

March 14, 1977
DRAFT/HPW

02
2

Northern Marianas Constitution
Research Memorandum No. 1

Subject: Restrictions on Land Alienation

Article XII of the Northern Marianas Constitution restricts the sale on long-term leasing of land in the islands to persons of "Northern Marianas ancestry." The constitutionality of this provision and the corresponding provision of the Covenant (§ 805) has been questioned under the Fourteenth Amendment's equal protection clause and on other theories. We need a memorandum providing the best possible defense of this provision, including an analysis of any recent equal protection decisions which may support our position.

We have these suggestions for starters:

- 1) A memo was prepared by the Department of Justice in 1972-73 opining that such restrictions will be constitutional based on certain Hawaiian, Alaskan and Indian precedents -- none of which were very compellingly discussed. Mr. Weisburd may be able to locate a copy of this memo.
- 2) Briefing Paper No. 12 gives some background and some indication of theories on which this provision may be attacked.

17792

3) The Analysis of the Constitution (pp. 174-187) gives further explanation of the provisions and presents justification for the decisions reflected in Article XII.

4) The report of the Convention Committee which accompanied the draft constitutional provision should also be reviewed. This can be found under Tabs 2-3 in Volume III of the Convention documents.

5) There have been some recent cases involving Indians that may be helpful. See, e.g. the recent law review article in the January 1977 issue of the Harvard Law Review.

HPW
DCS

March 14, 1977
DRAFT/HPW

Northern Marianas Constitution
Research Memorandum No. 2

Subject: Composition of Senate

Article II, Section 2, of the Constitution specifies composition of the Senate in a way which gives equal representation to three separate islands despite their significant differences in population. This provision was required by Section 203(c) of the Covenant, approved by the Northern Marianas people and Congress and signed into law on March 24, 1976. We expect a challenge under the one-woman/one-vote interpretation of the equal protection clause and need a memorandum setting forth the best Constitutional defense of this provision. You will want to begin your research by looking at our section-by-section analysis of the Covenant and the Report of the Joint Drafting Committee, both printed in the bound legislative history of the Covenant; and the Analysis of the Constitution (at pp. 32-37) for a brief discussion of the issue. The most critical cases, of course, are those applying the one-man/one-vote rule to State upper houses but refusing to do so with respect to the U.S. Senate. It was and is our view that the latter precedent is the three major islands in the Northern Marianas and the pre-constitutional nature of their decision to join together through the Covenant in a single political entity under U.S. sovereignty.

HPW
DCS

17794

March 14, 1977
DRAFT/HPW

Northern Marianas Constitution
Research Memorandum No. 3

Subject: Departures From Strict Majority Rule to Protect
Separate Island Interests

The amendment provision of the Constitution (Article XVIII) requires that two thirds of the voters or two of the three major islands in the Northern Marianas, as well as a majority of the entire voting population of the Northern Marianas, must approve an amendment for it to become effective. We need a memorandum defending this arrangement against a possible challenge under the equal protection clause of the Fourteenth Amendment. The recent Supreme Court decision in Lockport v. Citizens for Community Action, 45 U.S.L.W. 4255 (March 8, 1977), should provide a starting point.

HPW
DCS

March 14, 1977
HPW/Draft

Northern Marianas Constitution
Research Memorandum No. 4

Subject: Residency Requirements for Elected Officials

The Constitution establishes residency requirements for members of the legislature and the governor and lieutenant governor. The longest such period is the seven years required for the governor under Section 2 of Article III. A memorandum presenting our views on such requirements was submitted to the Convention and is collected under Tab 22 in Volume 3 of the Convention documents. The Analysis of the Constitution also has a brief discussion (at pp. 71-72) of this requirement. We would like an updated and expanded memo on this subject in anticipation of a constitutional challenge to this durational residency requirement.

HPW
DCS

17796

March 14, 1977
DRAFT/HPW

Northern Marianas Constitution
Research Memorandum No. 5

Subject: Executive Assistant for Carolinian Affairs

Section 18 of Article III provides for the appointment by the governor of an executive assistant for Carolinian affairs. The Carolinians are the ethnic minority in the Northern Marianas, consisting of approximately 3,500 - 4,000 of the 15,000 population. The person does not have to be a Carolinian but he or she does have to be "acceptable to the Carolinian community." We would like a memo exploring whether any equal protection questions are raised by the creation of such a position in the Constitution or by the functions assigned to the position. The provision is discussed in the Analysis at pp. 100-03. We would like to defend this as an appropriate and constitutional mechanism for recognizing minority concerns without interfering with any rights of the majority (cf. Bakke).

HPW
DCS

17797

March 14, 1977
DRAFT/HPW

Northern Marianas Constitution
Research Memorandum No. 6

Subject: Districting for Election to the Lower House

The Northern Marianas Constitution establishes a lower house with 14 members -- 12 from Saipan and the Northern Islands, one from Rota and one from Tinian. The population for the three islands is as follows: Saipan (14,653), Rota (1,160), Tinian (750). The resulting deviations are larger than those permitted by the Federal courts in applying the one-woman/one-vote rule, as discussed in Briefing Paper No. 3 at pp. 47. The problem was looked at by Mr. Weisburd and is discussed in the Analysis to the Constitution at pp. 37-40. We would like a memorandum defending the constitutionality of this system of representation. The decision to keep the legislature small in order to reduce the costs was one of the most controversial decisions at the Convention and precipitated a walkout by Tinian and Rota delegates. The Convention also believed that Rota and Tinian should have their own representative rather than share a representative with another island.

HPW
DCS

17798