SECOND NORTHERN MARIANAS CONSTITUTIONAL CONVENTION

HOUSE OF TAGA
SAIPAN, COMMONWEALTH MARIANAS 96950

Telephone number
6517/6572

June 21, 1985

Memorandum

TO : Legal Counsel

FROM : Chairman, Local Government Committee

SUBJECT: Northern Marianas Descent as a Qualification for Office

The Local Government Committee has requested you provide us with an opinion on the following question: Is it in violation of the Covenant or U.S. Constitution to require that to be eligible to be mayor one must be of Northern Marianas descent as defined in Section 4 of Article XII?

Paul A. Manglona
Chairman

xc: President

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Legal Opinion #26

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ATTORNEY GENERAL

TO : Chairman, Local Government Committee DATE: 6-25-85

FROM: Legal Counsel

RE : Northern Marianas Descent as a Qualification for Office

You have asked whether it is a violation of the Covenant or U.S. Constitution to allow only those people of Northern Marianas descent as defined in Section 4 of Article XII to hold the office of mayor. The short answer is that such an eligibility requirement would violate Amendment 14 of the U.S. Constitution, made applicable to the Commonwealth by Section 501 of the Covenant.

The 14th Amendment of the U.S. Constitution reads in relevant part "No state shall . . . deny to any person within its jurisdiction the equal protection of its laws."

Northern Marianas descent is defined at Article XII, section 4 of the Constitution in terms of the place of birth or domicile as of 1950 of a person or his ancestors. Restricting eligibility to hold office to that class of people raises the question of whether such a restriction unfairly discriminates against residents of the Northern Marianas who were not born or domiciled in the Northern Marianas by 1950, or are not of one-quarter descent of a person who was a full-blooded Northern Marianan as of 1950. In considering whether such a restriction would violate equal protection, the threshold question is how a court would evaluate such a restriction on eligibility. A court can apply either the "compelling state interest test" or the "rational basis test" in evaluating such a classification.

When the restriction infringes upon a fundamental right, the rigorous "compelling state interest" standard is applied. Under the "compelling state interest test", the Commonwealth's classification would be unconstitutional unless it is necessary to promote a governmental interest which the court finds to be "compelling".

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Fundamental rights which could be infringed by restricting eligibility to hold public office to persons who were born or domiciled here by 1950, or their descendants, could include the right to vote, to travel interstate freely, to be a candidate for public office, or to associate with others and express oneself as guaranteed by the First Amendment to the United States Constitution.

The less stringent traditional equal protection standard, the rational basis test, has been applied in other circumstances. Under this less burdensome test, a restriction will be found to deny equal protection if "it is without any reasonable basis, and therefore is purely arbitrary". See Lindsley v. National Carbonic Gas Co., (1911) 220 U.S. 61, 55 L.Ed. 369, 31 S. Ct. 337. Stated another way, under the traditional test, a restriction will survive an equal protection attack if the classification has a "reasonable basis" for, or is "rationally related" to the achievement of a legitimate state goal. Wallser v. Yucht, (1972, D.C. Del.), 352 F.Supp. 85.

I am unsure what the goals could be of restricting eligibility to hold public office to persons who were born or domiciled in the Northern Marianas by 1950, or descended from such a full-blooded Mariana. However, goals advanced in favor of durational residency requirements for office-holding include ensuring that candidates are aware of the problems within the governmental unit they are to serve, of ensuring that voters are aware of the relative merits of the candidates, and of precluding fraudulent candidacies by persons who are not seriously concerned with or capable of serving the constituencies. "Validity of requirement that candidate or public officer has been a resident of a governmental unit for a specified period." 65 ALR 3rd 1048, 1054 (1975). Presumably, the proposed constitutional amendment serves much the same goals.

In summary, justification of this restriction must be related to the attainment of a legitimate state goal, in the case of the rational basis test, or the attainment of a "compelling state interest", in the case of the more rigorous standard. It seems to me that the restriction cannot withstand scrutiny under the "rational basis test", let alone the compelling state interest test.

If the court applies the rational basis test, the court would find that the restriction proposed does not further a legitimate state purpose. To the contrary, birth or domicile in the Northern Marianas by 1950 does not necessarily contribute to a candidate's familiarity with the area or to the voters' familiarity with the candidate. For example, an eligibility requirement based on birth or domicile in the Northern Marianas by 1950 would deny the right to run for office to a person born in Guam even if that person has

lived 20 or more years in the Northern Marianas but grant such a right to a person born or domiciled in the Northern Marianas before 1950 but who lived his entire life in California.

The most telling argument against upholding the rationality of this restriction however derives from the closed nature of the classes created.

Length of residency may bear a rational relationship to fitness for office. The proposed amendment, however, would never allow people who were not born or domiciled, nor descended of people who were born or domiciled in the Northern Marianas by 1950 to qualify for office, no matter how long they reside here or how well they know the local conditions or are known to the voters. The fact that people who know the local conditions and are known to the local voters would be denied the opportunity to hold office under the proposed amendment negates the purpose supposedly promoted by restricting office-holding to people who were born or domiciled before 1950.

> To be sure, allegiance and attachment may be rationally measured by length of residency -- length of residence may for example, be used to test the bona fides of citizenship -- and allegiance and attachment may bear some rational relationships to a very limited number of legitimate state purposes. Cf. Chimento v. Stark, 353 S. Supp 1211 (N.H.), summarily affirmed 414 U.S. 802, 38 L.Ed.2d 39, 94 S. Ct. 125 (1973) (7-year citizenship requirement to run for governor); U.S. Const. Art. I, sec. 2, cl. 2, sec. 2; Art. II, sec. 1, cl. 5.

Zobel v. Williams, 457 U.S. 55, 70, 72 L.Ed.2d 672, 102 S. Ct. 2309 (Brennan dissenting).

In Zobel, the court found that the distinction in question was based on an illegitimate state interest -- rewarding the past contributions of its citizens. Therefore, the court held the distinction to be without a rational basis. The court described the consequences of allowing states to create classes unsupported by a rational basis as follows: "It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible". 457 U.S. at 64. The court is saying that if the states are allowed to create classifications among citizens that are not founded upon differences among citizens that are significant in light of legitimate state objectives, the classifications would become permanent because the basis of the classifications would not provide a means for citizens to move from one classification to another.

The proposed constitutional amendment would create such a permanent classification. For instance, even if a citizen lived here long enough to acquire knowledge of the local conditions and to become known to the voters, he still could not move into the class of people eligible for office. Consequently, the proposed amendment is repugnant to the Equal Protection Clause of 14th Amendment.

Likewise, conceivable interests which might be served by such a restriction have been held not to be legitimate state interests. Favoring established residents over new residents is a constitutionally unacceptable justification for a residency requirement. Vlandis v. Kline. 412 U.S. 441, 37 L.Ed.ed 63, 93 S. Ct. 2230 (1973). Likewise, a state's desire "to reward citizens for past contributions" is clearly not a legitimate state purpose. Zobel v. Williams, 457 U.S. at 63.

As the proposed amendment would fail to meet the requirements of the Equal Protection Clause under the rational basis test, it is not necessary to consider whether the law, although affecting a fundamental right, is justified by a compelling interest under the compelling state interest test. Zobel v. Williams, 457 U.S. at 60-61.

In conclusion, the proposal to allow only those people of Northern Mariana's descent to hold the office of mayor would violate amendment 14 of the U.S. Constitution, made applicable to the Commonwealth by Section 501 of the Covenant. This would apply to other offices as well.

Joseph A. Guthrie

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