October 25, 1976

REPORT TO THE COMMITTEE OF THE WHOLE OF THE
COMMITTEE ON PERSONAL RIGHTS AND NATURAL RESOURCES

Subject: COMMITTEE RECOMMENDATION NO. 3:
Initiative, Referendum and Recall

The Committee recommends that the Committee of the Whole adopt in principle the constitutional provision attached hereto with respect to initiative, referendum and recall.

The Committee considered these matters together with eligibility to vote and election procedures and recommends that there be a separate constitutional article dealing with initiative, referendum and recall, but that all three of these means of direct citizen participation in government be provided for in one article.

The reasons for the Committee's recommendation are set out below.

Section 1: Initiative. The initiative is the means by which the voters can enact legislation directly. The Committee believes that the initiative is an important check on the Legislature. If the Legislature fails to enact a law that the voters want to have enacted, the voters should have a method of enacting that law directly, without waiting for the Legislature to act or for the next general election to elect legislators who will act. The Committee believes that this power should be reserved to the people, and that a Constitutional provision is the appropriate way to accomplish this objective.

Subsection (a): The provision recommended by the Committee is a simple one. It requires only that the initiative petition state the full text of the law to be enacted and that it be signed by at least twenty percent of the qualified voters in the Commonwealth.

The Committee recommends that the full text of the proposed law be stated in the petition so that those who sign the petition will know precisely what they are supporting.

The Committee recommends that a petition be required to be signed by twenty percent of the qualified voters in the Commonwealth for two reasons: (1) Initiative petitions should be put on the ballot only if they have a reasonable chance of passing. If at least twenty percent of the qualified voters sign the petition, that is an indication that the proposed law has a reasonable chance of passing when it is put to the voters. (2) There is a relatively small number of qualified voters in the Northern Mariana Islands at the present time and these voters are concentrated in relatively small geographic areas. Therefore, it is not unreasonable or unduly burdensome to require those who would propose legislation by this method to get the support of at least twenty percent of the voters before the matter is put on the ballot.

The Committee specified a percentage of the qualified voters rather than a specific number of qualified voters (such as 500 or 1,000) so that the Constitution can be flexible and apply with the same force as the population grows. If the Committee had required that petitions be signed by 1,000 qualified voters, that would be about 17% of the qualified voters at present, but as the number of qualified voters increased (through increases in the population) that requirement of 1,000 signatures would represent a decreasing, and therefore less stringent, percentage of the total number of qualified voters.

The Committee specified a base of the total number of qualified voters rather than the total number of votes cast in some previous election or the total number of persons of voting age in order to apply the same requirement to all initiative petitions and to relate the requirement to those who actually could vote. If the number of votes cast in a previous election were used as a base, and that election happened to have a very small voter turnout, then it would be relatively easy to get the required number of signatures on the petition. Then in the following year, if there was a hotly contested election and the voter turnout was very large, getting the required number of signatures on the petition would be much more difficult. If the requirement were based on the number of persons of voting age it might

be unrealistic. Not everyone of voting age will be eligible to vote. If the Legislature requires registration, for example, a person who is not registered cannot vote, even though he is of voting age. Requiring signatures from twenty percent of the persons of voting age might be the same as requiring twenty-five or thirty percent of the persons actually qualified to vote. The committee believes that such a requirement would be too stringent.

The Committee considered a requirement that an initiative petition be signed by twenty percent of the qualified voters in each chartered municipality rather than twenty percent of the qualified voters in the Commonwealth. This would ensure that no legislation could be proposed by means of the initiative without significant voter support in Rota and Tinian. The Committee rejected this approach because the twenty percent requirement is only applicable to putting an initiative proposal on the ballot. After being put on the ballot, the proposal must be approved by a majority of the votes cast. The Committee believes that the requirement for the signatures of twenty percent of the Commonwealth voters is sufficient protection against abuse of the initiative.

Subsection (b): This section provides a mechanism for verifying that the signatures on the petition actually are of persons who are qualified to vote and that the number of signatures is at least twenty percent of

those qualified to vote." This subsection (together with subsections (c) and (d)) makes this Constitutional provision self-executing. It does not require any action by the Legislature, and it directs the Executive Branch to take certain actions. This ensures that there will be no interference with the people's right to use the initiative.

Subsection (c): This section specifies when the petition will be submitted to the voters. The next general election was specified because it is less costly to the Commonwealth government than using special elections. Waiting for the next general election may result in some delay before an initiative petition can be submitted to the voters (for example, an initiative petition that was completed in January would have to wait for the next general election in the following November), however this delay would never be for more than a year and that length of time did not seem inappropriate to have legislation pending. Moreover, providing that initiative petitions be considered at the next regular general election permits the voters to decide on all of the proposals that have been made in the preceding year.

Subsection (d): This section specifies when the new law that has been approved by the voters will go into effect. If the petition is successful, the new law will become effective 30 days after the election. There may be special circumstances when the supporters of the

petition will want the new law to come into effect in a shorter or longer time. This provision permits the petition to state when it will come into effect to take account of such special circumstances. In these cases, the voters will be approving not only the substance of the new law but its proposed effective date as well.

Section 2: Referendum. The Committee believes that the referendum should be available to the people to reject a law passed by the Legislature that is not acceptable. This is also an important check on the power of the Legislature. The provision for the referendum is constructed in the same fashion as the provision for the initiative.

Subsection (a): The basic provision is very simple. It requires that the petition set out the full text of the law that is sought to be rejected so that the persons who are signing the petition know precisely what they are supporting. It also requires that the petition be signed by at least twenty percent of the qualified voters within the Commonwealth. The reasons for the Committee's choice in this regard are the same as are stated above with respect to the initiative.

The Committee considered the problem that legislation to be challenged by a referendum petition could continue in effect during the time the petition was being circulated and prior to the next regular general election. The Committee considered providing that no legislation would go into effect

for a period of 90 days during which referendum petitions could be circulated. If the petition were completed successfully within 90 days, the legislation would be suspended until the election. The Committee rejected this approach because it represents a substantial interference with the legislative process and because the adverse impact of having legislation in effect during the time before the voters decided on the referendum petition was not sufficient to justify this substantial interference.

Subsections (b)(c) and (d): This section also includes provisions that are intended to make this section self-executing. No action by the Legislature will be necessary and the Executive Branch is directed to take certain actions. This will minimize interference by the government with the use of the referendum by the people. These provisions are the same as those for initiative, and the Committee's reasons for recommending them are the same as those set out above under the explanation of the Committee's recommendations on the initiative.

Section 3: Recall. The Committee believes that the recall should be available to the people to remove from office an elected official who has some length of time left in his term of office but who has not acted properly. The Committee recommends that the recall apply to all elected officials. This would include elected officials in all

branches of the Commonwealth Government -- Executive Branch, Legislative Branch, Judicial Branch (if any), and Washington Representative -- and all local government officials.

Subsection (a): This section requires that the petition identify precisely the elected official that is sought to be removed and that it be signed by forty percent of the qualified voters.

The provision requires that an official be identified by name and office so that there will be no confusion as to the person who is sought to be removed. The provision does not require that the petition state any reasons for removal. The Committee believes that removal by the voters should be as unlimited as is election by the voters. This is different from impeachment. In that case, only the Legislature acts to remove an official of the executive branch, and it is appropriate to require that specific charges of criminal conduct or improper conduct in office be made and proved before the official can be removed. The Committee recognizes that it may be desirable at some time in the future to require that referendum petitions state reasons for removal and therefore has given the power to the legislature to so provide.

The provision requires that referendum petitions be signed by forty percent of the qualified voters in the Commonwealth. The Committee considered a range of percentage

from fifteen percent to fifty percent. The Committee decided on a requirement of forty percent for three reasons: (1) recall is a very sensitive matter because it involves a challenge to a duly elected official and therefore the petition should require the signatures of a higher percentage of the qualified voters than for initiative or referendum which involve only legislation; (2) recall is a significant protection for the voters against improper or ineffective conduct in office and therefore it should not be made so difficult to get a recall proposal in the ballot that this protection is lost; and (3) the forty percent requirement applies only to putting proposals in the ballot -- no official can be removed unless a majority of the voters voting in the election agree that he should be removed.

The number of signatures necessary for a recall petition is a percentage of the total number of persons qualified to vote for the office from which the elected official is sought to be removed. Thus, if the office is one such as the governor for whom all voters in the Commonwealth are eligible to vote, then forty percent of all voters must sign the recall petition in order for it to be presented to the voters at an election. Similarly, if a local government official is sought to be removed, only forty percent of the total number of local voters who are eligible to vote for that local official would be required.

Subsections (b)(c) and (d): These are self-executing provisions and the Committee's reasons for recommending them are the same as stated above with respect to initiative and referendum.

Subsection (e): This subsection permits the Legislature to take certain actions with respect to recall that it cannot take with respect to initiative or referendum. The Committee's reasons for including this provision were to guard against possible abuses of the recall device and to permit some flexibility to change without the need of a constitutional amendment. The Legislature may provide limitations on the use of the recall. This means that the Legislature can provide, for example, that the recall cannot be used against a public official during his first six months in office, or that a recall can be used against a particular public official only once each year. This would prevent harassment by a minority group in subjecting the public official to continuous recall elections.

This provision also permits the Legislature to require that the grounds for the recall be stated in the petition. Many jurisdictions that use the recall have this requirement so that the public official can answer the charges that are made against him.

This provision also permits the Legislature to specify that recall petitions will be submitted to the voters at special elections. Because of the great damage that

can be done to the public interest by a corrupt or otherwise incapable public official, the Committee felt that it might be better to permit a recall petition to be considered by the voters immediately, rather than waiting for the next general election. This provision gives the Legislature the flexibility to so provide.

Respectfully submitted,

Felipe Q. Atalig, Chairman

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Vice Chairman

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October 23, 1976

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