

October 12, 1976

REPORT TO THE SENATE
COMMITTEE ON FINANCE, GOVERNMENT AND
OTHER MATTERS

Subject: Committee Recommendation Number 1:
Constitutional Amendment

The Committee recommends that the Convention sitting as a Committee of the Whole adopt in principle the attached constitutional provisions with respect to amendment of the constitution.

The Committee has carefully considered how best to propose and approve changes in the constitution of the Commonwealth of the Northern Mariana Islands. It believes that the principle of a constitution as a fundamental document for the government of the Northern Mariana Islands will be protected, while recognizing the need for flexibility by authorizing three alternative methods of proposing changes, all subject to ratification by the people.

The Committee's proposed article contains five sections. The first section introduces the three alternative methods of constitutional revision. The next three deal with these alternative methods for proposing constitutional amendments or revisions; the fifth deals with ratification.

The second section of the proposed article establishes a method for authorizing future constitutional conventions. This would be done by proposals for a call

for a constitutional convention initiated either by the legislature or by voter petition. In both instances approval of the call by the voters at a regular general election would be required. The legislature would be mandated to propose a call for a constitutional convention within seven years after ratification of the constitution; thereafter it would have the discretion to propose a call. Majority votes in each house would be required for such proposals. In addition, a petition signed by three-fourths of the registered voters of one of the three municipalities (Rota, Saipan or Tinian) also would initiate a call for a constitutional convention. A vote of two-thirds of the registered voters of the Commonwealth would be required to approve the call for a constitutional convention. Proposals for a call for a constitutional convention would not be subject to gubernatorial veto.

The number of delegates to the constitutional convention would be equal to the number of members of the most populous house of the legislature. Delegates would be elected. (The Committee deferred temporarily the method of election in order to be consonant with the methods for election of the legislature.) Elections would be nonpartisan.

The third section authorizes the legislature to propose constitutional amendments. Either house could initiate an amendment, which must be passed by both houses and voting. Each proposed constitutional amendment could

embrace only one article of the constitution.

The fourth section of the proposed article authorizes popular initiative of constitutional amendments upon petition of fifty percent of the total number of voters registered at the time of the last regular general election, including at least twenty-five percent of the registered voters from each of the three municipalities. The full text of the proposed constitutional amendment would be required to be contained in initiative petitions. Proposals under this arrangement must be initiated at least 180 days prior to a regular general election and would be submitted to the legislature for review and comment but not approval before their submission to the voters for ratification.

In the cases of both legislatively and popularly initiated constitutional amendments, gubernatorial vetoes would not be permitted.

The fifth section of the proposed article requires that any proposed amendment or revision of the constitution be submitted to the voters for their ratification at a general election. In the case of legislatively initiated amendments, a majority of the votes cast would be required for ratification. In the case of popularly initiated amendments, or amendments or revisions of the constitution proposed by a constitutional convention, a vote of two-thirds of the votes cast would be required for ratification.

The Committee's reasons for recommending these provisions are as follows:

1. Constitutional Convention. Changing conditions and experience under the new constitution of the Commonwealth may make it desirable to review this fundamental document and to make necessary adjustments. It is felt that the voters should have an opportunity to authorize a constitutional convention for this purpose within seven years after the new constitution is adopted. In addition, the legislature should be authorized to propose calls for constitutional conventions in the future; and the public itself, through the initiative arrangement, could propose such calls. The requirement for petitions by a high number of voters -- three-fourths of the registered voters of at least one municipality -- is designed to reduce the likelihood of intemperate proposals or pressures. The constitutional convention process facilitates a comprehensive review of the entire document, or major portions of it, and assures close attention to the experience under the constitution, which often cannot be done by ordinary legislative processes. Given the high costs of constitutional conventions and the time required to authorize and assemble a convention, the voters of the Northern Mariana Islands in each instance should approve calls for constitutional conventions. Delegates would be

popularly elected, as in the case of the present convention, encouraging broad public participation and interest and respect for democratic traditions.

2. Legislative Initiative. A constitutional convention typically involves a broad review of the existing constitution and is not a matter to be undertaken frequently or lightly. Based on widespread experience in fifty states and Puerto Rico, however, there is need or desire to consider specific amendments of the constitution, some of a technical nature, others relating to particular constitutional policies or protection of individual liberties. Among the fifty states, the legislature is considered the appropriate forum for proposing individual constitutional amendments. At the same time, the Committee was of the opinion that constitutional amendments should be proposed in a more deliberative way than ordinary legislation and therefore recommends that such actions be proposed only when approved by a three-fourths vote of each house, rather than by a simple majority. To facilitate voter understanding of the issues raised by the amendments, any single amendment would be limited to the subject matter contained in one article of the constitution. Thus, an amendment might deal with the executive branch or the bill of rights, but not both. (Separate amendments could be proposed.)

3. Popular Initiative. The Committee reviewed the question of whether the two aforementioned methods of proposing changes in the constitution would suffice: the use of a constitutional convention or initiative by the legislature? The Committee was particularly concerned with the possible failure of the legislature to propose needed amendments, no matter how desirable they might appear. To preserve the public's ultimate right to decide the content of its fundamental document, the Committee proposes a third method of amending the constitution: the use of an initiative arrangement involving petitions signed by a designated number of registered voters. In order to discourage frivolous proposals or ones that reflect the desires of only narrow interest groups, a substantial number of signatures would be required (fifty percent of the registered voters is proposed), as well as a significant number of signatures from each of the three municipalities (the arrangement proposed at least twenty-five percent of the registered voters for each municipality). The use of a stated number of signatures was rejected because of possible population changes.

4. Ratification. The public's ultimate right to approve constitutional amendments would be preserved, in the judgment of the Committee, by requiring that all such proposals be submitted to and approved by the voters at a

regular general election. This is designed to prevent haste consideration of proposals and to assure continued participation of the public in the constitutional process of the Commonwealth. Most states require ratification, whether involving proposals initiated by constitutional convention^{1/}, the legislature or by popular initiative. The Committee decided that a higher vote for ratification should be required of proposals under the constitutional convention and popular initiative method than in the case of legislatively initiated proposals. The legislature is the popularly elected representatives of the public and is more likely to be sensitive to the needs of the public. The range of changes that a constitutional convention might propose and the possibility that proposals upon petition of voters might reflect emotionally charged popular sentiment or tensions support the higher vote requirement in these instances (two-thirds of the votes cast rather than a simple majority for amendments that are legislatively initiated).

The Committee also reviewed and weighed many other provisions and details that might have been included in the proposed article on constitutional amendment. Highlights of these proposals and the reasons why they are not included in the proposed article follow:

1. Constitutional Commission. This is a fourth method of initiating proposals for constitutional amendment. It usually involves legislative action establishing an appointed, rather than an elected, commission. Except in Florida, the work of the constitutional commission is not submitted directly to the voters for ratification but rather to the legislature, which can decide whether or not to submit proposals for ratification. There is much to commend this arrangement: it encourages the use of high government officials or specialists in the consideration of constitutional changes. Its work is likely to be objective and scholarly. We concluded, however, that there was no necessity for a constitutional provision on the subject. The legislature, under the traditional grant of legislative power, would be enabled to establish such commission by legislative action without specific constitutional authorization. This could be mandated only if the work of the constitutional commission were to be submitted directly to the voters for ratification -- the new Florida arrangement. In the Committee's judgment, direct submission by a non-elected body is not desirable.

2. Automatic Call for a Constitutional Convention. Fourteen state constitutions mandate the question of a call for a constitutional convention on a periodic basis, between ten and twenty years. This arrangement has the principal advantage of assuring serious consideration to the desirability

of a constitutional convention. On the other hand, even the submission of a call for a convention involves costs and concentration of energies. It is our judgment that after an initial mandatory requirement (at the end of the first seven years' experience under the Northern Marianas constitution) for a call for a constitutional convention, legislative discretion is better than mandatory periodic submission of proposals for a call. The Committee also considered whether any limitation should be placed on this legislative discretion, for example, by a constitutional provision limiting the number of calls. While it is possible that the legislature might propose calls too frequently, a constitutional restriction on potential excesses was not warranted.

3. Constitutional Provision on Preparatory Commission. Many states create agencies to undertake necessary preparatory work for pending constitutional conventions. This may be highly desirable, and in fact is reflected in the work of the recent "pre Con" commission. This can be left, however, to legislative discretion and need not be mandated or authorized in the constitution.

4. Organization of Constitutional Convention. The Committee reviewed arrangements under a number of state constitutions relative to details on the organization of constitutional conventions. They involve delegate qualifications, dual office holding, dates for election of delegates, filling of vacancies, appropriations to conduct the convention

date and place for convening, and internal organization and procedure. Since conditions may change substantially over the years, most of this detail is best left to the determination of the legislature or, with the approval of the legislature when it proposes a constitutional convention, by the convention itself. In the case of popularly initiated constitutional conventions, the legislature would not be precluded from adopting legislation on necessary details to assure an orderly convention (some matters may be contained directly in the initiative petition). As noted, the Committee has proposed that the constitution specify the number of delegates and that election be non-partisan, but that most other matters need not be set forth in the constitution. Once a constitutional convention is authorized, it should be free to consider a wide range of potential revisions or amendments, subject of course to provisions of the Covenant and applicable provisions of the United States Constitution. Finally, it should be noted that while amendments to the constitution do not require formal approval of the United States Government, the federal courts would have jurisdiction under the Covenant to consider issues of federal constitutional validity. Restrictions on the scope or power of a constitutional convention was not considered warranted.

5. Second Approval by State Legislature. A number of states contain requirements that legislatively initiated constitutional amendments must be approved by two legislative sessions, with an intervening election of legislators. Some states have this type of provision plus higher voting requirements for passage of constitutional amendments. The Committee favored the higher voting requirement (a three-fourths vote in each house is proposed). It also considered second approval. However, this procedure would delay action, possibly for several years, since constitutional amendments would be submitted for voter ratification. On balance, it was the Committee's judgment that the combination of the higher vote and the ratification requirements were sufficient safeguards against untoward or dangerous constitutional amendments.

6. Effective Dates. Some state constitutions specify the number of days after voter ratification on which a constitutional amendment is effective, such as thirty days, or the first day of January after approval, etc. The proposing authority (e.g., the Constitutional convention or the legislature) can make such determination for each proposed amendment, or the amendment itself can state its effective date. A single effective date provision in the constitution could impair the value of the amendment. In some instances a longer or a shorter effective date may be

desirable. Hence, the Committee opted to omit any such provision from the constitution itself.

7. Legislative Veto. The constitutional amendment process is generally regarded as involving the ultimate approval of the voters. For this reason, the veto power of the governor usually is not authorized. While all of the reasons favoring gubernatorial veto of ordinary legislation might be applicable here, the pre-eminent consideration of preserving the public's direct control through voter ratification negated the intervention of the executive. Further, constitutions and constitutional amendments often deal with executive power and its abuses. The right of the governor to veto constitutional amendments might accentuate such abuses. For these reasons, the constitution would exclude the governor from the constitutional amendment process.

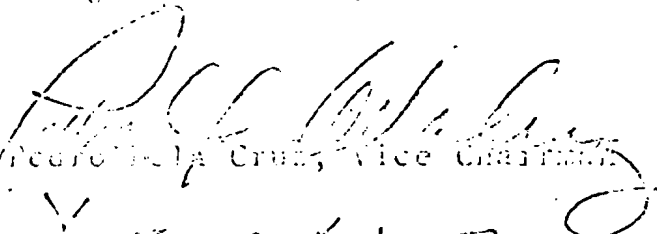
8. Choice of Alternative Methods of Amending the Constitution. The committee considered four basic alternatives for proposing constitutional amendments and chose three of them: constitutional conventions, legislative initiatives and popular initiatives. It rejected the fourth, constitutional commissions, for the reasons noted above. The Committee selected three alternatives because it concluded that different circumstances might justify such different approaches. These need not be

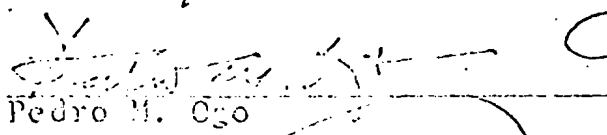
of the constitution, the constitutional convention method seems best suited. For amendments reflecting particularized concerns, legislative initiatives are a most expeditious way of proceeding. And as an ultimate means of overcoming legislative reluctance to act, the initiative authority of the public, both in proposing calls for constitutional convention and for specific constitutional amendments, is a participatory and democratic arrangement worth encouraging. Throughout the voter ratification method is preserved.

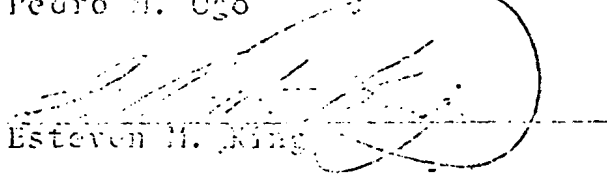
9. Special Elections to Ratify Calls and Amendments. The Committee favors voter consideration of proposals for a call for a constitutional convention and ratification of revisions or amendments to the constitution to be held on the regular general election day rather than at special elections. There is a distinct advantage to conducting such matters at a special election: it helps focus voter attention on the subject under consideration and prevent the distraction which might result from linking such a subject with the election of public officials or other referendum matters. These are important considerations but are outweighed in the Committee's judgment by the extra costs that are involved.

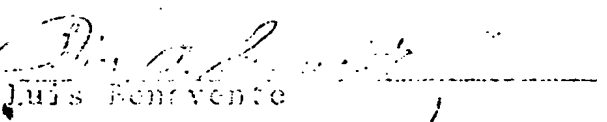
Respectfully Submitted,

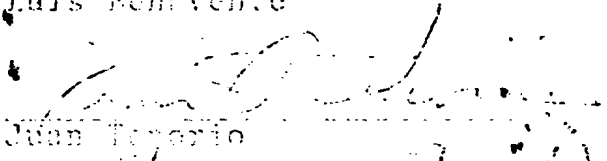
Bonifacio R. FERRER, Chairman

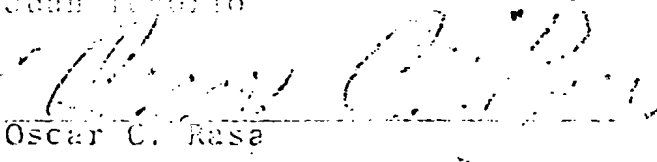

Pedro de la Cruz, Vice Chairman

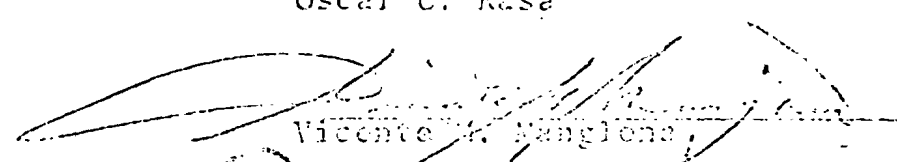

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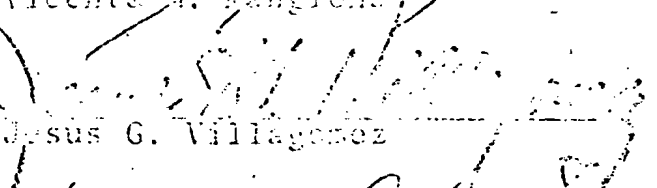

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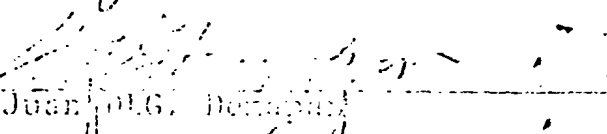

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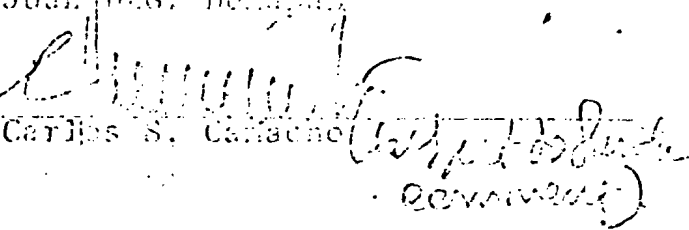

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