

SUBJECT: Proposal for Ballot Format for the Vote on the Ratification
of the Amendments Proposed by the Third Constitutional
Convention

The Post Convention Committee has considered the issues regarding the balloting of the proposed amendments and has a proposal for consideration by the Board of Elections. We look forward to discussing this with the Board and work together towards an approach that complies with all applicable legal requirements and best serves the needs of the voters.

General Objectives

The overall goal is to make the task of voting as simple as possible consistent with the voter understanding exactly what a vote in favor of (or against) a proposed amendment means. To accomplish this objective, it is necessary to consider the number of amendments placed before the voters, the length of the ballot, and the contents of the explanatory material.

Number: The Committee believes that the voters should have as few amendments presented as accurately reflect the proposals of the Convention. Based on the experience in 1985, when 44 amendments were on the ballot, it seems desirable to have a smaller number. Although opinions on the subject undoubtedly vary, there were many complaints about the length of the ballot, the resultant complexity, and the fact that many voters did not vote on all of the proposed amendments.

Length: To the extent possible, the ballot should be short and include all the questions to be voted on in as brief a space as possible. Otherwise there is a substantial risk that the voters will not find the place to mark on the ballot or will become confused and frustrated with the task of voting. The principal issue here is whether the entire text of all sections proposed to be amended should (or must) be part of the ballot. The exact question to be put before the voters should be simply and briefly stated; one example is: "Do you approve Amendment Number 1 amending Article I of the Constitution as recommended by the Third Northern Marianas Constitutional Convention?" Section 19(b) of the enabling legislation appears to assume that the full text of the amendment will be on the ballot and preceded by a question similar to the one contained in the legislation.

Explanatory Material: The Committee wants to ensure that accurate and objective information is provided the voters regarding the proposed amendments. The explanatory material should include the full text of the proposed amendments and an objective summary of the changes that were proposed by the Convention.

General Approach

The Committee recommends the following approach for consideration by the Board of Elections:

1) The Committee suggests that 19 amendments be placed before the voters --each one dealing with a single article of the Constitution. As discussed below, the Committee believes that such an approach will reflect the public education program, will recognize the fact that the various changes within a single article are interrelated, and complies with all applicable legal requirements. As envisioned by the Committee, Amendment Number 1 will cover the changes proposed to Article I; Amendment Number 2 will cover the changes related to Article II; and so forth. Two articles of the current Constitution, Article XV on Education and Article XX on Civil Service, are proposed to be deleted as articles and to have these subjects addressed in new sections of Article III (Executive Branch) where they were in the original Constitution. The Committee recognizes that these two subjects under these circumstances may be best considered in two separate proposed amendments. This can be done and still have less than 20 amendments for the voters to consider.

2) The Committee suggests that there be three separate ballots - one in each of the three required languages - and that each ballot contain only the 19 questions for the voters to address. This seems preferable to having a single ballot with each of the 19 questions set forth in all three languages with a Yes or No alternative under each version of the same question. It also is the Committee's preference, consistent with its general objectives, that the ballot be separate from the explanatory material that will be given to each voter at the time that the ballot is given.

3) The Committee is considering various approaches to the explanatory material required and would welcome the views of the Board of Elections. The Committee has prepared a draft version for the Board's consideration. It is drafted on the assumption that the ballot is a separate document, that the pamphlet would be available in each of the three languages, and that the voter would benefit from having a complete version of the Constitution available, with the recommended changes clearly specified, at the time that the voter decides whether to support or oppose ratification. The Committee also recognizes that the interrelationship between the question put before the voters and the text of the proposed changes must be considered in light of Section 19 of the enabling legislation.

Advantages of Proposal

First, this approach best reflects the way in which the Convention did its work and produced its recommended changes to the Constitution. The four substantive committees of the Convention were assigned individual articles contained in the present Constitution; they were instructed to review the many proposals for change (620 in total) that pertained to each article and make recommendations to the full Convention; and the committee reports typically dealt with each article as a coherent whole because of the obvious interrelationship among the various

sections in each article. When finally asked to vote on proposed amendments to the Constitution, the delegates did so on an article-by-article basis and the record so reflects. The delegates recognized that, although they might disagree with individual deletions or additions, it was necessary to consider the whole article as a package and to make their individual decision whether, on balance, the article as proposed to be amended was preferable to the status quo.

Second, this approach correlates best with the public education program now underway in the community. The Committee has found that the voters want to hear what changes are proposed to the various institutions of government, to restraints on land alienation, to public lands, and the other subjects treated in individual articles of the Constitution. From the very first Convention in 1976, the issues pertinent to the Constitution have typically been considered on this basis. The Committee is preparing materials that address each article individually so that the voters can understand exactly what changes are proposed to each article and be prepared to make their own determination whether the article amended as proposed is more desirable than the current provision.

Third, an approach that focuses on each word change proposed by the Convention invites confusion and worse. It is obvious that making each such change the subject of a separate amendment would produce a ballot that would offend all of the objectives set forth above. It is also true that such an approach would invite inconsistent voter determinations that would seriously endanger the effective operation of the Commonwealth government. For example, the delegates have proposed downsizing of the legislature and established certain budget limitations on the legislature. These are interrelated provisions that should be considered together by the voters. It is certainly true that voters may prefer some, but not all, changes proposed by the delegates to an article; this recommended approach simply asks the voters to do what the delegates were required to do, namely, decide whether on balance the merits of the entire set of changes to the article outweigh the perceived disadvantages.

Compliance With Applicable Legal Requirements

Some critics of the Convention's recommendations are suggesting that the Convention did not comply with the applicable legal requirements in performing its task, that it cannot be determined what the delegates are proposing by way of amendments, and that amendments based on an article-by-article basis may violate the "single subject" requirement imposed by the enabling legislation. Counsel for the Convention have advised the Post Convention Committee that there is no legal support for these contentions and that the recommended approach set forth above is entirely consistent with the applicable legal requirements.

First, there can be no serious question about the legality of the Convention's proceedings or its recommended amendments to the Constitution. The Commonwealth Constitution imposes only two restrictions on a Constitutional Convention; it requires that a Convention have the same number of delegates as the legislature has members and that the delegates be elected on a nonpartisan basis. (Art. XVIII, Sec. 2(d)) It does not impose any "single subject" rule on the

work of Conventions although it expressly does so with respect to any amendment proposed by legislative initiative. (Art. XVIII, Sec.3) The Convention was free to recommend as many, or as few, amendments as the delegates decided was appropriate. This unlimited authority was confirmed by the enabling legislation which provided in Section 13 as follows:

“The Convention may adopt any number of proposed amendments. A proposed amendment adopted by the Convention may encompass one or more sections, subsections, or articles of the Constitution or may propose the addition of new sections, subsections, or articles of the Constitution, but each proposed amendment shall be limited to a single subject or topic. Each proposed amendment shall be confined to constitutional or related issues. Each proposed amendment adopted by the Convention shall be subject to the ratification process independent of the others.”

Under the enabling legislation, therefore, the delegates were free to propose amendments without any restraint and its proposed amendments could embrace changes in different sections or articles in a single amendment subject only to the “single subject” requirement discussed below.

Second, the detailed records of the Convention and its final product clearly indicate what it is proposing by way of changes to the Constitution. As discussed above, the delegates proceeded under the Convention’s Rules to consider changes in individual articles and ultimately voted on such changes on an article-by-article basis. It has been suggested that the Convention’s publication of an entire constitution as proposed to be amended was either improper or reflected its intention that only a single proposed amendment (namely, the entire constitution as amended) was going to be placed before the voters. This contention cannot be taken seriously. The delegates published an entire draft constitution incorporating the proposed amendments so that they initially, and the voters subsequently, could put in context the exact changes proposed by the Convention. This effort to stimulate clarity and understanding has no legal significance whatsoever; there is no evidence furthermore that the Convention believed that it could, or should, present the entire constitution as proposed to be amended to the voters for ratification.

Third, the approach suggested above complies with the “single subject” requirement contained in the enabling legislation. (We will assume for purposes of this discussion that this requirement is constitutional, although the weight of authority indicates that such limitations on a constitutional convention cannot be imposed by the legislature and the Commonwealth’s Constitution imposes such a requirement only on amendments proposed by legislative initiatives.) Changes proposed to an article are all obviously related to the subject of that article, whether it be an institution of the Commonwealth government (executive, legislative or judicial branches), local government agencies, government processes (such as recall or constitutional amendment) or a subject considered important enough to deserve constitutional treatment (such as restraints on land alienation, public lands, public finance or gambling). The discussion in the Analysis of the 1976 Constitution (at page 199) explaining the “single subject” requirement applicable to legislative initiatives fully supports the view that each article by definition refers to

a single subject. The judicial decisions interpreting a “single subject” requirement made applicable to popular initiatives by constitution (not legislation) also indicate that changes to different articles or sections comply with the requirement so long as the proposed changes are “reasonably germane” to each other and to the general purpose or object of the initiative. (Brosnahan v. Brown, 651 P.2d 274, 279, 186 Cal. Rptr.30, 35 (1982))

The Post Convention Committee looks forward to discussing the ballot format with the Board of Elections at the Board’s earliest convenience.