

MEMO

TO: Legal Team
FROM: Bernard Zimmerman
SUBJECT: Downsizing the Legislature
DATE: June 9, 1995

Article II, Section 3(a) provides for a 14 member House of Representatives: one from Rota; one from Tinian; and 12 from Saipan, with a cap of 20 members. Article II, Section 4(a) requires reapportionment every ten years based on total population. Currently, there are 16 members from Saipan.

Following the 1980 census, the House was reapportioned to 15 members distributed as follows:

| Election District | No. of Representatives | Population Per Representative | Percentage Deviation |
|-------------------|------------------------|-------------------------------|----------------------|
| Saipan 1 | 3 | 1106 | 1.162 |
| Saipan 2 | 3 | 1133 | 1.281 |
| Saipan 3 | 5 | 1104 | 1.269 |
| Saipan 4 | 2 | 1205 | 7.730 |
| Tinian | 1 | 866 | 22.609 |
| Rota | 1 | 1261 | 12.690 |
| Ideal Population | | 1119 | |

In Sablan v. The Northern Marianas Board of Elections, 1 CR 741, a three judge district court approved this plan, rejecting a challenge that it violated the one person - one vote rule. The court applied the rational relationship test, noted that mathematical exactness was not required and defined that the governing standard as "equal protection * * * requires only that the apportionment of state legislative districts be as near to population equality as a good faith effort allows, so long as no person's vote is substantially diluted in weight."

The court noted that the unique geographical location, relatively small population and its distribution within the islands "impose inherent limitations of a designation of election districts." at 769. Since the challenge in Sablan focused on Saipan districts, and not Rota and Tinian, the court's analysis focused on Saipan's unique cultural traditions which were based on villages. The court also noted the commitment to preserve the Carolinian community and concluded that the district boundaries on Saipan represented a good faith effort to preserve "cultural and historical ties which unite each village."

To justify any substantial deviation in Rota or Tinian, the CNMI will have to be prepared to establish that the deviation is necessary to promote legitimate objectives such as maintaining the integrity of political subdivisions and respecting political boundaries which are also

geographic. I will begin assembling material to make this showing.

Presently, Article II, Section 4, provides for periodic reapportionment based on the “number of residents.” The term residents generally includes aliens. I take this to mean that redistricting is required to be based on total population.

Tables 1 and 2 present downsizing options based on total population. One set of tables is based on the 1990 census. The other set is based on a “Household Survey” conducted in 1992 which Mr. Borja assures me is accurate.

As a general rule, the Supreme Court has determined that total deviations of less than 10% are permissible absent a showing they were not properly motivated, such as to foster discrimination. Deviations in the range of 10 to 20% are permissible if justified by important state objectives. With the exception of Sablan, which permitted a total deviation of 35%, I have seen no case which has permitted a deviation in excess of 20%. 17% is the greatest deviation I recall the Supreme Court approving. Only a House of about 19 or 20 members is likely to pass muster. Accordingly, downsizing based on total population will not produce a smaller legislature unless a plan is adopted which is almost certain to be successfully challenged as violating the one person - one vote rule.

As discussed in my earlier memorandum, there is authority for reapportionment based on criteria other than total population. Approved criteria include citizenship, voting age population and registered voters. However, apportionment based on registered voters, and perhaps other criteria, is likely to be viewed with suspicion if it produces districts that are substantially different than what would have been produced using total population.

I have not yet received data from Mr. Borja on the voting age population. Plans based on registered voters are presented in Table 3. While they do produce a very small House, they also produce deviations in the range of 25 to 30%, and the results vary so greatly from those obtained by use of total population, that in my judgment, they are not likely to withstand challenge.

Tables 4 and 5 present plans based on citizenship data. This is a category approved by the Supreme Court in Burns, without any explicit reservations. However, it is subject to the argument that a lot of non-citizens use the service of legislators and so, to the extent that a court adopts the one person - one legislator approach rather than the one person - one vote approach, any plan based on citizenship may be subject to attack. The plan based on the 1990 citizenship data, produces a 13 member House likely to withstand challenge and seems small enough to satisfy the delegates. In fact, Delegate Borja submitted proposal number 341 which contains a virtually identical plan. It may well be that voting age population data will produce an acceptable smaller House. In the interim, this seems the best approach. It will require amending Article II, Section 4(a) to permit reapportionment on bases other than total population.

As you can see from the trends in the data, population growth is such that, using the 1992 “Household Survey” a 13 member House based on citizenship would have to be increased to a 17 member House. These numbers may change in the future, especially if there is substantial

economic development on Rota and Tinian. My sense is that it is likely that following the 2000 census, a 13 member House with one representative from Tinian and one from Rota will no longer be valid. Accordingly, it is important to have flexibility to add delegates, since the likely alternatives will be either to have all delegates run at large, as apparently happened in Colorado, to add voters from Saipan to the Tinian and Rota districts or to combine Rota and Tinian.

TABLE 1

| Total Population - 1990 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2118 | 1 | 2118 | -7.146% |
| Rota | 2295 | 1 | 2295 | 0.614% |
| Saipan | 38926 | 17 | 2290 | 0.384% |
| TOTAL | 43339 | 19 | 2281 (Ideal) | |

| Total Population - 1990 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2118 | 1 | 2118 | -12.043% |
| Rota | 2295 | 1 | 2295 | -4.693% |
| Saipan | 38926 | 16 | 2433 | -10.216% |
| TOTAL | 43339 | 18 | 2408 (Ideal) | |

| Total Population - 1990 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2118 | 1 | 2118 | -16.922% |
| Rota | 2295 | 1 | 2295 | -9.979% |
| Saipan | 38926 | 15 | 2595 | 1.793% |
| TOTAL | 43339 | 17 | 2549 (Ideal) | |

TABLE 2

| Total Population - 1992 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2561 | 1 | 2561 | -3.176% |
| Rota | 2553 | 1 | 2553 | -3.478% |
| Saipan | 47786 | 18 | 2655 | 0.370% |
| TOTAL | 52900 | 20 | 2645 (Ideal) | |

| Total Population - 1992 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2561 | 1 | 2561 | -8.017% |
| Rota | 2553 | 1 | 2553 | -8.304% |
| Saipan | 47786 | 17 | 2811 | 0.960% |
| TOTAL | 52900 | 19 | 2784 (Ideal) | |

| Total Population - 1992 | | | | |
|-------------------------|------------------|-----------|-------------------------------|-------------|
| Island | Total Population | # of Reps | Per District | % Deviation |
| Tinian | 2561 | 1 | 2561 | -12.858% |
| Rota | 2553 | 1 | 2553 | -13.130% |
| Saipan | 47786 | 16 | 2987 | 1.624% |
| TOTAL | 52900 | 18 | 2939 (Ideal) | |

TABLE 3

| Registered Voters - 1991 | | | | |
|--------------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 763 | 1 | 763 | -23.920% |
| Rota | 1041 | 1 | 1041 | 3.871% |
| Saipan | 8218 | 8 | 1027 | 2.500% |
| TOTAL | 10022 | 10 | 1002 (Ideal) | |

| Registered Voters - 1995 | | | | |
|--------------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 781 | 1 | 781 | -29.867% |
| Rota | 1145 | 1 | 1145 | 2.820% |
| Saipan | 9210 | 8 | 1151 | 3.381% |
| TOTAL | 11136 | 10 | 1114 (Ideal) | |

TABLE 4

| Citizenship - 1990 | | | | |
|--------------------|--------------|-----------|-------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1286 | 1 | 1286 | -16.751% |
| Rota | 1595 | 1 | 1595 | 3.252% |
| Saipan | 17201 | 11 | 1564 | 1.227% |
| TOTAL | 20082 | 13 | 1545 (Ideal) | |

| Citizenship - 1990 | | | | |
|--------------------|--------------|-----------|-------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1286 | 1 | 1286 | -23.155% |
| Rota | 1595 | 1 | 1595 | -4.691% |
| Saipan | 17201 | 10 | 1720 | 2.785% |
| TOTAL | 20082 | 12 | 1674 (Ideal) | |

| Citizenship - 1990 | | | | |
|--------------------|--------------|-----------|-------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1286 | 1 | 1286 | -29.559% |
| Rota | 1595 | 1 | 1595 | -12.633% |
| Saipan | 17201 | 9 | 1911 | 4.688% |
| TOTAL | 20082 | 11 | 1826 (Ideal) | |

| Citizenship - 1990 | | | | |
|--------------------|--------------|-----------|-------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1286 | 1 | 1286 | -35.963% |
| Rota | 1595 | 1 | 1595 | -20.576% |
| Saipan | 17201 | 8 | 2150 | 7.067% |
| TOTAL | 20082 | 10 | 2008 (Ideal) | |

TABLE 5

| Citizenship - 1992 | | | | |
|--------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1511 | 1 | 1511 | -5.073% |
| Rota | 1693 | 1 | 1693 | 6.367% |
| Saipan | 23855 | 15 | 1590 | -0.086% |
| TOTAL | 27059 | 17 | 1592 (Ideal) | |

| Citizenship - 1992 | | | | |
|--------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1511 | 1 | 1511 | -10.764% |
| Rota | 1693 | 1 | 1693 | 0.108% |
| Saipan | 23855 | 14 | 1704 | 0.761% |
| TOTAL | 27059 | 16 | 1691 (Ideal) | |

| Citizenship - 1992 | | | | |
|--------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1511 | 1 | 1511 | -16.238% |
| Rota | 1693 | 1 | 1693 | -6.149% |
| Saipan | 23855 | 13 | 1835 | 1.722% |
| TOTAL | 27059 | 15 | 1804 (Ideal) | |

| Citizenship - 1992 | | | | |
|--------------------|-------------|-----------|-----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 1511 | 1 | 1511 | -61.816% |
| Rota | 1693 | 1 | 1693 | -52.400% |
| Saipan | 23855 | 8 | 2982 | 14.277% |
| TOTAL | 27059 | 10 | 2706 (Ideal) | |

TABLE 6

| Actual Voters - 1991 | | | | |
|----------------------|-------------|-----------|----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 645 | 1 | 645 | -22.883% |
| Rota | 916 | 1 | 916 | 9.533% |
| Saipan | 6802 | 8 | 850 | 1.669% |
| TOTAL | 8363 | 10 | 836 (Ideal) | |

| Actual Voters - 1995 | | | | |
|----------------------|-------------|-----------|----------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 716 | 1 | 716 | -16.257% |
| Rota | 942 | 1 | 942 | 10.175% |
| Saipan | 6892 | 8 | 862 | 0.760% |
| TOTAL | 8550 | 10 | 855 (Ideal) | |

TABLE 7

| Voting Age Population - 1992 | | | | |
|------------------------------|--------------|-----------|------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 681 | 1 | 681 | -14.547% |
| Rota | 833 | 1 | 833 | 4.524% |
| Saipan | 12034 | 15 | 802 | 0.668% |
| TOTAL | 13548 | 17 | 797 (Ideal) | |

| Voting Age Population - 1992 | | | | |
|------------------------------|--------------|-----------|------------------------------|-------------|
| Island | Citizenship | # of Reps | Per District | % Deviation |
| Tinian | 681 | 1 | 681 | -9.517% |
| Rota | 833 | 1 | 833 | 10.668% |
| Saipan | 12034 | 16 | 752 | -0.072% |
| TOTAL | 13548 | 18 | 753 (Ideal) | |