

# THE PRESIDENT'S PAGE

By HERMAN T. GUERRERO,  
CHAIR  
POST CONVENTION COMMITTEE

Some critics of the proposed amendments to the Constitution are especially defensive with respect to Amendment #2 dealing with the Legislative Branch. They seem to suggest that the delegates were too tough on the Legislature and too easy on the Executive Branch. One columnist went so far as to state that "the convention's complete rewrite of the Constitution contains not a single word about reining in executive spending." This is simply wrong.

Proposed Amendment #10 deals with Executive Branch spending and imposes new and rigorous controls in order to eliminate the very large deficit that now exists in the Commonwealth. It is the job of the Executive Branch to implement and enforce the laws passed by the Legislature. But they have to do so within the confines of the available funds. Too much money has been spent by the Executive Branch (and others) in recent years — far beyond the tax revenues available to the Commonwealth. As a result, the CNMI now has a sub-

stantial deficit — with estimates ranging in excess of \$30-40 million.

Regardless of the exact amount, the Convention delegates were very concerned. They were aware of the consequences if the deficit is not reduced. They were also aware that the well-intentioned efforts of the 1985 Convention directed to this problem had not been successful. In proposed Amendment #10, the delegates have proposed:

The deficit must be reduced within 3 years.

The Governor must submit a deficit reduction plan to the Legislature as part of the annual budgetary process.

Until the deficit is eliminated, a hiring and salary freeze goes into effect that will affect all government employees, with very limited exceptions.

Since most of the affected personnel are employed by the Executive Branch, the immediate and intended affect of Amendment #10 will principally fall on the Executive Branch. It will require the Governor and his division directors to use their personnel more effectively in order to reduce the deficit. The proposed amend-

ment also requires that all the savings in personnel costs are to be used to reduce the deficit. If this amendment is ratified by the voters, a brief transitional period is provided before it goes into effect. Afterwards, it will up to the people to insist that these constitutional provisions be fully complied with.

Other complaints about the treatment of the Executive Branch in the proposed amendments border on the insignificant and often reflect a serious misunderstanding of the function of a constitution. For example, it has been complained that the delegates propose deleting the phrase "as provided by law" after the word "calamity" in the section in Article 3 dealing with the Governor's exercise of emergency powers. This phrase was deleted by the delegates because the Legislature had not acted in the ten years since the 1985 Convention, which inserted this phrase, and there seemed little reason to believe that it might act in the next ten years. But the more important point is this: **THE LEGISLATURE IS NOT PRECLUDED BY THE CONSTITUTION AS AMENDED FROM ENACTING ITS OWN DEFINITION OF "CALAMITY" BY LAW IF IT WANTS TO.** If it elects to do so, and the Governor signs the law, then presumably both the Governor and the Legislature would be



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bound by this definition if the matter ever got to the courts. That would be so whether or not the phrase "provided by law" is in the Constitution. If the Legislature elects not enact any definition of "calamity" and the issue ever comes up, the courts will almost certainly then look at dictionary or judicial definitions of the word and decide whether the facts at hand can be reasonably interpreted to constitute a "calamity." This is one of many examples where the phrase "as provided by law" is meaningless, which is why the delegates have proposed its deletion.

Interestingly, this particular commentator ignored the more significant proposed

amendment to this section. Proposed Amendment #3 requires the Governor to report to the Legislature within 30 days after ANY exercise of emergency powers. The delegates wanted to make sure that the Legislature was fully and promptly informed regarding any such important action by the Governor. Once it is advised, it will be up to the Legislature to decide whether it should take any action in light of the Governor's exercise of emergency powers. This proposed change was one of many that the delegates believed would encourage the Executive and Legislative Branches of the Commonwealth to work more closely together.

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
OFFICE OF THE SECRETARY OF PUBLIC WORKS**

## INVITATION TO BID

**DPW96-ITB-008**

The Department of Public Works is soliciting sealed bids for the Construction of Dandan Baseball Field, Saipan, Commonwealth of the Northern Mariana Islands. Bids in duplicate will be accepted in the Office of the Director, Division of Procurement & Supply at Lower Base, Saipan until 2:00 pm local time, March 8, 1996 at which time and place the bids will publicly opened and read aloud. Any bids received after the above time will not be accepted under any circumstances.

A bond of 15% of the total bid price must accompany the bid. This security may be Certified Check, Cashier's Check, Bid Bond or other form acceptable to the Government, made payable to the Treasurer, Commonwealth of the Northern Mariana Islands with a notation on the face of the check "Credit Account No. 1471".

The bidder is required to submit with his proposal a copy of his business permit in compliance with the Contractors Registration and Licensing Laws of the Commonwealth of the Northern Mariana Islands.

Plans and Specifications of the project are available from the Technical Services Division, Department of Public Works, Saipan, on or after February 28, 1996. A non-refundable payment of \$50.00 is required for each set; payment to be made at the CNMI Treasurer. The Pre-bid Conference for this project is to be held at 1:00 pm local time, March 4, 1996, in the Department of Public Works Conference Room.

Attention is called to the Labor Standards Provision for wage rate determination of the CNMI Classification and Salary Structure Plan, and payment of not less than the minimum salaries and wages as set forth in the Specifications must be paid on this project.

All bid documents received shall be the sole property of the Government of the Northern Mariana Islands with the exception of bid bonds, certified checks and cashier's checks which will be returned to the bidders in accordance with the specifications section titled "Instructions to Bidders" Paragraph 5, Bid Guarantee.

"The Government reserves the right to reject any or all bids and to waive any imperfection in the bid proposal in the interest of the Commonwealth of the Northern Mariana Islands."

**EDWARD M. DELEON GUERRERO**  
Secretary of Public Works  
February 20, 1996

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## Guerrero on Nabors

Dear Editor:  
 Bill Nabors wrote to you this week saying that he did not announce the Mayor's position at the public meeting. I was one of the sources for that story. To be accurate, Mr. Nabors told the Post-Convention Committee and staff that the Mayor would oppose Amendment #6 on Local Government, Amendment #2 on the Legislature, and Amendment #11 on Public Lands at the public hearing, but he did not tell us that in his public testimony when he was standing at the microphone. He told us that while we were sitting at the table in the Tinian Gym. The Variety's story says that Mr. Nabors "reported to the Post-Convention Committee at the public meeting on Tinian". That is entirely accurate, although perhaps not as detailed as Mr. Nabors would have liked.  
 In addition, I can report that the Mayor himself told the Post-Con-

vention Committee staff and Delegate J.P. San Nicolas at an earlier meeting on Tinian, called to plan for the public hearings and to ensure that the Mayor's office had every opportunity for input, that he would oppose Amendment #6, Amendment #11 and Amendment #2. At that time, he also stated his reasons, including the reduction in the number of Senators from 3 to 2, and the limitation on sale of homesteads for 25 years. The Variety's reports of the Mayor's position is entirely accurate on that score as well, at least as to what the Mayor also personally told the Post-Convention Committee. Mr. Nabors was at that meeting as well.  
 There was nothing inaccurate about the Variety's story.

Sincerely,  
 Herman T. Guerrero  
 Chair, Post-Convention Committee

## New Kagman polling place

THE OFFICE of the Board of Elections wishes to inform all voters who are registered to vote in I-B, San Vicente, and who are residing in Kagman II and III, Papago area, and northern Lanai that their new polling place will be located in Kagman, at the Agriculture station for the March 7, 1996 election of the proposed Constitutional amendments.  
 For additional information, please call the office of the Board of Elections at tel. nos. 234-6880 or 233-1061 during office hours from Monday thru Friday.

## Reducing . . .

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and legislative history of the proposed amendment.

Courts construe every change in constitutional or statutory language as significant unless a contrary intent plainly appears (or the change is such that it is impossible to accord it any substantive meaning). The new language proposed by the Third Con-Con clearly is much different than the old.

This looks like a classic case of trying to fix something that isn't broken. And as everyone knows, trying to fix something that isn't broken is a sure way to break it.

Because of these concerns, I asked Ms. Siemer to back up her representation that no change in the current taxpayer's right of action was intended with specific language in the Analysis. I suggested that the Analysis state that "the Convention intends that taxpayer standing and attorney fees continue to be available in all actions it would have been under the former Section 9," and that the Convention "bases its revision of the language of this section on its understanding that judicial precedent in the Commonwealth already guarantees this result."

My suggested language was not incorporated into the Analysis. What's more, the Analysis states, "The Convention did not intend this amendment to effect any pending taxpayer suit filed under section 9." If the amendment does not change the existing taxpayer right of action, why is it necessary to specifically state that it does not affect currently pending actions?

Muddy Analysis  
 The Analysis does cite two pre-1985 cases recognizing taxpayer standing and states "the Convention did not

intend in any way to affect the law as declared in those and other cases." Problem is, one of those cases is simply a trial court decision and the other gave only a lukewarm endorsement. Those cases weren't enough for the Second Constitutional Convention, why should they be for the Third?

"The Convention simply wanted to clarify that any expenditure of public funds in violation of the Constitution may be enjoined," says the Analysis. The Supreme Court already said the provision is to be liberally construed; how is any clarification needed?

The Analysis frankly admits: "Taxpayer suits to enjoin spending not alleged to violate this Constitution, such as to stop spending alleged to breach a statute or ordinance, may continue to be filed as permitted by Commonwealth statutes and court decisions"—whatever that is.

According to the convention, the new text "provides a clear standard for the public and the courts." If so, it is a much narrower right of action. If so, courts will apply the plain meaning of the new constitutional text and never look at the legislative history. And the public will be the loser.

To use the words the convention's leadership and advisors used to describe the current constitutional text on taxpayer's right of action, the Analysis, at best, "lack[s] the desirable clarity."

*This piece appears in the Variety as a guest column. Stephen C. Woodruff has been a resident of Saipan for 20 years, living here since 1974, except for three years in Hawaii when he returned to school for a law degree. He was Chief Consultant to the Second Constitutional Convention. He presently is Senate Legal Counsel. The views expressed in this article are his own.*

about services on the local level. If we use the structure that the Constitution now provides, and use it wisely, we can move to a system in which the Commonwealth makes a financial contribution to local communities in the form of a grant of money, and it is up to the local communities how they want to use those Commonwealth funds. We can do this because the local communities will be making their own decisions about what is good for their neighborhoods and the families that live in them.

Local communities can enact their own ordinances. This means they can enforce their own ordinances as well. These ordinances can define the style of community that the families living there want to have. Local governments can sponsor cultural affairs, preserve traditions, as well as promote environmental awareness and protection, and ensuring that local businesses don't present an appearance that harms the community.

The Constitution takes away the power of the legislative delegations to make local laws. We don't need anybody at the Commonwealth level to do that for us any more. We can do it ourselves in our local communities. This is a great step ahead, if we choose to use it.

We need to focus on the issues of money and power at the Commonwealth level because, for all the time that most of us can remember, we have had to depend on a central government for our laws and direction. But now we have moved ahead to a new era. If we use what the Constitution has granted,

we aren't going to be looking to the Commonwealth government for all our everyday needs. We are going to be cooperating with our families, our neighbors, and our local colleagues in our villages to tap the true strength of our people; and to make them truly the masters of their own surroundings.

I can point with pride to the new local school boards — to the school-based management that the Constitution has made possible. We are giving these local school boards an opportunity to take on all the responsibility for local matters that they can handle. We have made them elected, not appointed. They will come from the ranks of the families and villages to govern our schools directly.

I can point with satisfaction to the new acknowledgement of a municipal share in the revenues from public lands and natural resources located on those public lands. A new section in Article 14 allocates 5% of the revenues from natural resources covered by that article to the municipalities.

I can point with hope to the new responsibilities that the Constitution grants with its increased powers of recall. We can no longer grumble about our local elected officials and sit around waiting for the next election when we have a chance to vote them out. If we really think our local officials aren't doing their job — and this includes the Senators and Representatives who represent our islands in the Legislature — we can get 20% of the votes to sign a petition, put it on the ballot, and vote them out of office in 90 days. They represent us. If we let them continue in office when they are doing

a bad job — then we can't complain. It is our fault, not theirs. We have the power to control them during the entire time they are on the job. The new Constitutional amendments gives us the opportunity and places on us the responsibility to use it.

I can point with a sense of relief to the new protection for permanent preserves of our public lands on each of the islands so that our children can enjoy the wonderful beauty of our islands as we have. The comfort of our local communities will be supported by these preserves

because they will maintain our open spaces and our opportunities for relaxation within our own communities. And I am pleased that we have strengthened Article 12 and its protection of our privately held lands.

We have maintained the existing relationship between our Commonwealth government and our municipal governments. That is very important in the near term; and I have always supported the concept that the Commonwealth should share its power with the municipalities. But I am pointing to the new reality, beyond the old arguments about sharing Commonwealth powers. We have a real opportunity now to build our local powers; as much as we can support with our determination and our public participation in local affairs. As I look 25 or 50 years into the future, it is this new structure that I see changing our Commonwealth for the better — making it a comfortable, successful place to live.

I am proud to have served in the Third Northern Marianas Constitutional Convention.



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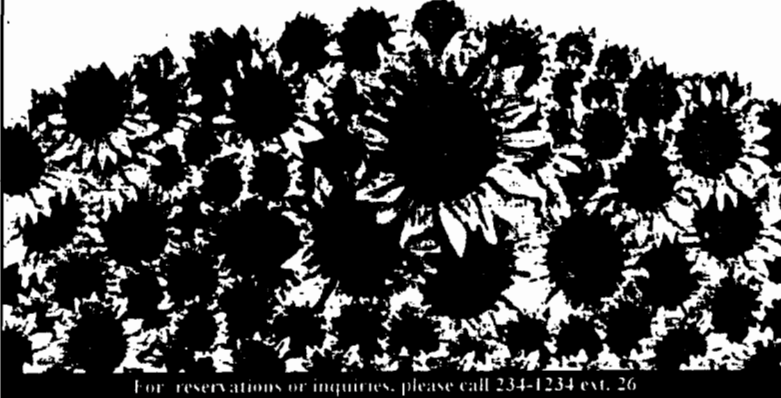
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