

STANDING COMMITTEE REPORT NO. CC-SCR-04-05

DATE: March 11, 2020

RE: CC-PR-4-06; CC-PR-4-26; CC-PR-4-30; CC-PR-4-33; CC-PR-4-40; CC-PR-4-43; CC-PR-4-47

The Honorable Redley Killion
President
Fourth Constitutional Convention of the
Federated States of Micronesia
Palikir, Pohnpei 96941

Dear Mr. President:

Your Committee on Civil Liberties and Tradition, to which was referred Delegate Proposal Nos. CC-PR-4-06, CC-PR-4-26, CC-PR-4-33, CC-PR-4-40, CC-PR-4-43 and Delegation Proposal Nos. CC-PR-4-30 and CC-PR-4-47, has drafted its own Committee Proposal entitled;

TO AMEND ARTICLE III, SECTIONS 3, 4, 5, AND 6 OF THE CONSTITUTION OF THE FEDERATED STATES OF MICRONESIA TO ALLOW FSM CITIZENS TO HOLD DUAL CITIZENSHIP.

begs leave to report as follows:

Article III of the Constitution currently provides:

**“ARTICLE III
Citizenship**

Section 1. A person who is a citizen of the Trust Territory immediately prior to the effective date of this Constitution and a domiciliary of a District ratifying this Constitution is a citizen and national of the Federated States of Micronesia.

Section 2. A person born of parents one or both of whom are citizens of the Federated States of Micronesia is a citizen and national of the Federated States by birth.

Section 3. A citizen of the Federated States of Micronesia who is recognized as a citizen of another nation shall, within 3 years of his 18th birthday, or within 3 years of the effective date of this Constitution, whichever is later, register his intent to remain a citizen of the Federated States and renounce his citizenship of another nation. If he fails to comply with this Section, he becomes a national of the Federated States of Micronesia.

Section 4. A citizen of the Trust Territory who becomes a national of the United States of America under the terms of the Covenant to Establish a Commonwealth of the Northern Mariana Islands may become a citizen and national of the Federated States of

Micronesia by applying to a court of competent jurisdiction in the Federated States within 6 months of the date he became a United States national.

Section 5. A domiciliary of a District not ratifying this Constitution who was a citizen of the Trust Territory immediately prior to the effective date of this Constitution, may become a citizen and national of the Federated States of Micronesia by applying to a court of competent jurisdiction in the Federated States within 6 months after the effective date of this Constitution or within 6 months after his 18th birthday, whichever is later.

Section 6. This Article may be applied retroactively.”

The intent and purpose of the Committee Proposal is (1) to allow a FSM citizen who satisfies Section 2 to hold dual citizenship, (2) to restore FSM citizenship to those who lost their FSM citizenship because they failed to renounce their citizenship of a foreign country, (3) to provide a pathway for FSM citizens who knowingly renounced their FSM citizenship to regain their FSM citizenship through naturalization as provided by law, and (4) to remove those sections of Article III for which there are no longer any persons eligible to claim FSM citizenship.

Your Committee on Civil Liberties and Traditions reviewed, discussed, and debated the seven proposals to amend Article III to allow for dual citizenship. Two proposals would limit dual citizenship to FSM citizens with U.S. citizenship. See Delegate Proposal No. CC-PR-4-06 and Delegation Proposal No. CC-PR-4-40. Two proposals would allow dual citizenship to FSM citizens who acquired citizenship because one or both parents are citizens of the FSM with no other limitations or requirements. See Delegate Proposal No. CC-PR-4-33 and Delegation Proposal No. CC-PR-4-47. One proposal would allow dual citizenship to FSM citizens who acquired citizenship because one or both parents are citizens of the FSM and to FSM citizens who acquired citizenship through naturalization, with no other limitations or requirements. See Delegate Proposal No. CC-PR-4-26. One proposal would allow dual citizenship if the FSM citizen satisfied a residency requirement and also provided a path to restoration of FSM citizenship for persons who had lost their FSM citizenship. See Delegation Proposal No. CC-PR-4-30. One proposal would provide dual citizenship with only those countries identified by Congress and would provide Congress the power to establish the application process for dual citizenship. See CC-PR-4-43.

Your Committee is in favor of dual citizenship. However, with 7 different proposals put forth to address the subject matter, your Committee’s first task was to come to a consensus on the language that is agreeable to the proponents. A separate meeting was conducted with all seven proponents, and an agreement was reached in the form of the existing language currently in front of us today. Your Committee is aware of the fact that dual citizenship has been put to the voters on at least four previous occasions and has failed to be approved by the voters on any of those prior occasions. In reviewing the data, it has become obvious that support for dual citizenship continues to grow with the vast majority of FSM’s population supporting the initiative.

Section 3

Your Committee noted that there are a great number individuals who have lost their FSM citizenship because they did not know that they had to renounce their citizenship of another country or because they could not afford to renounce their citizenship of the other country. The discussion of the process of renunciation of citizenship focused primarily on U.S. citizenship because so many FSM citizens have been born in Guam and Hawaii, automatically making them U.S. citizens under the Fourteenth Amendment to the U.S. Constitution. Your Committee heard numerous examples of individuals who wanted to remain FSM citizens, but who could not because of the renunciation requirement of Section 3.

Your Committee obtained information from the U.S. Embassy in Kolonia, Pohnpei regarding the process of renunciation of U.S. citizenship and determined that if the FSM citizen holds dual citizenship with the U.S., it is impossible for the individual to comply with the requirements of Section 3 of Article III in order to retain their FSM citizenship. The U.S. does not allow a person under the age of 16 to renounce citizenship. For individuals between the ages of 16 and 24, there are severe restrictions on who can renounce citizenship, because the U.S. has experienced situations where individuals in their teens and early 20s have been pressured into renouncing their citizenship against their will and because the U.S. wants to insure that the individual is mature enough to understand the gravity of their actions. There is currently a non-refundable fee of \$2,400 USD to renounce U.S. citizenship, and it takes approximately 3 years to complete the process. In addition, a person can only renounce their U.S. citizenship in designated locations. Once a person starts the process of renouncing their U.S. citizenship, comments are placed in the U.S. passport control system, and these comments affect the person's ability to travel, especially into and out of the U.S.

Your Committee was in unanimous agreement that the current language in Section 3 pertaining to renouncing "citizenship of another nation" should be removed.

A Delegate stated that many of his constituents raised the concern of whether the dual citizen would be loyal. To address this concern, your Committee then discussed proposed loyalty requirements. The two requirements that received the most attention were a vernacular or local language requirement and a residency requirement.

Your Committee determined that the language requirement would be both unfair and difficult to administer. The requirement was deemed unfair for two reasons. First, English is an official language of the FSM and is the unifying language of the FSM. Second, many people currently born and living in the FSM are not fluent in one of the local languages, because many children are raised in multi-lingual homes and speak English at school. The requirement was deemed difficult to administer for two reasons. First, there was concern with who would design the test, what qualifications would that person have, and what would be tested. Second, because there are dialects within each of the local languages, there was concern with how the "official" dialect would be chosen. There was additional concern that some of the local languages do not have uniform rules of spelling or grammar making it difficult to determine whether a given answer is "correct."

Your Committee discussed several possible residency requirements and whether a residency requirement should be placed in the Constitution or whether Congress should be granted the power to establish a residency requirement by statute. The residency requirement in Proposal CC-PR-4-30 was discussed at length. Several Delegates raised the concern as to how a residency requirement would be measured and what documentation would a person need to produce in order to establish that they had been a resident in the FSM for the required period of time. It was noted that those who had lost their FSM citizenship may not have kept their travel documents and may have thrown away their old passports and thus, would not be able to prove that they satisfied the residency requirement. A second concern was that if the residency requirement was during the person's lifetime, then the person may not know that they satisfied the requirements for FSM citizenship until they died. A third concern was that a residency requirement was unfair to those who were in school abroad, those who worked abroad, and those who could not afford to travel home.

One Delegate stated that loyalty was a subjective matter and that it was unfair to treat FSM citizens who acquired dual citizenship through no action of their own differently from other FSM citizens. Most FSM citizens with dual citizenship acquired their citizenship in another country because of where their parents happened to be living when they were born. These individuals should not be penalized because they had no ability to choose where to be born.

Several Delegates raised the concern that allowing dual citizenship would open up land ownership to people with no cultural connection or family ties to Micronesia. Citizenship, however, is controlled by Section 2 of Article III. No person can become a citizen of the FSM unless that person has one parent who is a FSM citizen. Because this requirement of FSM citizenship is in the Constitution, it cannot be changed by statute. Thus, all FSM citizens, whether or not they have citizenship in another country, have Micronesian blood in them.

It was also noted that land ownership is addressed in other provisions of the Constitution and that it was not appropriate to address the issue of land ownership in defining citizenship in Article III. One Delegate stated that just because a person is a FSM citizen does not entitle that person to own land; land is controlled by custom and tradition. Citizenship is more than landownership.

Your Committee unanimously agreed that Section 3 should provide for dual citizenship without any loyalty requirements. The Committee also unanimously agreed that dual citizenship should be limited to those individuals who acquired FSM citizenship as a birth right under Section 2 and that FSM citizens who are naturalized citizens should not be allowed to hold dual citizenship. This distinction was made to insure that individuals who sought to become FSM citizens through naturalization wanted to be FSM citizens and were not seeking FSM citizenship as an entry into the U.S. or to own land for short term gain.

The language for Section 3 that your Committee unanimously agreed upon is:

“Section 3. Citizenship of another country shall not affect a person's Federated States of Micronesia citizenship, as provided under Section 2.”

Section 4 – Current Language

The current language of Section 4 provides a mechanism by which a citizen of the Trust Territory who was living in the Northern Marianas when the Northern Marianas became the Commonwealth of the Northern Marianas could become a citizen of the FSM. The citizen of the Trust Territory had 6 months from the effective date of the Covenant to Establish the Commonwealth of the Northern Marianas to become a FSM citizen. The effective date of the Covenant was January 9, 1978, and six months from that date was July 8, 1978. Thus, there is no one to whom Section 4 applies.

Your Committee unanimously agreed that the current language of Section 4 should be deleted.

Section 4 – Proposed Language

Many Delegates were of the opinion that there is a difference between those who had lost their FSM citizenship because they did not know they had to renounce their citizenship in a foreign country or who were unable to renounce their citizenship in a foreign country and those FSM citizens who had knowingly and voluntarily renounced their FSM citizenship. Your Committee recognized that there are some who have renounced their FSM citizenship because of their employment, including military service, who want to return to the FSM and become part of the community.

Your Committee believes that there should be a path to restoration of citizenship for persons who have renounced their FSM citizenship but want to return. We believe that for this group, a residency requirement establishing a true intent to return to the community is appropriate. Your Committee, however, felt that it would be better to authorize Congress to determine whether or not to establish by law the residency and other requirements for restoration of citizenship rather than enumerating them in the Constitution. If the requirements set are too onerous, then Congress can change the requirements by statute. But, if those requirements are in the Constitution, then another amendment will be needed to make the necessary change.

The language for Section 4 that your Committee unanimously agreed upon is:

“Section 4. A person who has knowingly renounced his citizenship of the Federated States of Micronesia shall remain a national of the Federated States of Micronesia, except as may be provided by law. A national of the Federated States of Micronesia may regain his citizenship of the Federated States of Micronesia in accordance with the residency requirement and other conditions as may be prescribed by law.”

FSM Nationals

One Delegate questioned the need to have both FSM citizens and FSM nationals. The Journals of the 1975 Constitutional Convention were consulted to determine what the original drafters

had understood these terms to mean. Standing Committee Report No. 14 explains the terms “citizen” and “national” as follows:

“The terms ‘citizen’ and ‘national’ both refer to the status of an individual in his relationship to the state. The word ‘national’ has a broader meaning than ‘citizen’. The domestic law term ‘citizen’ is applied to persons with full political and civil rights. ‘National’ is an international law term applied to citizens, as well as persons who, while not citizens, owe permanent allegiance to the state and are entitled to its protection. Under the Committee Proposal, all citizens will be nationals of Micronesia, but all nationals will not be citizens. . . . Frequently, political and civil rights are not extended to nationals but are automatically given to citizens. The right to vote for or to run for elected office in the government, the privilege of appointment to certain positions, the right to own and sell land, etc. are examples of status distinctions which may be made between nationals and citizens.”

1975 Con.Con., SCREP. No. 14, Sept. 23, 1975. The Committee reaffirmed that the terms “citizen” and “national” have and should retain their meaning as set out in Standing Committee Report No. 14.

Your Committee unanimously agreed that the current language that a person who had birth right citizenship under Section 2 but lost that citizenship remains a national of the FSM should remain in the Constitution. A national of the FSM is allowed to enter and live and work in the FSM without having to obtain a visa or work permit. Your Committee believes that maintaining the status of national is important for persons who are Micronesian by birth and who want to live and work in the FSM, but who may not want or be able to, restore their FSM citizenship.

Section 5 – Current Language

The current language of Section 5 provides a mechanism by which a citizen of the Trust Territory living in a District of the Trust Territory that did not ratify the Constitution could become a citizen of the FSM. The Trust Territory citizen had to apply for FSM citizenship within 6 months of the effective date of the Constitution or 6 months after his 18th birthday. The effective date of the FSM Constitution was May 10, 1979. A person born on May 9, 1979, would have been the youngest citizen of the Trust Territory born “immediately prior to the effective date” of the Constitution and would have had to have applied for FSM citizenship no later than November 9, 1997. Thus, there is no one to whom Section 5 applies.

Your Committee unanimously agreed that the current language of Section 5 should be deleted.

Section 6

Your Committee was in unanimous agreement that the amendments to Article III should be retroactive and restore FSM citizenship to those persons who have lost their FSM citizenship by operation of current Section 3 and that restoration of citizenship to this group should be

automatic, requiring no additional action by the FSM citizen. Your Committee was in unanimous agreement that a person who knowingly renounced their FSM citizenship should not automatically regain FSM citizenship, but can restore his citizenship by meeting such requirements as Congress may prescribe by law under Section 4.


Your Committee unanimously agreed that the word "shall" should be substituted for the word "may" to insure that the restoration of citizenship is automatic. Your Committee also agreed that Section 6 should be renumbered as Section 5.

The language that your Committee unanimously agreed upon is:


"Section 5. This Article shall be applied retroactively."

For the reasons stated herein, your Committee on Civil Liberties and Traditions is in accord with the intent and purpose of the Committee Proposal attached hereto and recommends its passage on First Reading, and that it be placed on the Calendar for Second Reading for review by your Committee of the Whole, then placed on the Calendar for Final Reading after review by your Committee on Style and Arrangement.

Respectfully submitted,



Mason Albert, Chairman

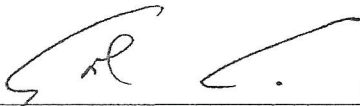


Delegate Salvador Iriarte, Iso Nanken

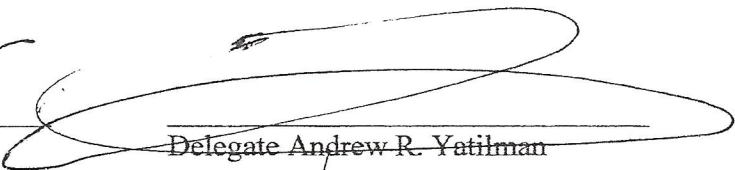
Camillo Noket, Vice Chair



Delegate Akillino H. Susaia

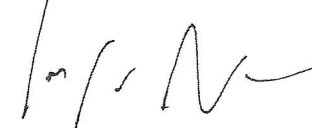


Delegate Salomon Saimon

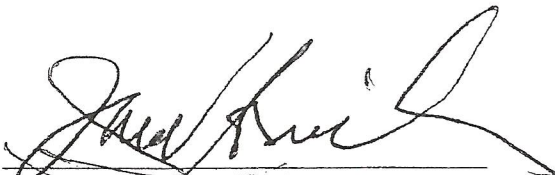


Delegate Andrew R. Yatilman

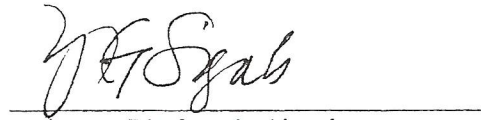
Delegate Jack S. Fritz



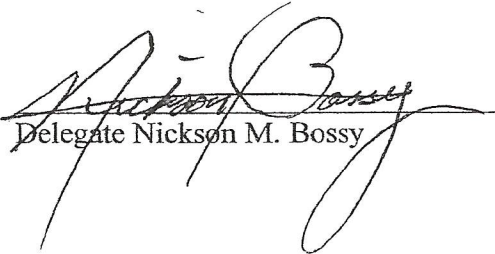
Delegate Victor Nabeyan



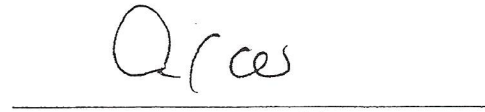
Delegate James A. Naich



Delegate Yoslyn G. Sigrab



Delegate Nickson M. Bossy



Delegate Carney L. Palsis

Delegate Kind K. Kanto

Committee Proposal No. 04-05
Committee on Civil Liberties and Traditions
Standing Committee Report No. CC-SCR-04-05

Relating to dual citizenship.

RESOLVED, that the following be agreed upon as an amendment to the Constitution:

ARTICLE III Citizenship

Section 1. A person who is a citizen of the Trust Territory immediately prior to the effective date of this Constitution and a domiciliary of a District ratifying this Constitution is a citizen and national of the Federated States of Micronesia.

Section 2. A person born of parents one or both of whom are citizens of the Federated States of Micronesia is a citizen and national of the Federated States by birth.

Section 3. ~~A citizen of the Federated States of Micronesia who is recognized as a citizen of another nation shall, within 3 years of his 18th birthday, or within 3 years of the effective date of this Constitution, whichever is later, register his intent to remain a citizen of the Federated States and renounce his citizenship of another nation. If he fails to comply with this Section, he becomes a national of the Federated States of Micronesia.~~ Citizenship of another country shall not affect a person's Federated States of Micronesia citizenship, as provided under Section 2.

Section 4. ~~A citizen of the Trust Territory who becomes a national of the United States of America under the terms of the Covenant to Establish a Commonwealth of the Northern Mariana Islands may become a citizen and national of the Federated States of Micronesia by applying to a court of competent jurisdiction in the Federated States within 6 months of the date he became a United States national. A person who has knowingly renounced his citizenship of the Federated States of Micronesia shall remain a national of the Federated States of Micronesia, except as may be provided by law. A national of the Federated States of Micronesia may regain his citizenship of the Federated States of Micronesia in accordance with the residency requirement and other conditions as may be prescribed by law.~~

Section 5. ~~A domiciliary of a District not ratifying this Constitution who was a citizen of the Trust Territory immediately prior to the effective date of this Constitution, may become a citizen and national of the Federated States of Micronesia by applying to a court of competent jurisdiction in the Federated States within 6 months after the effective date of this Constitution or within 6 months after his 18th birthday, whichever is later.~~

Section 6 5. This Article ~~may~~ shall be applied retroactively.

Date: March 11, 2020

Offered by: Committee on Civil Liberties and Traditions