seeking certiorari from this Court by citing newspaper articles and similar hearsay concerning recent excessive borrowing by Puerto Rico and the Virgin Islands. (Pet. at 21-23).

Petitioner opens with a claim that "Guam is one of three U.S. territories with federal organic acts, along with Puerto Rico and the Virgin Islands." (Pet. at 21). Untrue. Guam and the Virgin Islands are the only remaining territories operating under organic acts. For over fifty years, Puerto Rico has been a commonwealth that operates under a constitution chosen by its people. *See* 48 U.S.C. § 731d (the provision of the Act permitting the creation of Puerto Rico's constitution); *see also* Keith Bea,

"Political Status of Puerto Rico: Background, Options, and Issues in the 109th Congress," (Congressional Research Service, updated June 6, 2005) (summarizing Puerto Rico's current political status).[9]

Puerto Rico does not even have a federally mandated debt-ceiling. The applicable federal laws simply authorize Puerto Rico to issue bonds as it shall determine by local legislation. 48 U.S.C. § 741 ("when necessary to anticipate taxes and revenues, bonds and other obligations may be issued by Puerto Rico or any municipal government therein as may be provided by law"). Puerto Rico's debt-ceiling limitation on its ability to borrow money is established solely in its own constitution. *See* P.R. Const. art. VI, § 2 (setting Puerto Rico's debt-ceiling as a percentage of all revenue). Puerto Rico's experience with excessive borrowing under its own constitution and laws has nothing to do with the operation of the Territory of Guam under its federally dictated Organic Act.

As for the Virgin Islands, as discussed *supra*, Congress chose to use notably different language for the Virgin Islands' debt-ceiling in its Organic Act than Congress subsequently used in drafting the debt-ceiling in Guam's Organic Act. *Brewster v. Gage*, 280 U.S. 327, 337 (1930) ("The deliberate selection of language so differing from that used in the earlier acts indicates that a change of law was intended."). But even if the experience of the Virgin Islands under this different statutory language was at all instructive as to Guam, the lesson would simply be that Congress was quite capable of reigning in excessive

[9] *Available at* http://www.openers.com/document/RL32933/2005-06-06%2000:00:00 (last visited Aug. 23, 2006).

that issue should it ever arise in some hypothetical and speculative future.

CONCLUSION

Congress entrusted Guam's Legislature with the power to engage in public borrowing, and it entrusted Guam's Supreme Court to sit in judgment of disputes involving issues such as public borrowing. There is no reason to believe that this trust has been abused in this case, and certainly no reason to overcome this Court's traditional reluctance to overturn the decision of a territorial court on a matter of purely local concern. It is respectfully asked that the Petition be denied.

Respectfully submitted,

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borrowing in the Virgin Islands, threatening the appointment of a CFO and otherwise using its plenary power over the territory. (*See* Pet. at 22).[10] Indeed, Petitioner is forced to admit that following this federal intervention, the Virgin Islands "appear[s] to have succeeded in bringing its budget back into balance." (Pet. at 23).

Petitioner has not shown that Guam has a history of excessive borrowing leading to federal intervention. And Petitioner has not shown why Congress is not perfectly capable of protecting federal interests in Guam by reeling in excessive borrowing should it deem it necessary as it did in the Virgin Islands. The Guam Supreme Court has interpreted the statute in question correctly and consistent with its plain language. But even had it not, it is hardly an argument for a grant of certiorari that the Virgin Islands once had troubles when (1) there is no evidence to support the presumption that Guam is following the same path and (2) no reason to believe that Congress would not address

[10] This is because the Virgin Islands, like Guam, is an unincorporated territory subject to plenary control by Congress. The Territories Clause provides without qualification that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., art. IV, § 3, cl. 2. Congress thus has plenary control over unincorporated territories such Guam and the Virgin Islands. *National Bank v. County of Yankton*, 101 U.S. 129, 133 (1880) ("[Congress] may make a void Act of the territorial government valid, and a valid Act void. In other words, it has full and complete legislative authority over the People of the Territories and all the departments of the territorial governments."); *Grafton v. United States*, 206 U.S. 333, 354 (1907) ("the Government of [a territory] owes its existence wholly to the United States. . . . The jurisdiction and authority of the United States over that territory and its inhabitants, for all legitimate purposes of government, is paramount"); *Simms v. Simms*, 175 U.S. 162, 168 (1899) (Congress has "entire dominion and sovereignty" and "full legislative power" over the territories).