On My Mind

By [illegible]

I am delighted to see that meaningful public dialogue is finally taking place regarding the proposed constitutional amendments. See "Open Letter to the Voters" in last week's issue of the Star.

Since the writer, the [illegible] the Post Convention Committee, was himself directly involved in drawing up the proposed amendments, I suppose it is unrealistic to wish that, for the sake of truly open discussion, he had taken it just one step farther, and urged voters to make up their own minds, instead of urging them to support a particular position.

To make such open discussion easier in the future, it would seem a good idea to turn the education process over to a non-involved neutral body. On the mainland, the League of Women Voters performs this function. In the CNMI, where the League does not exist, the function could be turned over to the Board of Elections, or perhaps the Chamber of Commerce.

In continuation of open dialogue, let me address just a few of the points raised in the Chair's letter.

To start at the beginning, so to speak, with Amendment #1 the letter from the Chair indicated that Article I's provision regarding abortion in the present Constitution had been declared unconstitutional. It is my understanding that the present provision is not unconstitutional, because it does provide for exception by law. What has been declared unconstitutional is an absolute prohibition against abortion.

This is an understandably sensitive issue. To date no law has been passed defining the exceptions. A constitutional provision might well be the better alternative.

However, the proposed wording for this section of Article I doesnot provide for any exceptions either. Rather, it states that the right to life, from the moment of conception, is protected in the Commonwealth. Is this not also, in effect, an absolute prohibition of abortion?

In regard to Amendment #2, the Chair's letter maintains that since the U.S. Senate consists of only two members from each state, two senators from each island should be sufficient for the CNMI.

But there is a considerable difference, I believe, in group dynamics among 100 people - who make up the U.S. Senate - and a group of only six who would constitute the CNMI Senate under proposed amendment #2. I find the thought of giving a mere six people all the powers of the CNMI Senate more than a little discomfiting.

Moreover, though the U.S. Senate seems able to manage with an even number of members, I do not think it will work nearly as well with the much smaller number being proposed for the CNMI Senate.

I must also respectfully disagree with the Chair's position that a two-year term of office is too burdensome for members of the CNMI House. First of all, all 435 members of the U.S. House of Representatives serve two year terms of office. Surely, with smaller distances, smaller constituencies, it is not too much to ask that members of the CNMI House of Representatives do the same.

Besides, a four-year term for members of the House would eliminate mid-year elections, such as the one that took place this past November. That election [illegible] significant re-alignment [illegible] the House. With four-[illegible] could not have [illegible]

In addition, [illegible] and Senate [illegible] terms, and [illegible] Senate members [illegible] on an island-wide basis, as Amendment #2 calls for, what is the difference between them? Why have two houses at all?

Twenty-seven changes are proposed to Article III in Amendment #3. The Chair states, in his letter, that several of them contain important reforms. That may well be true. It is unfortunate that others, including the elimination of a guaranteed budget for the auditor, are part of the same amendment.

The letter states that the auditor's office is no more important, and no more deserving of a guaranteed budget, that the Attorney General's office, the Department of Public Safety, or the courts. To the contrary, it is the auditor's office that identifies wrong-doing that the other agencies are then called upon to investigate, prosecute and rule upon.

In regard to Amendment #4, the Chair said in this letter, that I misspoke in saying that no other state gives its judiciary as much rule-making power as [illegible] this amendment. My statement was taken directly from information previously submitted to the ConCon delegates.

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That information stated that in cases where rule-making is granted to the judiciary, it is nevertheless generally recognized, either specifically or implicitly that ultimately rule-making is a legislative, not a judiciary power. This amendment contains no such recognition.

I admit that I erred in stating, in discussing Amendment #5, that the civil service status of the Washington Rep's staff is included in Article III as amended by Amendment #3. It is included in Article III as amended by Amendment #16 about which more will be said later.

As regards Amendment #6, the Chair, in his letter, asserted that its many changes, outlining new powers for island mayors and municipal councils, should be easy to [illegible]. Maybe so, but [illegible] their impact is not so easy [illegible]. Has anyone developed [illegible] as to the effect on individuals, families, businesses, the economy, when local government is no longer funded by the Commonwealth, but must raise all its own revenue?

* * *

To go back to the matter of amendments to Article III, Amendment #16, which deals with the Civil Service system would, if approved, become section 16 of Article III. But what if Article III - that is Amendment #3 - is not approved, and Amendment 16 is? Where would the section on Civil Service go? How would it fit into the constitution?

The opposite question can also be asked. What if the new Article III is adopted, and Amendment #13, the education amendment which is slated to become section 13 of Article III - is not adopted - as is likely? There'd be no provision for education in the Constitution at all.

This inter-locking of proposed amendments creates problems in its own right. Other problems this causes have been mentioned in my previous columns; more will become evident in the discussion of the remaining amendments.

(to be continued)

[illegible]etters

[C]on-Con's response to Tighe, part 2

January 31, 1996

OPEN LETTER TO THE [V]OTERS ABOUT COMMENTS ON THE PROPOSED CONSTITUTIONAL AMENDMENTS

Amendment #7 through [A]**mendment #12 contain** important [ch]**anges** that benefit the [C]**ommonwealth. These changes are** [of]**fered by the** delegates to the [Co]**nstitutional** Convention, all of [w]**hom were elected.** These [am]**endments have been** criticized by [Ru]**th Tighe, but I never saw her at any** [of] **the Convention's sessions** or any [of] **the public hearings** that the [de]**legates held** on any subject. [Be]**cause she did not come to any of** [th]**ese sessions, and apparently** has [no]**t read the transcripts,** the analysis, [or] **the other materials the delegates** [ha]**ve published for the public,** Ms [Ti]**ghe has** made some important [mi]**stakes in her reasons for** voting ["n]**o" on all the amendments.** The [illegible]**n Committee offered** to help [illegible]**g its people meet with her.** [Ms]**. Tighe refused.** So I have [desc]**ribed a few of these mistakes** [illegible]

[AME]NDMENT #7: Amendment [#7 deals] with Article 7 on eligibility [to vote] and hold office.

[Am]**endment #7** adds a new [prov]**ision that disqualifies** anyone [convict]**ed of a felony** from holding [publ]**ic office. The delegates** consider [this] **important** protection for the [Common]**wealth. Ms. Tighe agrees** [with] **this judgment. But she intends** [to vote] **"no" because the delegates** [propose] **to delete a legislative** [provi]**sion. This legislative provision,** [whi]**ch told the legislature to provide** [crit]**eria for domicile and residence,** [was] **included in the 1976 Constitution** [so] **that the first Commonwealth** [legi]**slature would** pay attention to [thes]**e subjects.**

[Th]**e legislature already** had the [pow]**er to act with respect to** domicile [and re]**sidence matters.** Section 1 of [Article 2] **says: "The legislative power** [of the] **Commonwealth shall extend to** [all right]**ful subjects of legislation and** [shall be vest]**ed in a Northern Marianas** [Commonwealth] **legislature composed** [of a senate] **and a house of** [represent]**atives."** Under this [provi]**sion, 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. Th[is] is an important change, giving the voter 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. T[ighe] objects only to the proposal [to] allow a majority vote on certain [real property] taxes. Under the Constit[ution] [illegible] [le]gislature and the gove[rnor] [illegible] these real prop[erty] [illegible] [Com]monwealth purp[oses] [illegible] the proposed tax[illegible] Similarly, th[illegible] the mayor [illegible] property ta[xes] [illegible] without [illegible] to a vote in [illegible] Under Article 9, [illegible] people vote in a referendum [illegible] the legislature might pass, the[illegible] 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

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

Amendment #11 mak[illegible] four basic changes in the way we deal with our Commonwealth public lands. First, it reinstates a bureau [illegible] 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 possible.

Ms. Tighe says she needs more [illegible]rmation and discussion about [illegible]se 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 [illegible]mpt it before December 31, 1997. [illegible] 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 [illegible] legislature. This [illegible] commercial leases [illegible] the delegates [illegible] requirements [illegible] 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 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 [illegible] land here. So, the [illegible] our courts [illegible] who qualify to own [illegible] they buy, even if [illegible] bad, while [illegible] from other [illegible] 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

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Torres seeks probe of court order violation

Dear Judge Alexandro C. Castro:

This letter concerns two orders for deportation issued by the Superior Court that have been rendered meaningless by actions of the executive branch.

Specifically, two non-resident alien females (C.A. 94-1224 and CA 94-682) were deported from the CNMI and by law, barred from entering for five years. However, both have since returned and are residing in the Commonwealth. They were allowed to enter as immediate relatives of US citizens through marriage.

I am concerned the administration is setting a bad precedent for immigration enforcement, and worse, making a mockery of our laws. Will we allow "husband shopping" and "marriages of convenience" to become a loophole in our immigration law? I hope not.

To address this situation, I am hereby requesting an official court inquiry into this matter. I do not understand how a couple of court orders can so easily be circumvented, when there has been no formal modification of those court orders.

By copy of this letter, I am also bringing this matter to the attention of the CNMI Supreme Court and other interested parties.

Sincerely,
Rep. Stanley T. Torres

Castro says cases closed

Dear Congressman Torres:

I write in response to your letter dated January 25, 1996, in which you requested that I conduct an official court inquiry into what you perceive to be violations of two Superior Court orders for deportation. I totally agree that, generally speaking, orders of this court must be enforced and obeyed by all government branches. I also agree that any violation of or failure to enforce this court's orders

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