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To: Mike Helfer

From: Steve Lawrence

Subject: Reapportionment in the Marianas Islands.

The reapportionment mandate of "one person, one vote" had its beginning in Baker v. Carr, 369 U.S. 186 (1962), when the Supreme Court held that the reapportionment issue was justiciable. Since the decision in Baker, two lines of cases have developed on the reapportionment issue. One line of cases concerns the apportionment of Congressional districts which began with the case of Wesberry v. Sanders, 376 U.S. 1 (1964). The Congressional districting cases rest on the Article I, Section 2 command that "representatives shall be chosen by the people." The second line of cases began with Reynolds v. Sims, 377 U.S. 533 (1964), and rests on the equal protection clause of the Fourteenth Amendment. The cases based on the reasoning found in Reynolds concern the apportionment of state and local legislatures; it is this line of cases based on the equal protection clause which is relevant to the situation in the Marianas Islands. Although the basic premise underlying the Congressional and state reapportionment cases, that the weight of a person's vote cannot be made to depend

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on where he lives, is the same, there are two important reasons for distinguishing the two situations. First, the Constitutional authority on which each rests is different. In a situation, such as in the Marianas, in which only selected provisions of the U. S. Constitution will apply, the constitutional source or basis takes on added significance. Second, the Supreme Court has established a different standard of review for each of these two situations. The basic difference in the standard of review is to allow cases brought under Reynolds to deviate somewhat from strict population equality in the presence of certain judicially sanctioned factors. On the other hand, the Court has developed a more mechanical, mathematical method to test the constitutional validity of Congressional districts. The more liberal standard of review for the cases based on Reynolds and the equal protection clause will take on importance later in this analysis. The point to be made and emphasized here is that the Reynolds line of cases, with its more liberal standard of review, is the context in which the Marianas situation will be analyzed.

There are three areas of concern in the Marianas with respect to the reapportionment mandate of the Fourteenth Amendment. These areas are:

1) the national legislature;

2) the local units of government; and

3) the Public Land Corporation.

This memorandum will examine these three areas of concern by posing three questions:

1) What are the consequences of having the Fourteenth Amendment apply in the Marianas as if the Marianas were a State of the Union?

2) On what grounds can an exception to the Fourteenth Amendment be justified in order to take the Marianas out from under the reapportionment mandate?

3) Is it constitutionally permissible to grant an exception to the equal protection clause in the Marianas?

I. WHAT ARE THE CONSEQUENCES OF HAVING THE FOURTEENTH AMENDMENT APPLY IN THE MARIANAS AS IF THE MARIANAS WERE A STATE?

A. The National Legislature

If the equal protection clause applies in the Marianas as it applies in a State, there is no question that the national legislature of the Marianas (unicameral or bicameral) would have to be apportioned according to population. This conclusion derives from the clear language of Reynolds v. Sims and subsequent cases. The conclusion is strengthened and made clearer, however, if the potential justifications for a malapportioned national legislature are examined in light of the relevant Supreme Court cases. Since the reapportionment era began in 1962, there has been no paucity of ingenious reasons put forth to justify an exception to the reapportionment mandate as embodied in

Reynolds; the Court has met these assertions quite directly and forcefully. The possible justification which the Marianas, as a State, might assert are five in number and are as follows:

1) The national legislature of the Marianas can be malapportioned because the national legislature of the United States is malapportioned.

This is the so-called "federal analogy" argument. The Court was not impressed with this argument in Reynolds and flatly rejected it as "inapposite to a consideration of the constitutional validity of state legislative apportionment schemes." 377 U.S. 533, 575-576. Not only is the federal analogy inapplicable to existing states, but the analogy cannot be used to justify a malapportioned legislature in a State which has been newly-admitted to the Union. Apportionment according to population is not subject to bargaining in the process of admitting a new State to the Union, since "Congressional approval, however well-considered, could hardly validate an unconstitutional state legislature apportionment." Reynolds v. Sims, 377 U.S. 533, 582 (1964).

The Court in Reynolds distinguished the federal situation as embodied in the U.S. Congress by asserting that this plan was "conceived out of compromise and concession, indispensable to the establishment of our

federal republic" and arose "from unique historical circumstances." 377 U.S. 533, 574. The Court thus spoke in the context of the formation of the republic; no such compelling reasons attach to the situations which exist within the various States. The Court also justified the Federal Plan by pointing to the relationship between the States and the Federal Government. The Court reasoned that, since States are not merely "convenient agencies" for exercising governmental powers of the national government, as political subdivisions of the State are for exercising State governmental powers, there was little need for apportioning the national legislature according to population.

With respect to the federal analogy, it is important to note that the 1964 decision in Reynolds remains as the basic, definitive statement by the Court on this issue. Indeed, the issue has not arisen since that time because of the unequivocal nature of the Court's rejection of the argument. The cases since Reynolds have left the federal analogy argument behind; in retrospect, it appears at once to be the strongest and yet the least sophisticated of the arguments used to circumvent reapportionment. At any rate, if the assertion is made that the equal protection clause of the Constitution will apply in the Marianas as in a State, the federal analogy argument will not be useful.

2) The people of the Marianas desire a malapportioned national legislature.

This argument has been specifically met by the Court in Lucas v. Forty-Fourth General Assembly of Colorado, 377 U.S. 713 (1964). In that case an amendment to the Colorado Constitution which provided for the malapportionment of one house of the state legislature had been approved by a majority of the voters in a statewide general election. Indeed, a majority of the voters in every county of the State voted in favor of the amendment. The Court rejected this fact of popular will by stating that

> "an individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause . . . A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." 377 U.S. 713, 736-737.

Thus, Lucas settles the issue over whether the electorate of a jurisdiction can opt for a malapportioned legislature; the Equal Protection Clause takes precedence over the popular will.

3) The individual islands of the Marianas represent political subdivisions within the meaning of Reynolds v. Sims.

The Court in Reynolds recognized that some deviations from the equal-population principle are constitutionally permissible "so long as the divergences from a

strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy." 377 U.S. 533, 579. The Court singled out political subdivisions for special treatment when it stated that

> "a consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivision, as political subdivisions." 377 U.S. 533, 580.

It is crucial to note, however, that considerations relating to political subdivisions must still operate within the context of substantially equal districts. The Court made it clear that "permitting deviations from population-based representation does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population." 377 U.S. 533, 581.

The issue of political subdivisions serves to illuminate a most basic issue in reapportionment litigation. This issue concerns the relative weight to be given to the competing concepts of majority rule and territorial representation. Of course, the reapportionment cases in general support the majority rule concept; however, the Court's mention of political subdivisions thrusts the territorial issue into the debate as a legitimate competing force. As might be expected, many litigants have used the

political subdivisions argument in an attempt to justify deviations in population among voting districts. The point which is of importance for this analysis is the accommodation which the Court has worked out between the concepts of majority rule and territorial representation.

The accommodation, although not explicitly announced, has apparently been worked out in a series of three cases. The first, Swann v. Adams, 385 U.S. 440 (1967), involved districts which had a maximum deviation of 26%. The Court disallowed this deviation as being too large. The second case, Abate v. Mundt, 403 U.S. 182 (1971), involved a maximum deviation among districts of 11.9%, and was upheld by the Court. The third, Mahan v. Howell, 410 U.S. 315 (1973), involved a maximum deviation of 16.4%. This 16.4% deviation was upheld, with the Court, through Mr. Justice Rehnquist, stating that this deviation "may well approach tolerable limits." 410 U.S. 315, 329. The Court in Mahan did not, however, indicate that it will disturb what it refers to as "the most stringent mathematical standard heretofore imposed," the Swann disallowance of a 26% maximum deviation. It must be noted that the deviations in Abate and Mahan were upheld because of the legitimate State policies concerning political subdivisions. Thus, it would not be too presumptuous to conclude that, as between majority rule

(equal size districts) and territorial representation, emphasis can properly be put on the latter until the maximum deviation exceeds 16% and approaches 26%.

Given the relative populations of the islands in the Marianas group (Saipan at 12,000, Rota at 2,000, and Tinian at 1,000), the political subdivisions exception could not be used to justify malapportionment since population is not the controlling consideration. For the Marianas to argue this point would be to ask that the Supreme Court's interpretation of the importance of territorial representation be expanded beyond recognition.

4) The individual islands of the Marianas represent natural boundary lines which should not be violated.

The use of natural or historical boundary lines was recognized in Reynolds as a justification for some population deviations. Again, however, population must be the controlling consideration. For the same reasons as stated above in #3, this argument also fails.

5) By giving each island the same representation in one or both houses of the national legislature, a "fair political balance" as sanctioned in Gaffney v. Cummings can be realized.

This argument rests on the idea that it is constitutionally permissible to insure that various segments of the population, or various political parties, are repre-

sented in the legislature by use of the technique of apportionment. Critics of this technique refer to it as "gerrymandering" while proponents refer to it as the establishment of a "fair political balance." The Supreme Court in Gaffney v. Cummings, 412 U.S. 735 (1973), endorsed a "political fairness" approach to reapportionment which deserves close examination to see if there is any support for a malapportioned national legislature in the Marianas. In Gaffney a reapportionment plan was devised which had a maximum deviation of 7.83%. In developing this plan, principal weight was given to a partisan balancing of strength between the Democratic and Republican parties. District lines were drawn to give each party a certain number of "safe" seats (based on recent statewide election data) and a certain number of "swing" seats were created. In sanctioning this approach, the Court stated that

> "neither we nor the district courts have a constitutional warrant to invalidate a state plan, otherwise within tolerable population limits, because it undertakes, not to minimize or eliminate the political strength of any group or party, but to recognize it and, through districting, provide a rough sort of proportional representation in the legislative halls of the State." 412 U.S. 735, 754.

A key point with respect to this decision is that the political fairness approach takes place within the context of acceptable

population deviations; in other words, the Court in Gaffney must have concluded that a 7.83% deviation did not remove population as the controlling consideration. It must be pointed out that a reapportionment plan which provides for exactly equal districts can still fail to pass the test of constitutionality under the Equal Protection Clause if it is somehow invidiously discriminatory. Thus, a two-step analysis is in order: 1) is the plan acceptable with respect to population? and 2) are the nonquantitative aspects of the plan acceptable under a more traditional Equal Protection analysis? In Gaffney the Court answered both of these questions affirmatively.

Of what relevance is this case to the situation in the Marianas? Its importance lies in the fact that it is the first time in which the Supreme Court has faced what is, in effect, gerrymandering in the context of reapportionment. The Court has faced the issue of when and to what extent it is permissible to manipulate the creation of legislative seats. A plan must first pass the test of population equality, however, before it can manipulate legislative seats in the manner of Gaffney or by using a similar technique. The Marianas, if it were treated as a state, could not rely on the Court's reasoning in Gaffney because of the population disparities in the Marianas.

B. Local Units of Government

The reapportionment mandate as developed from Reynolds was extended to local governments in 1968 in Avery v. Midland County, 390 U.S. 474. It is assumed that the same factors which play a part in the state legislative apportionments also apply to the apportionment of local units of government. That is, the same accommodation between territorial representation and majority rule (see above) that has been worked out by the Court applies, as does the political fairness approach sanctioned in Gaffney. Thus, if the Equal Protection Clause were to apply in the Marianas as in a State, there is no doubt that the general-purpose local units of government would have to be apportioned according to population.

C. The Public Land Corporation

In addition to the extension of the reapportionment mandate to general-purpose units of local government, the mandate has also been extended to units of local government with more specialized purposes and powers. For example, in Hadley v. Junior College District, 397 U.S. 50 (1970), it was held that the election of trustees for a junior college district must conform to the one person, one vote rule. This development in reapportionment law raises the question of whether the membership of the proposed Public

Land Corporation ("PLC") must be apportioned according to populating. The analysis of this question will be divided into three overlapping sections: 1) a brief description of the relevant characteristics of the proposed PLC; 2) a description of the analytical framework developed by the Supreme Court for dealing with specialized units of local government; and 3) a conclusion as to the application of the reapportionment mandate to the PLC.

The PLC would be a private, non-profit, membership corporation for the purpose of receiving and administering the public lands of the Marianas Islands. The public land in question is distributed among the islands in the following manner: Saipan, 16,650 acres; Tinian, 15,800 acres; Rota, 16,730 acres. As can be seen, each island has essentially the same amount of public land to contribute to the PLC. While the number of acres on each island is about the same, the amount of public land does vary as a percentage of the total land on each island. Specifically, the public land on Saipan is 54.8% of the total land on that island; on Tinian, 60.4% of the total land; and on Rota, 79.5% of the total land. These figures are indicative of the relative impact which the establishment of the PLC will have on the three islands. These percentage figures must, in turn, be viewed in relation to the population of each island; the

population varies inversely to the percentage of total land which is public land.

The two most significant characteristics of the PLC for the purposes of this analysis concern its membership and its power to distribute excess revenues. There will be no election held solely for the purpose of selecting the PLC membership; the members will be the elected officials of the Marianas Islands. A rough approximation of the membership is as follows: 27 from Saipan, 14 from Rota, and 9 from Tinian. The members will, in turn, elect the board of directors. The most significant characteristic of the membership of the PLC is the fact that the members are appointed to their positions by virtue of their election to some other post in the governmental structure of the Marianas Islands.

The power to dispose of excess revenues is an important power to be granted to the PLC. In Attachment "A" of "A Proposal for a Private Corporation to Receive and Administer the Public Lands of the Marianas Islands," it is stated that the PLC

> "could provide an ideal vehicle for making essentially governmental decisions as to the allocation of any profits in the interest of the citizens of the Marianas. Or it could be required to take directions, with respect to the allocation of profits, from some other independent democratic institution which lacks the resources to deal effectively with the public problems of the Marianas--such as the District Legislature." (page 17).

In the proposed Articles of Incorporation it appears that the disposition of funds by the PLC will be under the direction and guidance of the District Legislature (paragraph #5, page 5, and Paragraph #12, page 6). Thus, the PLC will not have an independent hand in disbursing funds which are collected during the course of its operation.

Analytical Framework

Since there will be no election held for the purpose of selecting the membership of the PLC, the first issue to be faced is the relevancy of the reapportionment mandate to appointive bodies. This issue was faced by the Supreme Court in Sailors v. Board of Education, 387 U.S. 105 (1967). In this case the selection of a county school board was at issue. The residents of a particular locality elected the local school boards, and this election was not at issue in the case. The contested issue in the case concerned the county school board which was chosen by delegates from the local school boards. This system gave one vote to every local school board, regardless of population, in the selection of the county board. The plaintiff contended that this system of electing the county board violated the reapportionment mandate.

The Court rejected the plaintiff's contention in an opinion by Mr. Justice Douglas. The Court stated that

> we find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election. 387 U.S. 105, 108.

Later in the opinion the Court stated that, "as respects nonlegislative officers, a State can appoint local officials or elect them or combine the elective and appointive systems as was done here." (emphasis added) 387 U.S. 105, 111. The only constitutional question which might arise in an appointive situation such as this concerns other federally protected rights; the appointive process cannot run afoul of other provisions of the Constitution.

With respect to the situation in the Marianas, the key inquiry which comes from the Sailors case concerns whether or not the PLC is a nonlegislative agency or unit of government which need not elect its officials. As the Court stated,

> we need not decide at the present time whether a State may constitute a local legislative body through the appointive rather than the elective process. . . We do not have that question here, as the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense. 387 U.S. 105, 110.

Among the functions performed by the County Board of Education were:

1) the appointment of a county superintendent.

2) the levy of taxes.

3) the distribution of delinquent taxes.

4) the power to transfer schools from one district to another.

The question as to what constitutes a nonlegislative local unit of government has not been worked out in subsequent Supreme Court cases; Sailors remains as the basic statement and serves as the standard on this issue. When the functions of the PLC are compared with those of the County Board of Education in Sailors, they appear even more nonlegislative than those of the County Board. This is particularly true given the oversight function of the District Legislature over the PLC's function which is closest to a legislative function -- the disbursement of public funds. It can be stated with some confidence that the functions of the PLC are not "legislative in the classical sense." From this conclusion flows the further conclusion that an election is not required for the purpose of selecting the membership of the PLC. As the Court in Sailors stated, "Since the choice of members . . . [does] not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy." 387 U.S. 105, 111. This statement can appropriately be applied to the PLC.

Subsequent reapportionment cases have addressed the issue of the relevancy of an election to reapportionment. In Hadley v. Junior College District, 397 U.S. 50 (1970), the Court stated that

> as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election. 397 U.S. 50, 56.

The Court made it clear that the decision to hold an election is a prerequisite to the application of the reapportionment cases; the Court strongly implied that this decision rests with the particular State or locality. While not adding anything to the Sailors formulation as to when an election might be required, the Court in Hadley emphasized time and again that the use of the electoral process was the threshold requirement and major triggering factor in the application of the reapportionment mandate. Indeed, the functions performed by the junior college trustees in Hadley do not differ materially from the functions performed by the County School Board members in Sailors. A crucial distinction is that, in Hadley, the State had made the decision to choose the trustees by popular vote. Hadley is illustrative of the other cases in this area of reapportionment law in that it

presupposes an election before there is any consideration of reapportionment. Given this fact, the following line of reasoning can be applied to the PLC:

1) There must be an election before the reapportionment mandate applies.

2) The Sailors case is the basic statement as to when an election is required.

3) The PLC need not hold an election under the Sailors standard.

4) Therefore, reapportionment is not relevant to the PLC situation.

Section II

As has been seen in Section I, the national legislature would be subject to the reapportionment mandate if the Equal Protection Clause were to apply in the Marianas as if the Marianas were a State. The underlined section of preceding sentence is critical to the analysis; the conclusion derived in Section I is dependent on the premise that the Marianas is to be treated just as another State. (This is the major theme of the literature in the FILE.) In seeking to justify an exception for the national legislature, emphasis must be placed on the ways in which the Marianas differs from a State. By attacking the major premise of Section I, a different result can be justified; that is, a convincing distinction of the Marianas situation will make

an exception seem reasonable in light of the fact that all State governments must abide by the reapportionment mandate. Once it has been concluded that the Marianas are substantially different from a State, several justifications, both old and new, can be offered to support an exemption. It must be remembered that these justifications are in the form of policy arguments geared to the special situation in the Marianas; they will not stand a strict legal analysis in a judicial forum. There are three major reasons for concluding that the Marianas situation is substantially different from that of a State:

1) The theoretical link between the Marianas and the federal government of the U.S. is quite different from the link between a State and the federal government. The difference is summed up by the word "commonwealth"; the Marianas are not a State, but rather a separate political entity which desires a close relationship with the United States. While it may be helpful to analogize the Marianas situation to that of a State for some purposes (see other memos on constitutional questions) it is not wise to do so when dealing with the vital issue of the internal governmental structure of the Marianas. The legislature in

question in the Marianas is not a State legislature; it is a national legislature which will have concerns above and beyond those of an ordinary state legislature. The national legislature of the Marianas will have responsibility for expressing the views of an entire people as they relate to the world. Also, the citizens of the Marianas will not have the same opportunity to influence the policies of the national government as do citizens of the States. This important fact highlights the basic theoretical difference between the situation in the Marianas and the situation in a State. The Marianas have responsibilities broader than those of a State and, at the same time, exercise much less influence on national policy in the U.S.

2) Not only is the theoretical link different, but the practical link between the Marianas and the federal government of the U.S. is quite different. The Marianas government will not participate in the whole range of federal programs designed to aid the States and localities of the United States. Other examples could be cited, but the main point to be made is that

the responsibility of the federal government toward the Marianas will not be the same as in a State.

3) The geography of the Marianas plays the major role in the desire to have a malapportioned legislature. This markedly different geographic situation in the Marianas is a powerful distinguishing factor. After all, the Marianas are a divided entiry, and merely wish to confirm this unalterable geographic fact in the composition of their national legislature. The reasons for submerging the concept of territorial representation in favor of the concept of majority rule are not persuasive in the Marianas. Certainly there is little chance that these natural boundaries will be used to gerrymander or otherwise distort the political structure out of recognizeable shape. Of course, there is one situation in the U.S. which is somewhat analogous -- Hawaii. However, when this fact of geography is combined with the theoretical and practical differences previously discussed, the Marianas situation can be seen as sufficiently different to justify different requirements under the reapportionment cases.

The need to distinguish the situation in the Marianas from that in a State is absolutely necessary in order to proceed to a presentation of substantive justifications for an exception. It must be kept in mind that the three reasons given above for distinguishing the Marianas case do not, in themselves, serve to justify an exception for the national legislature. Rather, the three reasons serve the purpose of providing a different context within which to discuss the possibility of an exception. If the Marianas can be viewed as something other than a State, old ideas take on new strength and new ideas gain credibility. It is within this new context that the following three justifications are offered.

The first and major justification for granting an exception to the national legislature is the fact that that the reapportionment cases are written from a distinctly American perspective. There are constant references in the cases to "our form of government." The Supreme Court has determined that emphasis must be placed on the concept of majority rule; this judgment was based on a wealth of detail drawn from the American heritage. This is a particular conception of democracy, and it can be argued strongly that it need not be transferred to the Marianas. There is no compelling reason for the U.S. to force the Marianas to

accept majority rule as the guiding precept of its political system. The concept of territorial representation has not been repudiated by the Court, but rather submerged in favor of an emphasis on majority rule. Certainly, the democratic concept will not be significantly harmed by an emphasis on territorial representation in the Marianas. This is particularly true in light of a major theme of the negotiations between the U.S. and the Marianas -- maximum self government for the Marianas. This theme demands, at the very least, that the Marianas be given certain leeway in organizing the internal governmental structure and determining the tenets and precept of a guiding political philosophy. The Supreme Court, in the reapportionment cases, has essentially been engaged in a choice among competing theories of representation. Maximum self government implies, at the very least, that the Marianas be given the choice as to whether to emphasize the concept of territorial representation or majority rule. If the Marianas so decide, democracy can certainly remain intact. Such a decision should not foreclose a close political association with the U.S. By giving the Marianas this limited choice as to representational theory, maximum self government will be served in the context of two very similar, yet slightly different, democratic systems which enjoy close political ties.

The second justification is related to and flows from the first. Since the Marianas is a different political

system, the role of the popular will can be viewed in a different context. That is, the view which was rejected in Lucas v. Colorado, 377 U.S. 713 (1964), has validity when the Marianas are seen as a political entity which differs from a State and which deserves to make its own decisions as to political philosophy. What better way is there to make decisions in a democracy than by the vote of the popular will. If this view is accepted, the issue can be cast in more favorable terms. Rather than asking the question, do the people of the Marianas deserve a malapportioned legislature?, the question can be posed as, do the poeple of the Marianas wish to recognize the natural boundaries represented by the islands and to emphasize the concept of territorial representation in their political system? In this way, the legislature is not seen as malapportioned, but rather as a natural outgrowth of legitimate democratic choices which the people of the Marianas have sanctioned while exercising maximum self government. Given this viewpoint, Lucas is simply not relevant to the Marianas situation.

Although the federal analogy argument was forcefully rejected with respect to the States, the argument does have validity if the Marianas are viewed in the context outlined above. In Reynolds v. Sims, 377 U.S. 533 (1964) the Court stated that

> The system of representation in the two Houses of the Federal Congress is one ingrained in our Constitution as part of the law of the land. It is one conceived out of compromise and concession indispensible to the establishment of our federal republic. 377 U.S. 533, 574.

The key words underlined above are most relevant to the situation in the Marianas. In this situation, a new political relationship is being established; whether or not the issue of a legislature which is not apportioned according to population is indispensable depends on the intensity of the feelings of the people of the Marianas. If the feelings are quite strong, the denial of the desired legislative structure may jeopardize the future relationship. And, as outlined previously, if the Marianas are given a choice, the legislative structure will become ingrained as a part of the law of the land in the Marianas. The fact that the political relationship between the Marianas and the U.S. is in the formative stage is quite important; the Supreme Court has noted that such a formative situation justified exceptions for the national government of the U.S. The formative situation is being repeated here and, since the Marianas is not like a State in this situation, the federal analogy argument is relevant to the situation and serves as a credible precedent for justifying an exception in the Marianas case.

Conclusion

The preceding material can be viewed as cumulative in support of the idea that the Marianas should be allowed to have a legislature based primarily on the concept of territorial representation. A summary of the argument can be presented here as follows:

> Since the Marianas Islands are not a State of the Union, they deserve special treatment in the area of reapportionment because the reapportionment doctrine represents a choice among competing theories which should be left to the popular will of the people of the Marianas during the formative stage of the political relationship with the United States.

And, to conclude finally, the narrow choice which should be left to the Marianas concerning representational theory guarantees that the decision will differ in degree and emphasis but not in kind with the basic concept of democracy. A decision to emphasize territorial representation cannot so distort the Marianas government that it will not be compatible with the United States in the close relationship which is envisioned. It is not inconsistent to conclude that the States must emphasize majority rule while the Marianas may emphasize territorial representation; different situations and questions call for different responses and answers. Again, this issue should be viewed as a matter of emphasis and not as a choice between democratic and nondemocratic principles.

Steve Lawrence