

OPEN LETTER TO THE VOTERS ABOUT COMMENTS ON THE PROPOSED CONSTITUTIONAL AMENDMENTS

In the January 19, 1996 issue of the Pacific Star, Ms. Ruth Tighe provided her reasons for voting against Amendments 1 through 6 as proposed by the Constitutional Convention delegates. Ms. Tighe's reasons are, as she says, the product of her own thinking, but they are aimed at influencing voters. For that reason, let me add some facts to the debate.

Amendment #1: Amendment #1 deals with Article 1 on Personal Rights.

Amendment #1 deletes the provision with respect to victims of crime. The Legislature has already provided two laws that protect victims of crime. This is a legislative matter, not a constitutional one. We need flexibility in this area, not the permanence of a constitutional provision. Our constitution should not be littered with legislative provisions. That is why we elect a legislature, and they have done a good job in this area. Ms. Tighe says she will vote against Amendment #1 because of this deletion, but she does not point out any aspect of the protection of victims of crime that needs a constitutional provision, and the Convention found that there was none.

We hope Ms. Tighe will reconsider. The experienced government prosecutor who took the time to testify before the Convention explained that a legislative solution was preferred. The prosecutors are the ones most directly affected by the willingness of victims of crime to come forward. They have day to day experience with this problem. The Convention also heard testimony that a comprehensive review of the criminal laws was underway. When this revision is presented to the legislature, there will be an additional opportunity for the legislature to address any needs for improvement.

Amendment #1 proposes a new provision that proclaims the right to life. This new provision is constitutionally sound and it is broad in scope, protecting life from conception through old age. Ms. Tighe says she is "not comfortable" with this right to life provision in Amendment #1 that replaces the former narrow provision. She does not acknowledge that if Amendment #1 is defeated, there remains only a provision on abortion that has been declared by the Attorney General to be unconstitutional and cannot be enforced. Ms. Tighe's solution would be to leave the Commonwealth with no protection in this area. The Convention addressed this problem in consultation with all interested parties. The Convention's proposed amendment would provide a framework for protection against abortion as well as euthanasia, assisted suicides, and other life threatening practices. The Commonwealth should have this policy in its constitution.

Your elected Con-Con delegates urge you to vote "yes" on Amendment #1.

Amendment #2: Amendment #2 deals with Article 2 on the Legislative Branch.

Amendment #2 reduces the size of the legislature in order to reduce costs and make the legislative process more efficient. Ms. Tighe says that while she favors reducing the House from 18 to 13, she is not in favor of reducing the Senate from 9 to 6. She provides no reasons for this distinction. The Convention spent a great deal of time considering proposals to amend Article 2. Most of the proposals from the public dealt with this article. The size of the legislature is a matter of considerable importance. The cost of a large legislature is substantial, and there is no indication that a larger legislature does a better job for the taxpayers. The Convention delegates believed that 13 members of the House could provide the necessary representation of the people.

Similarly, the Convention delegates believed that two Senators from each island could do just as effective a job in representing the island interests as three Senators from each island. In the U.S. Senate, two senators from each state perform the same function for the individual states. Even if each of these senators is from a different party, on matters affecting their home state, they typically pull together. So here in the Marianas as well, the Senators from the individual islands will pull together when representing their island interests. Ms. Tighe does not explain why, if the United States can get along with two senators from each state, the Commonwealth cannot get along with just two senators from each island.

Amendment #2 also provides a four year term and island-wide election for the House. This is a very important change. Our legislature is hampered because its members represent very small areas on Saipan and must run for office every two years. This leads to a budget that includes unnecessary “improvements” in various election districts so that the incumbent members can show, at the next election, that they did something for their constituents. By lengthening the term, we will have lower election costs, more time for thoughtful consideration of legislation from an island-wide perspective, less impact of business lobbyists, and more qualified legislators.

The Convention is proposing an important balancing feature in Amendment #9. If the voters are dissatisfied with the performance of the House members, they can recall them in a special election. Recall is made much easier than under the current Constitution. Only 20% of the voters need to sign a petition, and once the petition has been certified by the Attorney General as having the necessary number of signatures, it goes to the voters in 90 days. This is much more responsive government than we have now. If a majority of the voters disapprove of the job being done by any Representative, he or she will be out of office in six months.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #2.

Amendment #3: Amendment #3 deals with Article 3 on the Executive Branch.

Amendment #3 contains important reforms for the budget process, to ensure that there is a balanced budget based on fair revenue projections. It provides that in the event of a budget impasse, public funds shall be spent in an orderly way for necessary public services. It protects

against the exercise of emergency powers by the governor in an excessive way, protects the independence of the attorney general, protects against lengthy appointments of “acting” heads of executive branch departments, and strengthens the provisions for indigenous affairs. None of these reforms are difficult to understand, and each one responds to the needs of the Commonwealth for a better executive branch.

Ms. Tighe is opposed to these important reforms because the guaranteed budget for the public auditor has been deleted, along with all other guaranteed budgets. She thinks this will make the public auditor a “political football”. The Convention delegates considered this viewpoint carefully during their deliberations. They concluded that guaranteed funding does not guarantee independence. Only high quality appointments can do that. The public auditor function is important, but no more so than the attorney general who prosecutes public officials, the public safety officers who investigate crimes, and the courts who hear cases against public officials. None of these agencies have guaranteed budgets.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #3.

Amendment #4: Amendment #4 deals with Article 4 on the Judicial Branch.

Amendment #4 is of great importance. It provides equal status for the judicial branch with the legislative branch and the executive branch. The Commonwealth Supreme Court was created by statute and could be abolished by statute. It is not covered by the current Constitution.

Amendment #4 provides that judges are appointed by the governor with the advice and consent of the Senate for an initial term of six years in the Superior Court and 12 years in the Supreme Court. After the initial term, the question whether to retain a judge is put on the ballot for the people to decide. This is a non-partisan question and the judges are not permitted to campaign. This way of deciding whether judges should be retained is used in many places in the States. The current members of the courts proposed this plan and endorse it. The House of Representatives has also endorsed it.

Ms. Tighe says the 12 year term for Supreme Court “seems excessive.” But she doesn’t recognize that Supreme Court justices generally have experience in the Superior Court before they are elevated to the appellate court. They have to survive an initial six year term in the lower court, and can be replaced after that term if they are not performing well. It is important for the Commonwealth to have stability on the appellate court and to encourage consistency in decisions.

Ms. Tighe also worries about the ballot question on retaining judges becoming a “popularity contest”. But she should concede that allowing the people to determine whether a judge should be retained serves important interests in a democracy. The voters should have a say in the choice of all officials who make important decisions affecting the public welfare. Elections also foster the independence of the judiciary, who are retained by the people and who

are not obligated to officials in the executive branch or the legislature.

The proposed amendments to Article 4 place rulemaking power with respect to the judicial branch in the Supreme Court. This means that the three justices of the Supreme Court can approve rules for the admission and discipline of lawyers, the duties of court officials, and administrative matters for the courts. This is no breach of the separation of powers of the three branches. The legislature has a similar right to make its own rules. For example, Article 2, Section 5(b) provides that bills are confined to one subject except appropriation bills. But the way the legislature goes about complying with that requirement is up to it, and is not subject to judicial review. Similarly, under Article 2, Section 13(a), each house of the legislature is the final judge of the election and qualifications of its members. This is not subject to judicial review unless the legislature allows it. Ms. Tighe thinks that allowing the courts to provide for their own rules is a reason to vote against Amendment #4. She says that the states do not do it this way. That is wrong.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #4.

Amendment #5: Amendment #5 deals with Article 5 on the Washington Representative.

Amendment 5 declares the fundamental importance to the people of the Commonwealth of obtaining representation in the United States Congress. It maintains all the powers of the current Washington Representative until Congress grants the Commonwealth a non-voting delegate, and provides for an automatic transition when that happens.

Ms. Tighe wants to vote against this provision because the impeachment provision has been moved to Article 2 and consolidated there. She is concerned that if Amendment #2 is defeated, there will be no impeachment available against the Washington Rep. She makes a similar point with respect to the governor and lieutenant governor who are covered by Amendment #3. The Convention was very careful in this regard. It provided in Article 9 an easier way for the people to remove the Washington Rep (and the Governor and Lieutenant Governor) with a recall vote. The Convention delegates intended that most questions about the removal of an elected official would be decided by the people rather than by the legislature.

Ms. Tighe is also concerned about the civil service exemption for the employees of the Washington Rep’s office. She says that “having voted ‘no’ to Article III, that exemption would not now apply unless I also vote ‘no’ to the amendment to Article V.” That is flat wrong. The amendments affecting the civil service are not include in Amendment #3 on Article 3. They are included in a separate Amendment #16 covering only the civil service.

Ms. Tighe is also concerned because the seven-year residence requirement has been deleted and thinks this is a reason to vote against the proposed amendment. The U.S. Supreme Court has been steadily finding such long residence requirements to be unconstitutional and

unenforceable. The Con-Con delegates thought that the voters could exercise their judgment responsibly at the polls to decide whether a candidate had resided in the Commonwealth long enough to be a good representative in Washington.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #5.

Amendment #6: Amendment #6 deals with Article 6 on local government.

Amendment #6 revises the current system of local government to give defined and enlarged powers to the mayors and municipal councils over local matters. It specifies that Commonwealth funding for local governments will be kept at the 1996 level for 1997 and 1998, and limits the number of local government employees paid from Commonwealth funds. These changes are quite easy to understand.

Ms. Tighe opposes these important new approaches. She says she thinks this is a large change and deserves more public input. The Con-Con delegates had a great deal of public input. They held hearings on these proposals on all three islands, debated 42 separate proposals on local government, issued reports to the public stating the reasons for adopting certain of these proposals, and had several days of floor debates which were televised. Changes need to be made to our system of local government so that it will work better and be more effective in meeting the needs of the community. The changes proposed in Amendment #6 are practical and directed at specific current problems.

Ms. Tighe refers to the proposed amendment process for the constitution. This allows amendment of the constitution at any time by popular initiative. The Convention delegates propose to make amendment of the Constitution easier by reducing the number of signatures on a petition from 50% down to 30% of the registered voters. The Convention delegates restricted future constitutional conventions so that the next one would be held in 25 years instead of in 10 years as at present. The delegates believed that reliance on the legislature to pass necessary laws and reliance on the people to generate needed constitutional amendments was better than having frequent constitutional conventions.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #6.

Sincerely,

Herman T. Guerrero
Chair, Post Convention Committee