

SUPPLEMENTAL MEMORANDUM

July 21, 1985

TO: Convention President

FROM: Consultant

SUBJ: Committee Recommendation No. 27

There were several matters with respect to the subject which I was unable to address in my earlier memo due to the limited time available for its preparation. These additional considerations will be covered by this memo.

Concern has been raised about the affect of establishment of a large military base on Tinian, with large numbers of military personnel registering to vote and influencing local politics in favor of their own narrow interests. One of the purposes of the subject committee recommendations is to respond to this concern. It is also a very legitimate concern, one which we all share. It is not a concern about the military per se, but a concern that people who vote here are people who really care about the future of the islands, understand the problems and needs of the islands, and understand the unique local culture and indigenous way of life.

Unfortunately, CR No. 27 is not likely to be able to resolve this problem. As noted earlier, it is virtually certain that these provisions, if they became a part of the constitution, would be overturned by the courts, even in the interim period. Unfortunately, also, there is no solution that is absolutely certain to work. Fortunately, however, there are several approaches, none of which require adoption of a constitutional provision by the Convention, that have a much better chance of working than does this committee recommendations.

One possibility is the establishment of a two year residency requirement to vote. Legal opinions rendered the convention have said that such a residency requirement would probably be found unconstitutional by the courts, but I believe such a requirement might stand. Those legal opinions were based on court cases in the states. The unique political status of the Commonwealth under the Covenant, the geographic isolation and special developmental problems of the CNMI, and the need to protect indigenous culture could very possibly provide sufficient "compelling state interest" or "rational basis" to uphold a two year residency requirement. Further, it is not necessary to change the constitution to

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establish a two year residency requirement. Article VII, Section 1 requires residency in the Commonwealth "for a period of time provided by law." The legislature could enact a two year residency requirement. One advantage of this approach is that if it fails to withstand constitutional scrutiny, only a law and not the Constitution of the Commonwealth is challenged. Another advantage of the two year residency requirement approach is that it is less likely to be challenged in court in the first place.

Another possible approach to the problem is the use of the domicile requirement. Domicile is a statutory requirement for voting in the Commonwealth, as it is almost everywhere else. Domicile is much stronger than residency. A person can have more than one residence but only one domicile. Domicile is that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period (see Covenant Section 1005(e)). If the Commonwealth is strict, it would be exceedingly difficult for any person in the CNMI on a limited tour of duty to claim domicile. The Convention has been provided with several legal opinions which outline the constitutional limitations of residency requirements; none of these opinions have addressed the subject of domicile.

The final approach, which is related to the domicile approach, is strict enforcement of by the Board of Elections or the voter registrar of the legal qualifications for voting. I can speak from personal experience that the strict enforcement approach works. As an out-of-state college student in Virginia, I sought to register to vote where I was going to school. It took three years of repeated efforts before I was permitted to register to vote, and I would never have been allowed to vote if I had been going home during the summer to work, instead of staying in Lexington, VA. This was because Virginia strictly enforced the residency and domicile requirements for voting.

The next question is "How would CR No. 27, if it were to become part of Constitution, be challenged in the interim period prior to termination of the trusteeship?" In the first seven years of Commonwealth status, a number of persons who would be disenfranchised by this proposed amendments as now worded, both local and from the states, have been allowed to exercise citizenship rights in the Commonwealth. This proposed constitutional amendment would take away those rights without due process of law, and that is in violation of the Covenant, the US Constitution, and the CNMI Constitution. Even if the CNMI can restrict citizenship rights in the period up to termination of the

trusteeship (i.e. prevent any additional persons who do not qualify under Section 8(a), (b) and (c) of the Schedule on Transitional Matters from exercising citizenship rights), and the AG has expressed an opinion to the contrary, it cannot legally take away the vested rights of those people who have already exercised those rights.

Further, if this provision were to successfully withstand judicial review, the inclusion of the phrase "and the laws of the Commonwealth" in CR No. 27, coupled with the use of the word "means" rather than the word "includes", effectively prevents the legislature (except possibly by the use of some complicated and obscure definition that does not use the term United States citizen) from allowing United States citizens and local people who do not qualify under Section 8(a), (b) and (c), as a class or classes, free entry into the the Commonwealth or exemption from such statutes as the nonresident workers act, since the legislature could not use another definition of United States citizen than the one provided in CR No. 27. NOTE: The problem with the use of the term "means" could be resolved by adding the words "United States citizens or nationals and" following that word, if this is preferred to changing it to the word "includes".

An argument has also been made that the people of the NMI do not have full citizenship rights in the United States and, consequently, US citizens should not have full citizenship rights in the CNMI. It is my belief that the people of the NMI do have those rights by virtue of Covenant Section 304, which is in effect, but they have often had difficulty getting those rights recognized by ignorant federal and state bureaucrats. It is my view that the people of the NMI have a legally enforceable right to be treated in the United States and by US government offices exactly as if they were US citizens. The fact that many local people have been allowed to vote in the states is evidence of this. US Public Law 98-213 and the subsequent Presidential Proclamation were major steps forward to ensure that that right is recognized. Progress is being made and CR No. 27 seems to run in the opposite direction. Further, this committee recommendations affects Americans, and local people, in the Commonwealth, without having any affect on the stubborn and ill-informed bureaucrats that are the cause of the problem.



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