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Deanne Siemer
Third Northern Marianas
Constitutional Convention
Legislative Building
Saipan, MP 96950

Re: Proposed Changes to Article 12, Section 4

Dear Deanne:

I reviewed the proposed amendments to Article XII you faxed to me on July 18 and want to make several comments:

First, I note that the "qualifying" domicile date is extended ten years to 1960. I understand that this is being proposed as a solution to the blood dilution problem currently facing many families. To truly cover an additional generation, I suggest that the date be extended to at least 1965.

I realize that any change in the qualifying date, whether it be 1960 or later, raises an issue as to whether such change creates a new or enlarged class of people eligible to own land. For what it is worth, I don't think so.

Saipan and Tinian were administered by the Navy until July 1, 1962 and up to that time access was restricted because of the presence of the Naval Technical Training Unit (The "CIA") on Saipan. Commencing July 1, 1962, administration of the islands was transferred back to the Dept. of Interior and Saipan was designated as the provisional headquarters of the Trust Territory. Before, the Trust Territory had been headquartered in Hawaii and Guam. Significant migration to Saipan could not commence for several months while the necessary logistical and administrative changes took place. Thus, extending the date to 1965 should not significantly increase the size of the class. Those few Trust Territory citizens who may meet the domicile criteria

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because of the relocation of the Trust Territory headquarters to Saipan would also have to acquire U.S. citizenship to be eligible to own land. This further decreases the impact of this proposed change.

If concerns are expressed, the matter can be determined with some certainty as complete birth and immigration records were maintained from the time American forces invaded Saipan. Using these records and the Trust Territory ID records used in my survey, it is possible to estimate the impact of any change with great specificity (it may, however, take more time than you have). At any rate, I think the change of date is helpful but suggest that it be extended at least to 1965.

Unfortunately, the change in the qualifying date is of only limited assistance to the subjects of my study, Chamorros of indeterminate status. The problem is that children born of parents of indeterminate status "inherit" that status. To my understanding, children of U.S. citizens are themselves considered U.S. citizens regardless of where born. Persons born in the Trust Territory were specifically excluded if at birth they acquired another nationality. 53 TTC 1(1). This affects all the children of those Chamorros of indeterminate status regardless of when they were born. Even if born in the Northern Marianas before 1950, they may be considered U.S. citizens because of the application of the Organic Act to their parents. (The Francisco Cruz problem.) If born after 1950, the simple fact is that their parents, unless naturalized, were not Trust Territory citizens because they were not born in the Trust Territory, and they, therefore, technically do not qualify as persons of Northern Marianas descent.

Thus, the uncertainty continues and it appears the only way to finally resolve the problem is to further define "Trust Territory citizen" to expressly include the class of Chamorros of indeterminate status. Therefore, I propose to add an additional sentence to Section 4. Read in its entirety, it would appear as follows:

> "Section 4: Persons of Northern Marianas Descent
>
> A person of Northern Marianas descent is a person who is a citizen or national of the United States and who is of at least one-quarter Northern Marianas Chamorro or Northern Marianas Carolinian blood or a combination thereof. For purposes of determining Northern Marianas descents, a person shall be considered to be a full-blooded

> Northern Marianas Chamorro or Northern Marianas Carolinian if that person was born or domiciled in the Northern Mariana Islands by 1960 and was a citizen of the Trust Territory of the Pacific Islands before the termination of the Trusteeship with respect to the Commonwealth. The term "citizen of the Trust Territory of the Pacific Islands," as used in this Article, shall mean those persons who were natural or naturalized citizens of the Trust Territory under the Trust Territory Code and shall be deemed to include all inhabitants of the Former Japanese Mandated Islands as of September 2, 1945 who were not then citizens of another country."

It is important to include in the Legislative history the reason for this approach. Because of my own time constraints, I can't provide you with annotations at this moment but I am willing to do so if you think it's appropriate. At any rate, I think the language should run along the following lines:

> A definition of a citizen of the Trust Territory was added to address the problem of the several hundreds Guam born Chamorros who migrated to the Northern Mariana Islands during the German and Japanese times. While fully integrated into the local community by the time of the American invasion in 1944, their qualification to act as baseline ancestors has always been in doubt because it is unresolved to this day whether or not they meet the criteria for Trust Territory citizen. There are two related problems. First, Trust Territory citizenship is limited to those born within the Trust Territory thus technically eliminating the entire class and disqualifying their children born after 1950. Second, descendants of this class even though born within the Trust Territory before 1950 may not qualify because it remains undetermined whether, through operation of the Organic Act, these descendants became U.S. citizens (thus rendering them ineligible for Trust Territory citizenship) because U.S. citizenship was automatically granted to their parents. This issue plagued the Trust Territory administration up until the day it ceased to exist. To eliminate this uncertainty, a Trust Territory citizen is further defined to

include all inhabitants of the former Japanese Mandated Islands as of September 2, 1945. The term former Japanese Mandated Islands is used because the date, September 2, 1945, precedes the creation of the Trust Territory. The term, however, includes the same geographical area. The date selected, the surrender of Japan, is sufficiently early to exclude any post-war migration from Guam.

Again, thanks for the opportunity to submit comments. Please tell me if I can be of further assistance.

Yours Truly

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TELECOPIER TRANSMITTAL

TO: **DEANNE SIEMER**
Third Northern Marianas
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Legislative Building, Capitol Hill
Saipan, MP 96950

Date: July 22, 1995

FROM: **BRIAN W. McMAHON**

FAX No.: 322-2267

Re: Proposed Changes to Article 12, Section 4

THE FOLLOWING IS (ARE) TRANSMITTED HEREWITH:

LETTER

TOTAL NUMBER OF PAGES TO BE SENT INCLUDING COVER SHEET: 5

If you are not receiving properly or should for some reason not receive all pages, please phone us immediately at (670) 234-9314 or 9315.

Thank you.

By: Sol

COMMENTS:

SECTION BY SECTION ANALYSIS
OF 7/17/95 DRAFT OF ARTICLE XII

General Observations

This draft does not accomplish the two objections of strengthening and clarifying the meaning of Article XII.

Some of the new language in Section 1 (on disclosure) and Section 5 (internal control of corporations by persons of Northern Marianas descent) is beneficial, but the new language in Section 3 ("and related obligations") is ambiguous and will spawn more litigation.

The draft does serious harm. It fails to deal with Public Law 8-32 and Section 6 substitutes the term "voidable" for "void ab initio."

Section 1.

The new language relating to disclosure seems to be a good idea, but the meaning of the terms is unclear. Also, this kind of language should not be added there. It should be added

in another section, or subsection or Section 1, or it should be added to Section 6 on enforcement.

The meaning of the words used in the new disclosure clause is unclear. Disclosure of what? By whom? To whom? When? Where? Who will enforce it? What will be the consequences of failure to disclose?

How does the duty or disclosure relate to the first clause of Section 1, which contains the prohibition against ownership? It doesn't.

The meaning of the terms "fairness and timely enforcement" is unclear. Article XII has nothing to do with being "fair" or "unfair." Article XII is supposed to prohibit ownership of lands by those forbidden to own it. The framers have decided (and § 805 of the Covenant decided) that those restrictions are "fair." The only question is how to enforce them.

This provision needs more work. It is a good idea, but it will be useless when it comes to interpretation and

enforcement in the courts, unless it is made more clear and understandable.

Section 2.

The first sentence of this section should have new language added to it to make it absolutely clear that both we and the framers of the first constitution intend that Article XII prohibits every and any kind of "acquisition" no matter what false label the lawyers may put on it; no matter whether the true nature of the transaction is concealed from view; and no matter whether the parties to the transaction put false documents in the Recorder's Office.

Section 3.

The new term "related obligations," again, expresses a good idea, but the language is not clear. What does it mean? Does the "related obligations" clause apply to both purchase transactions and to lease transactions? That is not clear. It should apply to both purchases and to leases.

Section 4.

Because the date for domicile in the Northern Marianas is changed from 1950 to 1960, we should know exactly what the effect of this change will be. For example, does it have any effect on the pending Article XII case known as *Joaquin Tudela v. Commonwealth Investment Company*? That is the case involving Duty Free Shoppers. In that case, Tudela claims that Duty Free violated Article XII because Lino Fritz is not a person of Northern Marianas descent because his Chamorro mother did not come back from Palau before 1950. When did she come back?

Section 6.

The term "transaction" has been the source of much litigation in our courts. It should be explicitly defined, so that it is made clear that it covers anything and everything that the parties try to do or actually do in order to violated Article XII. This includes secret agency contracts, for example.

It will seriously weaken Article XII if we remove the

"void ab initio" sanction and use "voidable" instead. "Void ab initio" means that if the transaction violates Article XII, then the title to the land never passes out of the original owner. He or she still owns that land, just as if the transaction never took place. That is correct. That is right.

We are told that use of the term "voidable" "will allow the courts flexibility in remedies." That is just what we do not need to do. We do not need to give the courts more "flexibility." We do not need to give our own courts more "flexibility." We do not need to give the Ninth Circuit more "flexibility." The courts have used their own "flexibility" to render Article XII meaningless and useless.

Now, we need to give the courts clear and unmistakable direction. We need to make our views so clear that the courts have NO flexibility, no discretion. We need to send them a clear message that they must enforce Article XII in accordance with its clear and unmistakable terms.

The second sentence would give the Attorney General the exclusive power to enforce OR TO NOT ENFORCE Article XII.

Enforcement of Article XII should be left up to the original land owners and their private lawyers.

The Attorney General's Office came into the case of *Agulto v. Villaluz* and opposed Article XII! That was the first Article XII decision in the Commonwealth. Superior Court Judge Jose S. Dela Cruz decided that case. And he enforced Article XII in the right way, strictly and without "flexibility." He declared the illegal transaction void ab initio. Lt. Governor Borja was the lawyer for the original landowner in that case.

Then, the case was appealed to the federal court appellate division. And the Attorney General (the Alexandro C. Castro) came into the appeal court and opposed Article XII.

We do not need more bureaucracy in the enforcement of Article XII.

The six year statute of limitations is a mistake. Article XII became law in 1978. There have been thousands of violations since that time. This six year limitation means that any purchase or lease transaction which occurred before

1989 is safe from challenge, even if it violated Article XII.

Many of our people do not understand their Article XII rights. There should be no time limit on the right to bring an Article XII case to court. The transaction is void ab initio. That means it never happened.