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MEMORANDUM FOR THE
ADVISORY COMMISSION ON POLITICAL EDUCATION

Subject: Approval of the Northern Marianas Constitution

During the past few weeks we have had several meetings, including some with visitors from Saipan, regarding the referendum on the Constitution currently scheduled for March 6, 1977. We are aware that the Advisory Commission is undertaking a wide range of activities designed to inform the Northern Marianas people regarding the Constitution. We thought it might be useful to summarize our views with respect to the approval of the Constitution for whatever use the Commission may wish to make of them. Needless to say, we are not disinterested or impartial observers; we are counsel to (and friends of) the Northern Marianas people and strong supporters of their effort to achieve the full benefits of a self-governing commonwealth within the United States.

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We think five important points should be emphasized in connection with the evaluation of the Constitution by the voters of the Northern Marianas:

- 1) Eventual approval of the Constitution by the United States requires a large favorable vote in the referendum;
- 2) Any delay in approval of the Constitution will adversely affect the Northern Marianas;
- 3) Another Constitutional Convention would not necessarily produce a "better" Constitution;
- 4) Disagreement with a few specific provisions in the Constitution does not justify disapproval of the entire document; and
- 5) The amendment process available under the Constitution provides the necessary flexibility to improve the Constitution in light of actual experience.

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- 1) Eventual Approval of the Constitution by the United States Requires a Large Favorable Vote in the Referendum.

It is important to obtain a large turnout of eligible voters on March 6 and approval of the Constitution by more than the 60% required by the enabling legislation. The degree

of popular support evidenced for the new Constitution will undoubtedly influence the readiness of the United States to approve the Constitution promptly. ^{*/}

In order to accomplish this result, it seems essential to consider the Constitution on a non-partisan basis. The aggressive support of both political parties in the Northern Marianas is required to demonstrate convincingly to the United States that the Northern Marianas people as a whole are prepared to accept the new Constitution. It is important that both parties support the Constitution without qualification and use their best "grass roots" campaigning techniques to secure a large turnout of voters, just as they did in connection with approval of the Covenant in 1975.

2) Any Delay in Approval of the Constitution Will Adversely Affect the Northern Marianas.

Approval of the Constitution is an important decision which deserves the most careful consideration by

*/ As a matter of historical interest, several years ago the Virgin Islands prepared a draft Constitution and a revision of their Federal Relations Act in an effort to improve their political status. Because of political differences, however, the new Constitution and Federal Relations Act were endorsed by only about 55% of the voters. As a result of this lukewarm endorsement, the political leadership in the Virgin Islands apparently decided not to press forward in the United States Congress with efforts to improve the political arrangements applicable to the Virgin Islands, probably because such efforts were judged likely to be unsuccessful.

every voter. If the Constitution is not approved on March 6, it will result in a delay of one year or more before another document could be presented to the people. Such a delay could have adverse political and economic consequences that should be carefully evaluated by the people before casting their votes.

With respect to the political consequences, the delay resulting from rejection of the Constitution will deny the Northern Marianas people the benefits of the new political status defined in the Covenant. Failure to approve the Constitution on March 6 will interrupt the momentum of the past few years in moving the Northern Marianas out from under the Trusteeship Agreement to the status of a self-governing Commonwealth. Delay would mean additional months or years of administration under the present form of government with all of its deficiencies. It would suggest to some officials within the United States that the Northern Marianas people are uncertain about their change in status or, even worse, may be incapable of assuming the responsibilities involved in the new Commonwealth. Prompt approval, on the other hand, will enable the new government to be elected this coming fall and installed in January 1978 on the schedule originally contemplated by both the United States and the Northern Marianas.

If the Constitution is not approved, the funds and other resources available to the Northern Marianas in the next few years will be seriously restricted. The provisions of the Covenant providing for federal programs and direct grants from the United States do not become applicable until a new government of the Northern Marianas is organized pursuant to an approved Constitution. Until there is such a new constitutional government, the Northern Marianas legislature will be unable to exercise the kind of control over the expenditure of public funds that is indispensable to meaningful self-government. In addition, the delay resulting from disapproval of the Constitution will mean that the economic, social and physical planning efforts now being carried out by the Office of Transition Studies and Planning cannot be implemented promptly. These plans are scheduled to be completed in the summer or fall of 1977 so that they can be implemented at the beginning of the new constitutional government. In other words, delay of a year or more may be very costly indeed.

3) Another Constitutional Convention
Would Not Necessarily Produce a
"Better" Constitution.

Some of those who oppose the Constitution may assume that another Constitutional Convention could be

convened promptly which would produce a draft more to their liking. This is, of course, a possibility. However, there are several complicating factors which should be evaluated before concluding that another Constitution could be produced easily.

First, the task of convening another Convention is not as simple as it may appear. It would require enabling legislation and raise, in that connection, many familiar problems regarding the size of the Convention, the number of delegates from each of the three major islands, and the procedural rules under which the Convention must function. A substantial period of time would be required to elect delegates to the Convention and prepare the necessary materials. Even assuming that professional services were not required for a new Convention, a substantial amount of money would be required for salaries, making copies of the necessary papers, and other Convention expenses.

Second, there is no guarantee whatsoever that a second Convention would produce a document that differs in any significant respect from the present draft. As each delegate to the Convention knows, the Constitution embodies many compromises that bridge the differing views of the political parties, ethnic groups, islands and other interests represented at the Convention. Many of these compromises

are interrelated. If the Constitution is rejected by the people, a new Convention would necessarily have to begin all over again; it would be virtually impossible to limit the Convention to a few "controversial" issues. The basic questions would remain the same: the division of responsibility among the three branches of government, the allocation of legislative powers between the two houses of a bicameral legislature, the number and identity of executive agencies, the extent of local government, the recognition of separate island interests, economy in government operations, executive and legislative salaries, the nature of the local court system, the implementation of the land alienation provision of the Covenant, the protection of public lands, and the personal rights to be guaranteed the people of the Commonwealth. None of these are easy issues. The Constitution to be put before the people on March 6 reflects the best judgment of 39 hard-working, thoughtful, elected delegates. There is no reason to believe that another election for delegates would eliminate many of the differing views on the problems of governing the Northern Marianas or that another Convention could do a better job.

Third, any new Convention must confront the same political problem now being faced -- that is, the need to draft a document which can be approved overwhelmingly by

the people. Such a Constitution cannot be produced on a partisan basis. The Constitution now before the people was signed by 33 delegates representing every major political geographical and ethnic grouping in the Northern Marianas. The recent history of Constitutional revision efforts within the United States demonstrates that such undertakings inevitably fail unless the leadership of all major political parties unite in urging the voters to support the Convention's work. In the Northern Marianas there is the additional problem of insuring that the Constitution is fair -- and appears to be fair -- to all the residents of the Commonwealth regardless of where they live. It is simply not possible for any single political party or island delegation in the Northern Marianas to produce a Constitution which will be accepted by all segments of the population to the extent required to obtain United States approval.

4) Disagreement with a Few Specific Provisions in the Constitution Does Not Justify Disapproval of the Entire Document.

It is to be expected that not everyone can honestly support each and every provision of the Constitution. The 39 Convention delegates held a wide range of views on most issues and the Constitution reflects the Convention's effort

to compromise these different positions. It would be most unfortunate if the people who disapprove of a few provisions in the Constitution decide to oppose its ratification or to remain neutral in the referendum.

The experience of the United States during the past 15 years is instructive. Several of the major constitutional revision efforts in individual states have been unsuccessful. One experience common to these states is the ease with which opposition to a proposed Constitution can build upon the dissatisfaction of small minorities with respect to different provisions in the Constitution. In the Northern Marianas situation, for example, there are probably those who oppose the fixing of legislative salaries in the Constitution, those who favor the fixing of legislative salaries but believe the specific amount is too low, those who oppose the creation of an Executive Assistant for Carolinian Affairs, those who believe too much authority is given to the residents of Tinian and Rota, and those who believe too little authority is given to these two islands. If persons who subscribe to one of these positions elect to combine their forces in opposition to the entire Constitution, it will be very difficult to muster the necessary substantial endorsement of the Constitution in the March 6 referendum.

It is important that the political leaders and voters in the Northern Marianas evaluate the proposed Constitution on an overall basis. The proper question to be addressed is this: Does this Constitution provide a fair, practical and economical legal foundation for the organization and initial operation of the new Commonwealth government? If the answer to this question is yes, then the Constitution should be supported vigorously even though there may be room for specific improvement in the future. Again there is persuasive historical precedent: ratification of the United States Constitution in 1789 was accomplished only by the commitment to add to the Constitution after its ratification the first ten amendments known collectively as the Bill of Rights.

5) The Amendment Process Available under the Constitution Provides the Necessary Flexibility to Improve the Constitution in Light of Actual Experience.

It is probably useful to postpone consideration of any amendments to the Constitution until it has been in operation for some period of time. Nevertheless, the provisions of the Constitution outlining the amendment process should provide reassurance to those voters who support the Constitution but believe that it can be improved in some important respect.

Under Article XVIII of the Constitution there are three straightforward means by which the Constitution may be amended. First, the legislature by action of three-fourths of the members of each house present and voting may place a proposed amendment before the voters. Second, 50% of the qualified voters in the Commonwealth and at least 25% of those in each Senatorial district may also put a proposed amendment on the ballot. Third, amendments may be proposed by a Constitutional Convention convened by the legislature if two-thirds of the voters so desire.

These amendment procedures afford full opportunity to modify the Constitution to reflect changed conditions and evolving views within the Northern Mariana Islands. Since the Covenant imposes very few limitations on the specific provisions of the Constitution, the Northern Marianas are free in the future to amend their Constitution as seems appropriate and to do so without any necessity of approval by the United States. This fundamental safeguard should be emphasized in the political education campaign. No Constitution can anticipate all the problems that may develop in a new government or necessarily reach the wisest accommodation among strongly held divergent views. The effective implementation of the new Constitution will require the

complete support of all segments of the Northern Marianas community. Only through actual experience can a fair judgment be made regarding the sufficiency of the specific provisions which are now the subject of some controversy. If reservations about specific provisions can be put aside until the Constitution is approved by the people and the United States, there will be ample opportunity in the future to re-examine these provisions in light of actual experience and changing political sentiments in the Northern Mariana Islands.

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