

239
Mig - Chamorro Villages
for all US Passport Holders from Ray 6995
Re This

Re: Proposed Con Con Amendment 44
Phone permission granted to quote same in IIY
8/28/85
from Ray

1 ANALYSIS OF THE PROPOSED AMENDMENT TO SECTION 8 OF THE
2 SCHEDULE ON TRANSITIONAL MATTERS OF THE CNMI CONSTITUTION
3 (By Ramon G. Villagomez, delegate to the First and Second
4 Con-Con and author of the proposal)

5 The current language of Section 8 is as follows:

6 Section 8: Interim Definition of Citizenship.

7 For the period from the approval of the
8 Constitution by the people of the Northern
9 Mariana Islands to the termination of the
10 Trusteeship Agreement, the term United States
11 citizen or United States national as used in
12 the Constitution includes those persons who,
13 on the date of the approval of the Constitution
14 by the people of the Northern Mariana Islands,
15 do not owe allegiance to any foreign state and
16 who qualify under one of the following criteria:

17 a) persons who were born in the
18 Northern Mariana Islands, who are citizens of
19 the Trust Territory of the Pacific Islands on
20 the date of the approval of the Constitution
21 by the people of the Northern Mariana Islands,
22 and who on that date are domiciled in the
23 Northern Mariana Islands or in the United
24 States or any territory or possession thereof;

25 b) persons who are citizens of the
26 Trust Territory of the Pacific Islands on the
27 date of the approval of the Constitution by
28 the people of the Northern Mariana Islands,
29 who have been domiciled continuously in the
30 Northern Mariana Islands for at least five
31 years immediately prior to that date, and who,
32 unless under age, registered to vote in
elections for the Mariana Islands District
Legislature or for any municipal election in
the Northern Mariana Islands prior to January
1, 1975; or

c) persons domiciled in the Northern
Mariana Islands on the date of the approval of
the Constitution by the people of the Northern
Mariana Islands who, although not citizens of
the Trust Territory of the Pacific Islands, on
that date have been domiciled continuously in
the Northern Mariana Islands beginning prior
to January 1, 1974.

28 The second CNMI Constitutional Convention adopted a
29 proposal to amend the first paragraph of Section 8 so that
30 it would read as follows:

31 Section 8: Interim Definition of Citizenship.
32 For the period from the approval of the Constitution
by the people of the Northern Mariana Islands to the

Take away our right to vote.

11/23/85
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8 Constitution by the people of the Northern
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11 citizen or United States national as used in
12 the Constitution includes those persons who,
13 on the date of the approval of the Constitution
14 by the people of the Northern Mariana Islands,
15 do not owe allegiance to any foreign state and
16 who qualify under one of the following criteria:

17 a) persons who were born in the
18 Northern Mariana Islands, who are citizens of
19 the Trust Territory of the Pacific Islands on
20 the date of the approval of the Constitution
21 by the people of the Northern Mariana Islands,
22 and who on that date are domiciled in the
23 Northern Mariana Islands or in the United
24 States or any territory or possession thereof;

25 b) persons who are citizens of the
26 Trust Territory of the Pacific Islands on the
27 date of the approval of the Constitution by
28 the people of the Northern Mariana Islands,
29 who have been domiciled continuously in the
30 Northern Mariana Islands for at least five
31 years immediately prior to that date, and who,
32 unless under age, registered to vote in
elections for the Mariana Islands District
Legislature or for any municipal election in
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1, 1975; or

c) persons domiciled in the Northern
Mariana Islands on the date of the approval of
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that date have been domiciled continuously in
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to January 1, 1974.

The second CNMI Constitutional Convention adopted a
proposal to amend the first paragraph of Section 8 so that
it would read as follows:

Section 8: Interim Definition of Citizenship.
For the period from the approval of the Constitution
by the people of the Northern Mariana Islands to the

By passage and
take away our right to vote.

1 termination of the Trusteeship Agreement, the
2 term United States citizen or United States national
3 as used in the Constitution and laws of the Northern
4 Mariana Islands includes, means those persons who,
5 on the date of approval of the Constitution by the
6 people of the Northern Mariana Islands, do not owe
7 allegiance to any foreign state and who qualify
8 under one of the following criteria, as well as
9 their children regardless of their date of birth:

6 a) persons who were born in the
7 Mariana Islands, who are citizens of
8 the Trust Territory of the Pacific
9 Islands on the date of the approval
10 of the Constitution by the people
11 of the Northern Mariana Islands
12 and who on that date are domiciled in
13 the Northern Mariana Islnds or in the
14 United States or any territory or possession
15 thereof;

12 b) persons who are citizens of
13 the Trust Territory of the Pacific
14 Islands on the date of the approval of
15 the Constitution by the poeple of the
16 Northern Mariana Islands, who have been
17 domiciled continuously in the Northern
18 Mariana Islands for at least five years
19 immediately prior to that date, and who,
20 unless under age, registered to vote in
21 elections for the Mariana Islands District
22 Legislature or for any municipal election
23 in the Northern Mariana Islands prior to
24 January 1, 1975; or

19 c) persons domiciled in the
20 Northern Mariana Islands on the date of
21 the Constitution by the people of the
22 Northern Mariana Islands, who, although
23 not citizens of the Trust Territory of
24 the Pacific Islands, on that date have
25 been domiciled continuously in the
26 Northern Mariana Islands beginning prior
27 to January 1, 1974."

24 Under the proposed amendment there will be three (3).
25 changes to the first paragraph of Section 8 as follows:

- 26 1. The term "and laws of the Northern Mariana
27 Islands" will be added after the word
28 "constitution".
- 29 2. The word "includes" will be deleted and
30 replaced with the word "means".
- 31 3. The term "as well as their children
32 regardless of their date of birth"

1 will be added after the word "criteria".

2 The three (3) changes as listed above will be analyzed
3 individually in three separate analysis. Each of the three
4 (3) changes is proposed for a different reason and is intended
5 to accomplish a different objective. This analysis will
6 discuss the reason(s) for the proposed amendment, the intent
7 of the Second Constitutional Convention and the effect that
8 the proposed amendment will have if ratified by the voters
9 in the November, 1985, general election.

10 ANALYSIS OF THE FIRST CHANGE

11 The first change is the addition of the term "and
12 laws of the Northern Mariana Islands" after the word
13 "constitution". The purpose of this proposed amendment is
14 to make sure that all laws enacted in the CNMI prior to the
15 termination of the Trusteeship Agreement are consistent with
16 the Constitution whenever the term "U.S. citizen" is used.
17 Under this proposed amendment, any law enacted in the CNMI
18 which uses the term "U.S. citizen" would mean U. S. citizen
19 as defined in the CNMI Constitution, unless the law specifically
20 provides otherwise. For example, a law which uses the
21 term "U.S. citizen as defined in the 14th Amendment of the
22 U.S. Constitution" would not mean U.S. citizen as defined in
23 Section 8 of the Schedule on Transitional Matters.

24 The Second Constitutional Convention found this to be
25 necessary in that there are two classes of U.S. citizens
26 existing within the Northern Mariana Islands and the United States.
27 The first class includes those who are defined under the
28 14th Amendment to the U.S. Constitution, and the second class
29 includes those who are defined under Section 8 of the
30 Schedule and Transitional Matters. Those persons who fall
31 under Section 8 of the Schedule and Transitional Matters are
32 not U.S. citizens in the United States until the termination

1 of the Trusteeship Agreement. Until that time, they are
2 Trust Territory citizens. With this proposed amendment the
3 legislature would be required to indicate who it is referring
4 to when it uses the term "U.S. citizen". It has to clarify
5 whether it means those persons who will become U.S. citizens
6 upon termination of the Trusteeship Agreement, or those
7 persons who are already U.S. citizens under Amendment 14 to
8 the U.S. Constitution, or both.

9 ANALYSIS OF THE SECOND CHANGE

10 The second change is the deletion of the word "includes"
11 and the inclusion of the word "means" in place thereof.

12 To understand the purpose of Section 8 of the Schedule
13 on Transitional Matters it would help to ask "why do we have
14 to define the term U.S. citizen in the CNMI Constitution
15 when it is already defined in Amendment 14 to the U.S.
16 Constitution? Amendment 14 defines "U.S. citizens" to mean,
17 "All persons born or naturalized in the United States,
18 and subject to the jurisdiction thereof,..."

19 The reason that it is necessary to define the term
20 "U.S. citizen" in the CNMI Constitution, during the interim
21 period, is that the people of the CNMI are not born or
22 naturalized in the United States and are therefore not U.S.
23 citizens. Yet, the CNMI Constitution requires that persons
24 be U.S. citizens before they can be entitled to certain
25 rights or privileges in the CNMI such as voting, running for
26 office, holding appointed positions, and so forth. Unless
27 a definition is provided, the people of the Northern Marianas
28 would not be able to vote, hold office, or be appointed
29 to positions within the Northern Marianas since they are not
30 U.S. citizens. This requirement for such definition is
31 necessary only during the interim period.

32 For the above reason, it was decided by the first


1 Constitutional Convention that, during the interim period,
2 (until the termination of the Trusteeship Agreement) a
3 definition of "U.S. citizen" be provided to mean those persons
4 who are not U.S. citizens, but who will become U.S. citizens
5 at the termination of the Trusteeship Agreement, pursuant to
6 Section 301 of the Covenant to Establish the Commonwealth of
7 the CNMI. The definition is not to include persons who are
8 already U.S. citizens under the 14th Amendment. The language
9 in the first paragraph of Section 301 of the Covenant makes it
10 clear that the definition of the "U.S. Citizen" in the Constitution
11 does not include those who are already U.S. citizens under the
12 14th Amendment. The relevant language of Section 301 is as
13 follows:

14 The following persons and their children
15 under the age of 18 years on the effective
16 date of this Section, who are not citizens or
17 nationals of the United States under any other
18 provision of law, and who on that date do not
19 owe allegiance to any foreign state, are
20 declared to be citizens of the United
21 States....(emphasis added)

22 Since Section 8 is intended to define "U.S. citizens" to
23 mean only those who will become U.S. citizens at the termination
24 of Trusteeship Agreement, therefore Section 8 (a), (b), and (c)
25 are exactly the same as Section 301 (a), (b) and (c) of the
26 Covenant. Section 301 (a), (b) and (c) of the Covenant does
27 not include "U.S. citizens" as defined in the 14th Amendment
28 to the U.S. Constitution. Likewise, Section 8 (a), (b) and (c)
29 of the CNMI Constitution does not include those persons who are
30 defined as U.S. citizens under the 14th Amendment to the U.S.
31 Constitution.

32 The primary purpose of the proposed amendment, to change
33 the word "includes" to that of "means" is to clarify the intent
34 of the framers of the CNMI Constitution and to make the
35 Constitution consistent with Section 301 (a), (b) and (c) of
36 the Covenant.

1 After the approval of the CNMI Constitution and prior to
2 the general election, Mr. Michael A. White, a U.S. citizen
3 under the 14th Amendment, applied to the CNMI Board of Elections
4 to become a legislative candidate. The Board of Elections
5 denied his application in that he was not eligible to vote in
6 the Northern Mariana Islands since he, and other alien employees,
7 were in Saipan under a temporary work permit. Mr. White filed
8 an action in the Trust Territory High Court and the Court held
9 that Mr. White was eligible to vote and eligible to run for
10 office. That decision was contrary to the intent of the framers
11 of the Constitution. However, it opened the door for U.S.
12 citizens, as defined in the 14th Amendment to the U.S.
13 Constitution, to be registered to vote and run for office.



14 The result of that decision was to create two classes of
15 U.S. citizens in the United States and the Northern Mariana
16 Islands. The first class are those U.S. citizens defined
17 under the 14th Amendment who have all the rights, privileges,
18 and immunities in the United States and in the CNMI. The
19 second class of U.S. citizens are those defined under Section
20 8, (a), (b) and (c) of the Schedule of the Transitional Matters
21 who have all the rights, privileges and immunities in the CNMI,
22 but do not have all the rights of U.S. citizens in the United
23 States. However, they have the privileges and immunities in the
24 United States as provided in Section 304 of the Covenant.

25 What this means is that whenever U.S. citizenship is
26 a requirement in the United States, the people from the Northern
27 Marianas who are Trust Territory citizens would not be entitled
28 thereto. For example, if it is required that a person be a
29 U.S. citizen in order to run for office in California, then
30 people from the Northern Marianas who are Trust Territory citizens
31 would not be eligible to run for office. This is so, even though
32 they are defined as U.S. citizens in Section 8 of the Schedule

1 on Transitional Matters of the CNMI Constitution.

* 2 The effect in creating those two classes of U.S. citizens
3 is to apply the U.S. laws unequally against the Section 8 U.S.
4 citizens of the Northern Mariana Islands. It is unequal in that
5 14th Amendment U.S. citizens have all the rights, privileges
6 and immunities in the United States, whereas, Section 8 U.S.
7 citizens do not. At the same time, U.S. citizens as defined
8 in the 14th Amendment to the Constitution have all the rights,
9 privileges and immunities in the Northern Mariana Islands
10 equal to those of the CNMI Section 8 citizens.

11 The second reason for the proposed amendment to Section 8
12 of the Transitional Matters is to bring to the attention of
13 the people of the Northern Mariana Islands, their government,
14 and the government of the United States the fact that there
* 15 is this unequal application of U.S. laws against the citizens
16 of the Northern Mariana Islands. In addition, it is hoped that
17 the United States government and the CNMI government would
18 work together to eliminate this unequal treatment against the
19 CNMI people and to apply the U.S. laws equally to both classes
20 of U.S. citizens.

21 It is not the intent of the proposed amendment to
22 discriminate against any U.S. citizens defined under the 14th
23 Amendment. Those U.S. citizens already have superior rights
24 as compared to the citizens defined under Section 8 of the
25 Schedule of Transitional Matters.

26 During the First Constitutional Convention a Public
27 Hearing was held on the question of whether U.S. citizens as
28 defined in the 14th Amendment of the U.S. Constitution be
29 permitted to vote during the interim period. The public expressed
30 the desire that such U.S. citizens not be eligible to vote or
31 run for office in the CNMI until the termination of the
32 Trusteeship Agreement and until all CNMI people become true U.S.
citizens.

1 The definition of U.S. citizenship under Section 8 of the
2 Schedule on Transitional Matters is temporary only and would
3 automatically expire at the termination of the Trusteeship
4 agreement. Thereafter, all U.S. citizens as defined under
5 Section 8 would become U.S. citizens as defined under Amendment
6 14 to the U.S. Constitution.

7 ANALYSIS OF THE THIRD CHANGE

8 The third change is to add the term "as well as their
9 children regardless of their date of birth."

10 The current definition of U.S. citizens under Section
11 8, (a), (b) and (c) includes only those people in the CNMI who
12 were living at the time that the Constitution was approved, and
13 does not include those who were born thereafter. For that
14 reason, all Section 8 U.S. citizens born after the approval of
15 the Constitution are not eligible to obtain a Certificate of
16 Identity, but will become 14th Amendment U.S. citizens upon
17 termination of the Trusteeship Agreement. During the interim
18 period, such persons are Trust Territory citizens and are not
19 U.S. citizens as defined in Section 8 of the Schedule on
20 Transitional Matters.

21 It was not the intent of the framers of the Constitution
22 to exclude such individuals from the definition under the
23 Section 8 of the Schedule and Transitional Matters. However,
24 by not including, in the definition, a language which would
25 include such children, born after the approval of the
26 Constitution, they were unintentionally excluded. The proposed
27 amendment will correct the situation.

28 The intent of the Second Constitutional Convention is
29 to include all children born in the CNMI under the definition
30 of "U.S. citizen" in Section 8 of the Schedule and Transitional
31 Matters. Again, this definition terminates automatically
32 upon termination of the Trusteeship Agreement.