

January 31, 1996

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

Amendment #7 through Amendment #12 contain important changes that benefit the Commonwealth. These changes are offered by the delegates to the Constitutional Convention, all of whom were elected. These amendments have been criticized by Ruth Tighe, but I never saw her at any of the Convention's sessions or any of the public hearings that the delegates held on any subject. Because she did not come to any of these sessions, and apparently has not read the transcripts, the analysis, or the other materials the delegates have published for the public, Ms. Tighe has made some important mistakes in her reasons for voting "no" on all the amendments. The Post-Con Committee offered to help by having its people meet with her. Ms. Tighe refused. So I have described a few of these mistakes here.

AMENDMENT #7: Amendment #7 deals with Article 7 on eligibility to vote and hold office.

Amendment #7 adds a new provision that disqualifies anyone convicted of a felony from holding public office. The delegates consider this an important protection for the Commonwealth. Ms. Tighe agrees with this judgment. But she intends to vote "no" because the delegates propose to delete a legislative provision. This legislative provision, which told the legislature to provide the criteria for domicile and residence, was included in the 1976 Constitution so that the first Commonwealth legislature would pay attention to these subjects.

The legislature already had the power to act with respect to domicile and residence matters. Section 1 of Article II says: "The legislative power of the Commonwealth shall extend to all rightful subjects of legislation and shall be vested in a Northern Marianas Commonwealth legislature composed of a senate and a house of representatives." Under this provision, the legislature has the authority to pass laws concerning the criteria for domicile and residence, and they have done so. The language that is proposed to be deleted from the Constitution is unnecessary now that the Commonwealth is firmly established. No constitutional lawyer would argue to the contrary.

Your elected Con-Con delegates urge you to vote "yes" on Amendment #7.

AMENDMENT #8: Amendment #8 deals with Article 8 on elections.

The delegates propose to delete legislative language from Article 8 which says the legislature may provide for registration of voters, absentee balloting, administration of elections and similar things. Ms. Tighe mistakenly identifies this as a section "giving the legislature the authority" to deal with these subjects. That is wrong. The legislature has authority over all rightful subjects of legislation unless the Constitution takes away certain authority. Ms. Tighe's

idea is just the reverse of how our Constitution actually operates.

In writing a constitution, one has to take care not to include what is called “legislative language”: that is, something that should be left to the legislature and that should not be included as basic, fundamental law in the constitution. The 1976 Constitutional Convention did a pretty good job of staying away from legislative language and sticking to strictly constitutional subjects. The 1985 Constitutional Convention strayed more into legislative subjects, and the delegates have proposed to delete a number of those provisions as well. If we keep specific legislative matters out, our Constitution will be flexible enough to stand the test of time.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #8.

AMENDMENT #9: Amendment #9 deals with initiative, referendum, and recall.

Amendment #9 makes it easier for the voters to recall an elected official who is not doing a good job, and to replace that person with someone else. The number of signatures required on the recall petition has been lowered from 40% to 20% of the persons qualified to vote. And the number of votes needed has been lowered from 2/3 to a majority. This is an important change, giving the voters more power. Ms. Tighe says she has no objection to these changes.

One of Ms. Tighe’s reasons for voting “no” is that she thinks the Attorney General is now under some kind of deadline to get petitions certified in time for the next general election and that this deadline would be removed by the amendment. She is absolutely wrong about this. There is no deadline of any sort in the current Article 9. It says: “A recall petition shall be filed with the attorney general for certification that the requirements [for the number of signatures on the petition] have been met. A recall petition certified by the attorney general shall be submitted to the voters at the next regular general election unless special elections are provided by law for this purpose.”

Under the current Constitution, the attorney general takes whatever time he needs to examine the signatures and certify the petition. Then, once he certifies it, the petition goes on the ballot at the next general election. That general election could be almost two years away. Under the proposed amendments, the attorney general still has whatever time he needs to examine the signatures and certify the petition but, once he does that, the question goes on the ballot within 90 days. That might be the general election, if one is coming up, but under this system the voters do not have to wait more than 90 days.

Another of Ms. Tighe’s reasons for voting “no” on this amendment is that the language of this article has been updated and she is “uncomfortable” with this. In 1976, before self-government began, the Constitution said that initiative and referendum petitions would be approved by the required majority of the “votes cast by persons qualified to vote in the Commonwealth”. This was just to make it clear, at a time before the Commonwealth legislature had even been formed, that the only votes that could be counted were those of qualified voters.

The procedures for registration of voters, counting of votes, and challenging ballots are now very well established in the Commonwealth. Therefore, the term “votes cast” is sufficient for constitutional purposes.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #9.

AMENDMENT #10: Amendment #10 deals with Article 10 on taxation and public finance.

Amendment #10 contains four important reforms with respect to taxes and public finance. First, public debt cannot be incurred to retire deficits. This means we won’t get ourselves deeper in debt just to say we’ve retired a deficit. Second, a majority of the voters can approve real property taxes. If the Commonwealth has a really urgent need, then a majority of the voters should be trusted to make the right decision. Third, if we have a deficit, there is a hiring and salary freeze until the deficit is eliminated. This will help prevent us from piling up an enormous debt that we can’t retire and that will burden our children. The government has to live within its means. Of course, hiring for public health and safety can be exempted. And fourth, the taxes that are going to be rebated must be put in a trust fund and used only for tax rebates. There is nothing difficult about any of these concepts. They are just common sense proposals to keep our government running on a sound basis.

Ms. Tighe objects only to the proposal to allow a majority vote on certain real property taxes. Under the Constitution, the legislature and the governor cannot impose these real property taxes for Commonwealth purposes without putting the proposed tax to a vote of the people. Similarly, the municipal council and the mayor cannot impose these real property taxes for local purposes without putting the proposed tax to a vote in the municipality. Under Article 9, when the people vote in a referendum on any other law that the legislature might pass, they act by majority vote. These laws could include safety, health, environmental, land and other urgently important matters. The delegates propose that under Article 10, when the people vote on tax matters, the same general majority rule apply.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #10.

AMENDMENT #11: Amendment #11 deals with Article 11 on public lands.

Amendment #11 makes four basic changes in the way we deal with our Commonwealth public lands. First, it reinstates a bureau with corporate powers to deal with public lands. This is the system that was in place until abolished by the governor. Second, it expands the homestead program so that more people will be able to get homesteads. Third, it controls the leasing of public land for commercial purposes and provides for public knowledge and participation in the decision-making process. And fourth, it sets aside some of our public lands into permanent parks and preserves so that our islands will continue to have some of the magnificent green spaces that we enjoy today. Our public lands are one of our greatest resources, and these changes will ensure that they are managed well and made available to our people to the maximum extent

Ms. Tighe says she needs more information and discussion about these changes. The Post Convention Committee is holding 15 public meetings and 10 government meetings to discuss the amendments. The schedules have been published in the newspapers. She is welcome to join any of these discussions. In addition, the Post Convention Committee has published materials in Chamorro, Carolinian, and English about the amendments. Copies of those materials may be obtained at the Con-Con office in the JoeTen DanDan building, second floor.

Ms. Tighe says she is worried about the permanent preserves including all public land more than 500 feet above sea level because she thinks that might encompass Capitol Hill. The language in the relevant provision is Section 6(e) which says: "Public lands 500 feet or more above sea level are permanent preserves unless exempted by the bureau before December 31, 1997." This means that if the government does not want Capitol Hill to be a part of the permanent preserves, the Marianas Land Bureau has to take action to exempt it before December 31, 1997. The high ground on our island is an essential part of its scenic beauty. Unless it is protected, in 50 years there could be buildings on every rock. We will have lost the beauty that brings tourists here and supports our businesses.

The five directors of the Marianas Land Bureau are required to administer the public lands "for the benefit of the people of the Commonwealth who are of Northern Marianas descent." Each director must be a person who has adequate knowledge of the landholding practices, customs, and traditions in the Commonwealth. Each director must also come from the private sector and must have resided in the Commonwealth for five years immediately prior to appointment. The directors must be confirmed by the Senate. Ms. Tighe says she is uncomfortable with the change from the prior requirements that directors be persons of Northern Marianas descent who speak Chamorro or Carolinian. The delegates believe that the new requirements are directly related to the job that the directors must do, and they ensure that knowledgeable local people will hold these jobs. Someone who has lived in California for the last 30 years should not be eligible for this job just because he or she can speak some Chamorro.

The current Constitution allows leases of public lands for 40 years. Leases up to 25 years can be made without any action by the legislature. Anything over 25 years and up to 40 years must be approved by the legislature. This basic rule on commercial leases is continued. But the delegates added two important requirements: First, commercial leases cannot be made without public hearings and an opportunity for competing bids; and second, leases expire in three years if the commercial purpose is not achieved. Ms. Tighe points out that the Schedule on Transitional Matters requires new leases, entered after the proposed constitutional amendments were published, to comply with these new protections for the public interest.

Your elected Con-Con delegates urge you to vote "yes" on Amendment #11.

AMENDMENT #12: Amendment #12 deals with Article 12 on restrictions on land alienation.

Amendment #12 allows parents to give family lands to their children, regardless of

Amendment #12 allows parents to give family lands to their children, regardless of whether those children qualify as 25% Northern Marianas descent. Family lands can be given to adopted children if they are adopted before age 6. Public lands, homesteads, and other lands cannot be given to adopted children, no matter when they were adopted, if they are not persons of Northern Marianas descent. Ms. Tighe intends to vote “no” because of these changes, none of which affect her in any way. But these changes are important to local people. The delegates wanted parents to be able to provide family land for their children, whether natural or adopted. On the other hand, the delegates did not believe that adopted children who are not persons of Northern Marianas descent should be eligible for homesteads. We have little enough land left, and we need to limit homesteads to persons of Northern Marianas descent.

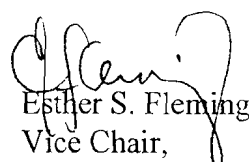
Ms. Tighe points out that transactions that violate Article 12 would be made “voidable” under the proposed amendments, rather than “void ab initio” as they are at present. This change also does not affect Ms. Tighe personally at all. But it is important to local people. Sometimes there is a transaction that violates Article 12 somewhere in the chain of title before a local person buys the land. Then, when that transaction is declared “void ab initio,” the local person, who paid their hard earned money for a small piece of land to call his own, loses everything. He loses the land, and he also doesn’t get his money back. This just isn’t a fair result. But at the same time, we don’t want people from other countries to be able to own land here. So, the delegates decided to trust our courts to allow locals who qualify to own land to keep the land they buy, even if a prior transaction is bad, while disqualifying people from other countries when a prior transaction is bad.

This is what “voidable” means. The court decides who can keep ownership and who cannot. Our judges are appointed by our governor and confirmed by the Senate. They should be trusted to decide when the void ab initio rule should be used against people who are not qualified to own land here, and when the voidable rule should be used to avoid injustices to persons of Northern Marianas descent who have bought land in good faith.

Ms. Tighe says she is not comfortable with the delegates’ proposal that an office be established under the Attorney General so that there is legal expertise available to persons of Northern Marianas descent. This public lawyer would be available “to assist landowners, monitor land transfers, and to assist in enforcing” Article 12. Ms. Tighe doesn’t give any reason why this is not a good idea and her suggestion that this is a basis on which to vote “no” should be rejected.

Your elected Con-Con delegates urge you to vote “yes” on Amendment #12.

Sincerely,



Esther S. Fleming
Vice Chair,

Post Convention Committee