

## LEGALITY OF CONVENTION ACTIONS IN THE ABSENCE OF A QUORUM

It is assumed that actions of the Convention taken in the absence of a quorum as defined by the enabling legislation are not valid and, therefore, could not be placed before the voters for approval or rejection as proposed amendments to the Constitution.

The statutory provision at issue is found in Section 14 of Public Law No. 9-18. It provides:

“No business may be transacted by the Convention in the absence of a quorum. Presence of a majority of the delegates shall constitute a quorum; provided , that at least one delegate is present from each of the three senatorial districts.”

As the present circumstances demonstrate, this requirement gives extraordinary power to the delegates from any one of the three senatorial districts (Saipan, Rota and Tinian), since any group of them proceeding as a unit can prevent the Convention from doing its work. It is in the statute for precisely the purpose for which it is now being invoked -- to enable the minorities on Rota and Tinian (either separately or together) to force the Convention to either quit work or agree to some demand of the Rota and/or Tinian delegates.

The basic numbers are these: The Convention has 27 delegates, the same number as the members of the bicameral legislature in the Commonwealth. Four from Rota, four from Tinian and 19 from Saipan (each representing the total of their representatives and senators in the legislature). The population figures reveal that Saipan has a population of about 47,000, whereas Rota and Tinian each have about 2500. As to registered voters, Saipan has about 9200, whereas Rota has about 1150 and Tinian has about 780. Depending on what figures one uses, it looks as though the present quorum requirement permits delegates representing less than ten percent of the population to prevent the Convention from completing its work.

Another relevant factor: the current provisions in the Constitution for approval of amendments recommended by the Convention provide extraordinary protection to the minorities on Rota and Tinian. It requires that amendments proposed by a Convention win not only a majority vote throughout the Commonwealth but also a two-thirds vote in two of the three senatorial districts. This means practically that if both Tinian and Rota fail to support an amendment by two thirds, it fails even though it may have more than 60-70% support Commonwealth wide. The Attorney General here has opined that this is unconstitutional under the U.S. Constitution based on a New Mexico case, but that it is premature to challenge in the absence of a real controversy with respect to a specific amendment that failed to get approval because of this two thirds requirement. We have looked at this. We tend to agree with the ultimate judgement and disagree with the prematurity assessment, but have concluded for various legal and political reasons that it is best not to raise this now. But it may have some relevance with respect to the need for the Rota and Tinian people to have such multiple layers of protection

against changes supported by the overwhelming percentage of the Commonwealth's citizens.

What are the possible grounds for challenging this quorum requirement?

1) There may be grounds under the U.S. Constitution, based principally on the one person-one vote stream of cases. There are critical differences, however, between the application of this principle to the election of representatives and its application to the internal workings of a state (or commonwealth) constitutional convention. We need to think about other grounds that might be raised under the U.S. Constitution.

2) There may be more hope, if even less precedent, under the Covenant or the CNMI Constitution.

A) The Covenant assures the people of the Northern Marianas the right to local self government (Section 103) and the right to govern themselves with respect to internal affairs "in accordance with a Constitution of their own choosing"(Section 103). It also provides that "The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein"(Section 201).

B) The Commonwealth Constitution as amended in 1985 required the legislature to put the issue before the voters, as they did in 1993, whether the people wanted to have a Constitutional Convention. The people voted overwhelmingly in favor of having this Convention. The Constitution provides that the number of delegates to the convention shall be equal to the number of members of the legislature and that the delegates to the Convention shall be elected on a nonpartisan basis. There is nothing in the Constitution about quorum or representation of the separate islands.

C) Whereas the Covenant and the Constitution give Rota and Tinian the bicameral legislature they insisted on during the last stages of the negotiations, with equal representation in the upper house, there is nothing else in either document that guarantees to Rota and Tinian the kind of power that they are now trying to exercise in this Convention because of the quorum requirements of the enabling legislation.

Is it not possible, perhaps even reasonable, to argue that enforcement of this quorum requirement denies the Commonwealth citizens their rights to self-government, to amend their own Constitution, and to have the republican form of government guaranteed by the Covenant? Or that the quorum requirement exceeds and is inconsistent with the provisions of the CNMI Constitution requiring this Convention to be held once two-thirds of the people voted for it as they did in 1993?

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**FOR: David Sohn and Mike Helfer (Please deliver to both ASAP)**

**FROM: HPW**

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MESSAGE

Thanks for the note. Here are some thoughts. You have the right number. Can we advance it slightly to my 8:45? Have written a great political speech invoking the dreams of the Founding Fathers and their lawyers.

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