



AMERICAN SAMOA

BAR ASSOCIATION

PO Box 23
Pago Pago, AS 96799

April 14, 2010

Afoa L. Su'esu'e Lutu
Executive Director
Constitutional Review Office

Re: ASBA Participation in the American Samoa 4th Constitutional Convention

Dear Mr. Lutu:

The ASBA would like to formally thank you for the opportunity to participate in the American Samoa 4th Constitutional Convention. It is a great honor for our members to be able to participate in this historic event. Public participation in government is the cornerstone of our democracy. It is imperative that we all take advantage of making our voices heard whenever the opportunity presents itself; whether it be through voting, jury duty, serving in office, or speaking or attending public hearings on issues impacting all of us.

The ASBA has a diverse membership base. We have attorneys just out of law school and attorneys with more than 40 years of experience. We have members who were born in American Samoa and have spent a majority of their life serving the people here. We have members who were born here but who have now left the island and are proudly representing American Samoa in the work they do on the mainland. We have members who have recently come to American Samoa to serve the people of our Territory on a short term basis and will eventually move on, but who will always have place in their heart for our wonderful islands.

Along with this diversity comes a wide swath of points of view on the issues that we believe should be addressed at the Constitutional Convention. Based on the wide and contrasting opinions on the various issues, the ASBA has chosen to simply give a synopsis of the issues we have found to be most important to the discussion. We will not present a point of view regarding the issues presented below nor do we advocate for or against any particular side as an organization. The issues presented here are by no means an exhaustive list of items to be discussed nor are they the only items that should be discussed. This is simply a list of the issues, that through discussion, our members found to be at the core of the Constitutional discussion as they saw it.

When examining a document, such as the Constitution, it is important not to focus solely on what it contains; but also to focus on what it does not contain. Therefore, some of the issues presented may seem as though they are outside the scope of a traditional constitution. However, one must remember the United States Constitution was specifically designed to defer many issues to the State and local governments. A number of State constitutions address the issues listed below. Some of these issues are currently addressed in statutes, however ASBA feels it may be appropriate to discuss whether it would be more appropriate to have them in the Constitution.

Here is the ASBA list of points for discussion at the Constitutional Convention:

- Should an Equal Protection Clause be considered?
- Should judicial appointments and terms be addressed?
- What should be the associate judges' roles outside of matai and land & title cases?
- What should be the minimum qualifications for associate judges?
- Is there a way/need to address the lack of female associate judges?
- Should there be impeachment provisions for all officials (Governor, Lt. Governor, judges, senators, etc.) in the Constitution?
- Should senators be elected?
- What qualifications should elected officials have?
- Should Swains Island receive full voting representation?
- Should there be a right to education?
- Should health care issues be addressed in the constitution?
- Should the length of legislative sessions be revised?
- Should the Governor's broad power to legislate by issuing executive regulations¹ be revised?
- Should the Governor be required to promulgate executive regulations in accordance with the Administrative Procedures Act and to publish them?
- Should the Dignity of the Individual² provision be revised to define its terms to make its purpose and effect more definitive?
- Should the anti-slavery³ provision be revised to better prevent human trafficking and immigration sponsor abuses?
- Should the Attorney General be an elected position?
- What is the proper length of time between Constitutional Conventions?

¹Article IV Section 6. Executive Regulations.

The Governor shall have the power to issue executive regulations not in conflict with laws of the United States applicable to American Samoa, laws of American Samoa, or with this Constitution.

² Article I Section 4. Dignity of the individual.

The dignity of the individual shall be respected and every person is entitled to protection of the law against malicious and unjustifiable public attacks on the name, reputation, or honor of himself or of his family.

³ Article I Section 10. Slavery prohibited.

Neither slavery, nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in American Samoa.

- What is the proper number and selection method of representatives for future Constitutional Conventions?
- Should government employee rights and responsibilities be addressed?
- Should environmental rights be addressed in the constitution?
- Should water rights be addressed in the constitution?
- Should certain land tenure issues be addressed now (e.g., Individual land, communal land, free hold land, church land)?
- Should there be jury trials in civil actions?

The ASBA also would like to thank you for being given the opportunity to share our views and recommendations for American Samoa's political status. This is a highly debatable issue with a number of excellent points to be made of each of the possible situations. Again, given our diversity we felt it was important to not support a particular position but to simply list several questions and issues to be considered when discussing this issue. Once again, this list is not exhaustive nor does it represent the only issues that should be discussed. This is simply a list of the issues, that through discussion, our members found to be at the core of the political status discussion as they saw it.

Here is the ASBA list of points for discussion concerning American Samoa's political status:

- How important is it for American Samoa to maintain U.S. National status for those born here?
- How important is it for American Samoa to maintain certain specific federal aid programs (e.g., food stamps, Medicare, social security, etc...)?
- How important is it for American Samoa to maintain U.S. disaster relief protection for cyclones, tsunamis, and earthquakes.
- How will American Samoa derive income if the U.S. decides not to enter into compact with American Samoa?
- How important is it for American Samoa to shed federal regulation?
- How will the average American Samoan benefit from a change in political status?
- How will the average American Samoan benefit from no change in political status?

Once again the ASBA thanks you for this opportunity to participate in this historic event. A number of our members have expressed a willingness to participate in the Constitutional Convention and the Political Status discussion. If you have any questions please feel free to contact me at any time.

Sincerely,

Nathan Mease
ASBA President