

FOR H.U.D. INVESTIGATION

Below is an analysis of Article 12 of the Commonwealth of the Northern Mariana Islands (CNMI) Constitution and its potential unconstitutionality with respect to the 5th and 14th Amendments of the U.S. Constitution, as well as its implications under Section 816 of the Federal Fair Housing Act (42 U.S.C. 3610(f)(3)(A)) in the context of the Commonwealth Fair Housing Act (Public Law No. 11-38). Article 12 restricts the acquisition of permanent and long-term interests in real property within the CNMI to persons of Northern Marianas descent (NMD), a provision rooted in the CNMI's Covenant with the United States and intended to preserve cultural and land ownership identity. However, this restriction raises significant constitutional and statutory questions when juxtaposed against federal protections against discrimination and due process.

Background on CNMI Article 12

Text of Article 12: "The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent" (CNMI Constitution, Article XII, Section 1). Long-term interests are defined as freehold or leasehold interests exceeding 55 years (Section 2).

Definition of NMD: Persons of Northern Marianas descent are those who are of at least one-quarter Northern Marianas Chamorro or Carolinian blood, or a combination thereof, and who were citizens or nationals of the Trust Territory of the Pacific Islands prior to the Covenant's effective date (1978) or are descended from such individuals (Section 4).

Covenant Context: Article 12 was mandated by Section 805 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States, reflecting a negotiated balance between self-governance and U.S. sovereignty.

Analysis: 10 Points and Facts on Unconstitutionality

Violation of Equal Protection (14th Amendment)

The 14th Amendment guarantees that no state (or territory, as applicable under the Covenant) shall "deny to any person within its jurisdiction the equal protection of the laws." Article 12 explicitly discriminates based on race and ancestry by limiting land ownership to persons of Northern Marianas descent, excluding non-NMD U.S. citizens (e.g., Americans of other racial or ethnic backgrounds) from equal property rights. This racial classification

triggers strict scrutiny, which Article 12 may not survive absent a compelling governmental interest narrowly tailored to that end.

Discrimination in Housing (Fair Housing Act, Section 816)

The Federal Fair Housing Act (FHA) prohibits discrimination in housing based on race, color, religion, sex, national origin, familial status, or disability (42 U.S.C. 3604).

Article 12's restriction undermines the Commonwealth Fair Housing Act's goal of aligning with the FHA under Section 816, as it inherently discriminates against non-NMD individuals in acquiring long-term housing interests (e.g., leases over 55 years or freeholds), conflicting with federal anti-discrimination standards.

Due Process Concerns (5th Amendment)

The 5th Amendment prohibits the federal government from depriving any person of "life, liberty, or property, without due process of law." Article 12, enforced through CNMI law under U.S. sovereignty, restricts property rights—a fundamental liberty interest—without providing non-NMD individuals a procedural mechanism to challenge or overcome the restriction, potentially violating substantive due process by arbitrarily limiting a basic right.

Conflict with Federal Supremacy

Under the Supremacy Clause (Article VI, U.S. Constitution), federal law, including the FHA, preempts conflicting territorial laws. The Commonwealth Fair Housing Act aims for substantial equivalence with the FHA to assume enforcement authority under Section 816, but Article 12's racial restriction creates a direct conflict, as it legalizes a form of housing discrimination the FHA prohibits, undermining CNMI's eligibility for referral status.

Racial Classification Lacking Narrow Tailoring

Even if preserving CNMI culture is deemed a compelling interest (a debated point), Article 12's blanket exclusion of non-NMD individuals is not narrowly tailored. Less restrictive alternatives—such as quotas, cultural preservation easements, or non-racial eligibility criteria—could achieve the same goal without violating equal protection, rendering the provision constitutionally suspect under 14th Amendment scrutiny.

Impact on U.S. Citizens

The Covenant extends U.S. citizenship to CNMI residents (Section 301), yet Article 12 denies non-NMD U.S. citizens equal property rights within the territory. This creates a second-class citizenship status for Americans moving to or residing in the CNMI, contravening the 14th Amendment's promise of equal protection across all U.S. jurisdictions.

Economic Liberty Restriction (5th Amendment)

The 5th Amendment protects economic liberties, including property ownership and use. Article 12's restriction on long-term leases and freeholds stifles non-NMD individuals' ability to engage in economic activities (e.g., real estate investment, business development), potentially constituting an unconstitutional deprivation of liberty without a rational basis tied to federal interests.

Inconsistency with FHA Substantial Equivalence

Section 816 requires CNMI's fair housing law to be "substantially equivalent" to the FHA for HUD to refer complaints to local enforcement. Article 12's race-based land restriction directly contradicts the FHA's ban on racial discrimination, jeopardizing CNMI's compliance

and exposing a constitutional tension between territorial autonomy and federal civil rights mandates.

Precedent from Federal Courts

Federal courts have struck down similar race-based restrictions. In *Wabot v. Villacrusis* (958 F.2d 1450, 9th Cir. 1990), the Ninth Circuit upheld Article 12 against an equal protection challenge, citing the Covenant's unique political agreement. However, this ruling predates modern strict scrutiny applications and FHA enforcement trends, leaving room for reconsideration, especially if tied to housing discrimination under the FHA.

Disproportionate Burden on Non-NMD Residents

Article 12 disproportionately burdens non-NMD residents, including military personnel, federal workers, and transplants, who cannot secure permanent housing or long-term leases. This practical effect clashes with the 14th Amendment's equal protection and the FHA's intent to ensure fair housing access, as it institutionalizes a caste-like system based on ancestry rather than merit or need.

Constitutional and Statutory Tension

14th Amendment: Article 12's racial classification and unequal treatment of U.S. citizens fail strict scrutiny, as cultural preservation, while significant, may not justify blanket racial discrimination in a territory under U.S. sovereignty.

5th Amendment: The arbitrary deprivation of property rights for non-NMD individuals lacks due process, especially given no individualized recourse exists to challenge the restriction.

FHA Section 816: The Commonwealth Fair Housing Act's alignment with federal standards is undermined by Article 12, as the latter perpetuates housing discrimination the FHA seeks to eradicate, risking CNMI's ability to enforce fair housing locally.

Conclusion

Article 12's restriction on land ownership to persons of Northern Marianas descent, while rooted in the CNMI's unique political status, clashes with the 5th and 14th Amendments' guarantees of due process and equal protection, as well as the Federal Fair Housing Act's anti-discrimination framework. The Commonwealth Fair Housing Act (Public Law No. 11-38) aims to mirror federal standards, but Article 12's entrenched racial preference creates a constitutional and statutory paradox. A federal court challenge or legislative reform may be required to resolve these conflicts, balancing CNMI's cultural autonomy with U.S. constitutional mandates.