IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

EDWARD MANIBUSAN, ATTORNEY GENERAL OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Petitioner,

v.

LARISSA LARSON, SECRETARY OF FINANCE,
Respondent.

Supreme Court No. 2017-SCC-0024-CQU

OPINION

Cite as: 2018 MP 7

Decided August 30, 2018

Christopher M. Timmons, Chief of the Civil Division, Office of the Attorney General, Saipan, MP, for Petitioner.

Matthew T. Gregory, Saipan, MP, and Kimberlyn K. King-Hinds, Tinian, MP, for Respondent.

BEFORE: ALEXANDRO C. CASTRO, Chief Justice; JOHN A. MANGLOÑA, Associate Justice; ROBERT J. TORRES, Justice Pro Tempore.

CASTRO, C.J.:

¶ 1 Attorney General Edward Manibusan ("Petitioner") and Secretary of Finance Larissa Larson ("Respondent") (collectively "Parties") submit two certified questions in their official capacities as Commonwealth officials. Both questions relate to the constitutionality of legislative and executive salary increases enacted pursuant to Public Laws 4-32, 7-31, and 19-83. In particular, the Parties' dispute focuses on who may review the salaries of executive, legislative, and judicial officers under Article II, Section 11 of the NMI Constitution ("Section 11"), as well as how such salaries are determined under Article II, Section 10 of the NMI Constitution ("Section 10"). We are asked to review the following questions:

> 1. Did the presence of four sitting members of the legislature on the advisory commission leading to the enactment of Public Law 19-83 violate Article II, Section 11 of the NMI Constitution? If so, did the illegal presence of the legislators on the advisory commission render the salaries for the Governor, the Lieutenant Governor, and the legislature in Public Law 19-83 unconstitutional?
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> 2. Were the three salary increases (or any of them) for members of the legislature unconstitutional because they exceeded the change in an accepted price index for the period since the last change, (or in the case of Public Law 4-32, was not based upon a price index at all); or alternatively, were the three salary increases (or any of them) unconstitutional because they exceeded the respective advisory commission's salary recommendation?

Joint Pet. 3.

¶ 2 We answer the first question by stating that Section 11 does not restrict members of the legislature from serving on the advisory commission discussed in Section 10. Thus, the presence of four sitting members of the legislature on the advisory commission leading to the enactment of Public Law 19-83 did not violate Section 11. In answering the second question, we discuss the procedure for enacting a salary increase under Section 10. To comply with Section 10, an advisory commission must be formed, choose a composite price index ("CPI"), and make a recommendation regarding the salaries of Commonwealth executive, legislative, and judicial officers that complies with the CPI chosen. The legislature may then adopt a salary increase that is no greater than the commission's recommendation. Because each of the three salary increases contravene at least one of these mandates, they are unconstitutional.

I. FACTS AND PROCEDURAL HISTORY[1]

¶ 3 The Northern Mariana Islands' Constitution was enacted in 1978, with the initial salaries for the governor, lieutenant governor, and members of the legislature set at $20,000, $18,000, and $8,000, respectively.

¶ 4 In 1980, the Second Legislature established the first advisory commission on compensation ("First Commission"). The First Commission was tasked with studying and making recommendations regarding the compensation of the governor, lieutenant governor, legislators, judges, the representative to the United States, and mayors. It did not consult any CPI before making its recommendations, stating that "[i]n reviewing the pertinent section of the Constitution and its analysis, the [First] Commission felt that a CPI is not required to be followed by the Legislature for the first change in the salary of the elected officials." Ex. 1 at 11. The First Commission recommended the salaries of the governor and lieutenant governor be increased to $40,000 and $35,000, respectively, while increasing legislative salaries to $21,000. Following these recommendations, the Fourth Legislature passed Public Law 4-32. The law set the governor's salary at $50,000, lieutenant governor's salary at $40,000, and legislators' salaries at $30,000.

¶ 5 In 1990, Public Law 7-8 established the second advisory commission on compensation ("Second Commission"). The Second Commission hired a consultant to develop a CPI specific to the Commonwealth. The consultant's report concluded the local price index increased from 161.2 to 195.2 in the time since the last pay increase with respect to the salaries of the governor, lieutenant governor, and legislators. As a result, the report calculated salaries for the governor, lieutenant governor, and legislature at $60,545, $48,437, and $36,327, respectively. The Second Commission, however, recommended the governor, lieutenant governor, and legislature's salaries be raised to $70,000, $60,000, and $37,000. Public Law 7-31 was enacted following the Second Commission's report, adopting its salary recommendations for the governor and lieutenant governor but further raising legislators' salaries to $39,300.

¶ 6 In 2016, Public Law 19-51 established the third advisory commission on compensation ("Third Commission"). The law required that the Third Commission consist of seven members, with three appointed by the governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives. Of the seven members appointed, four were sitting members of the legislature. In addition, the law directed the Third Commission to review, study, and evaluate levels of compensation for the governor, lieutenant governor, mayors, and legislators, but did not include judicial officers. The Third Commission "utilize[d] the available data sources from the Bureau of Labor Statistics, utilizing the average CPI for the given years." Ex. 3 at 6. The Third Commission listed CPI inflation adjusted wages for

[1] The following facts are taken, in part, from Petitioner and Respondent's stipulated facts in their Joint Petition for Certified Question.

the governor, lieutenant governor, and legislators at $124,081.94, $106,355.95, and $69,663.15, respectively. It subsequently recommended the governor's salary be increased to $120,000, and the lieutenant governor's salary be increased to $100,000, and legislative salaries be increased to $70,000. The Third Commission found compensation of judicial officers comparable to national and regional averages but failed to provide a specific salary recommendation. The legislature adopted the Third Commission's recommendations in Public Law 19-83.

¶ 7 On February 9, 2017, Petitioner filed a complaint in the Superior Court seeking "declaratory judgment that the Salary Laws are unconstitutional, and injunctive relief prohibiting the implementation of the salary increases for the governor, lieutenant governor, and members of the legislature pursuant to Public Law No. 19-83." Opening Br. 17. The court entered a preliminary injunction, enjoining Respondent from taking any action to implement the salary increases pursuant to Public Law 19-83 pending a ruling on its constitutionality. *See Manibusan v. Larson*, Civ. No. 17-0047 (NMI Super. Ct. July 7, 2017) (Order – Stipulation to Entry Inj. & Stay Proceedings Pending Joint Pet. Certified Question at 1–2). It also ordered the Parties to file their Joint Petition for Certified Question ("Petition"), staying proceedings in the Superior Court pending its result. *Id.*

¶ 8 On August 7, 2017, the Parties submitted their Petition, requesting that we clarify the Constitution's relevant provisions.

II. JURISDICTION

¶ 9 The Supreme Court has original jurisdiction over disputes arising between elected or appointed Commonwealth officials regarding the exercise of their responsibilities or powers under the Constitution. NMI CONST. art. IV, § 11. Here, Petitioner is an elected Commonwealth official pursuant to Article III, Section 11 of the NMI Constitution charged with prosecuting violations of Commonwealth law. *See* NMI CONST. art III, § 11. Respondent is an appointed official with the duty of disbursing funds in accordance with Commonwealth law. 1 CMC §§ 2552–53. It follows that the issue of "whether and to what extent funds should be disbursed in payment of salaries to members of the legislature as well as the Governor and Lieutenant Governor," Joint Pet. at 1, squarely implicates these officials' responsibilities. We thus have jurisdiction and may entertain the certified questions.

III. STANDARD OF REVIEW

¶ 10 We review certified questions de novo. *In re Status of Certain Tenth Legislature Bills*, 1998 MP 3 ¶ 1.

IV. DISCUSSION

A. Membership

¶ 11 Petitioner argues the advisory commission in Section 10 falls within the purview of an independent commission. He further states that because Section 11 precludes legislators from serving on independent commissions, they are prohibited from serving on the advisory commission. He asserts that although the

text is not completely clear, principles of statutory construction, historical context, and previous commissions' compositions evince the drafters' intent precluding legislators' membership. Respondent claims that had the framers intended the advisory commission to be independent, they would have explicitly labeled it as such. Rather, she argues, the public laws creating the advisory commission never mentioned a requirement of independence, and that historical documents indicate the advisory commission more closely resembles a dependent commission that allows legislators' membership.

¶ 12 Whether the advisory commission in Section 10 is an independent commission as contemplated in Section 11 is a matter of constitutional interpretation. We outlined the procedure for constitutional interpretation in *Peter-Palican v. Commonwealth*, 2012 MP 7 ¶ 6. There, we stated:

> A basic principle of constitutional construction is that language must be given its plain meaning. We apply the plain, commonly understood meaning of constitutional language unless there is evidence that a contrary meaning was intended. As part of our analysis, we must read constitutional language in the context of the entire provision at issue. Interpretations that would defy common sense or lead to absurd results should be avoided. In the event that a constitutional provision is ambiguous, we must attempt to ascertain and give effect to the intent of the drafters of the provision. Finally, we are hesitant to interpret constitutional language in a way that deviates from the common law absent a clear indication of an intention to do so by the drafters of the provision at issue.

Id. (citations and internal quotation marks omitted). We use these principles to determine the advisory commission's classification.

1. Text of Sections 10 and 11

¶ 13 With these considerations in mind, we begin with the language of Sections 10 and 11. We give effect to the text's plain meaning, if possible, *Dep't of Pub. Lands v. Commonwealth*, 2010 MP 14 ¶ 17, and interpret separate sections of the Constitution in harmony with one another. *United States v. Vallejo*, 69 F.3d 992, 994 (9th Cir. 1995). Section 10 discusses legislators' compensation:

> The members of the legislature shall receive an annual salary of eight thousand dollars and reasonable allowances for expenses provided by law. The salary of members may be changed no more than once every four years and only upon the recommendation of an advisory commission established by law to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. No change in the salary may be made that exceeds the percentage change in an accepted composite price index for the period since the last change. An increase in salary may not apply to the legislature that enacted it.

NMI CONST. art. II, § 10. Section 11 discusses legislators' restrictions on

government employment:

> A member of the legislature may not serve in any other Commonwealth government position including other elective office or an independent board, agency, authority or commission established by this Constitution or by Commonwealth law. A person, having been a member of the legislature, may not serve in any elective or appointive Commonwealth [g]overnment position created by statute during the term for which he or she was elected, for a period of one year following the expiration of the term during which the position was created.

NMI CONST. art. II, § 11.

¶ 14 Plainly read, Section 10 does not include restrictions on the composition of the advisory commission. Notably, the Constitution does not specify multiple aspects regarding the commission, including the number of members, their compensation, or, as pertinent to our inquiry, the status of the commission's members. On the other hand, Section 11 clearly restricts legislators from serving on an independent commission established by the Constitution or Commonwealth law. Nowhere in Section 10 did the drafters specify that the advisory commission was to be independent, and we must presume the drafters intended the terms they included in the Constitution's text. *See Marchetti v. United States*, 390 U.S. 39, 60 (1968) (noting courts should not insert words into statutes that their drafters omitted). We thus refuse to insert terms into Section 10 and determine the commission was not intended to be labeled as independent.

¶ 15 Moreover, the term's omission is supported by the Constitution's text. Black's Law Dictionary defines "independent" as "not subject to the control or influence of another; not associated with another;" and "not dependent or contingent on something else." Black's Law Dictionary 659 (6th ed. 1990). However, Section 10 conveys that the advisory commission is 1) established by law; and 2) makes recommendations as to the compensation of executive, legislative, and judicial officers. Thus, not only is the advisory commission's creation within the control of the legislature, but effectuation of its recommendations is dependent upon their acceptance by the legislature and governor. Such characteristics contravene the plain meaning of independence. And additionally, where a commission was truly intended to operate as independent, it was described as such: "[i]n every case where the governor appoints a board or commission to perform a regulatory or administrative function . . . the members of such a board or commission shall be *independent* . . . . This section does not apply to boards and commissions that serve a purely *advisory function* . . . ." NMI CONST. art III, § 21 (emphases added). Article III, Section 21 of the NMI Constitution demonstrates, for example, that although boards appointed by the governor to serve an administrative or regulatory function are required to be independent, the requirement is dispelled for commissions serving solely an advisory function. Such is the case for Section 10's advisory commission on compensation. The text thus provides that the

advisory commission was not meant to be independent, but rather, to serve the legislature in an advisory fashion. Legislative history confirms our interpretation.

2. Context, History, and Canons of Construction

¶ 16 In reviewing a provision's context and history, we may rely upon "committee recommendations, constitutional convention transcripts, and other relevant constitutional history." *Palacios v. Yumul*, 2012 MP 12 ¶ 5. In particular, the Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands ("Analysis") is "extremely persuasive authority when one is called upon to discern the intent of the framers when the language of the Constitution presents an ambiguity." *Rayphand v. Tenorio*, 2003 MP 12 ¶ 71.[2] We find two sources particularly useful in affirming the advisory commission's classification.

¶ 17 First, we look to the Analysis' discussion of Section 10. Its only guidance as to the commission's membership is: "[t]he Constitution does not include any limitation on or requirement with respect to the number, term of office or compensation of the members of the commission." Analysis of the Constitution, *supra* at 61. In the drafters' discussion of Section 11, however, they specified what government positions legislators were precluded from holding:

> This section prohibits members of the legislature from serving in any other Commonwealth government position, including independent boards, agencies, authorities or commissions established by the Constitution or by law. These include the department of education, the civil service commission and any other executive or administrative department established under article III, sections 13, 15 and 16. These also include the Marianas Public Land Corporation provided for in article XI, section 4, and the Marianas Public Land Trust provided for in article XI, section 6. All government positions, whether compensated or not, fall within the scope of this section. A legislator may not serve on any <u>independent</u> boards, agencies, authorities or commissions. A legislator may serve on a <u>dependent</u> board, agency, authority or commission established by the legislature, reporting directly to the legislature and performing a task incidental to the lawmaking process.

Analysis of the Constitution, *supra* at 63. Although we ordinarily read the word 'include' as a term of enlargement, *Commonwealth v. Manglona*, 1997 MP 28 ¶ 11, we do not read the Analysis' prohibition on legislators' service on independent commissions as precluding legislators' membership on the advisory commission. By its plain language, the Analysis repeats the Constitution's mandate that legislators were not to serve on independent commissions. *See* Analysis of the Constitution, *supra* at 63. However, no indication is given, either

[2] The Analysis' purpose is to explain each section of the Constitution and "summarize the intent of the Northern Marianas Constitutional Convention in approving each section." Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 1 (1976).

in form or in substance, that the advisory commission was intended to operate like the independent commissions specified in Section 11—rather, it is a separate creature of the drafters' creation. Indeed, unlike the commissions specified in Section 11, the advisory commission's function is much more closely interwoven with that of the legislature itself. We find such a distinction significant, and thus, find no prohibition on legislators' service on the advisory commission in the Analysis.

¶ 18 Our reading is further supported by Briefing Paper No. 3: The Legislative Branch of Government ("Briefing Paper 3").[3] In discussing the question of legislators' compensation, it stated:

> If the Convention leaves questions of compensation to the determination of the legislature or another agency, it should consider two further possibilities. First, the Constitution could specify an upper limit on how much the legislature could set for compensation. Second, state constitutions often provide that no legislator may receive a salary increase during the term for which he was elected. Such provisions, used by 23 states, are intended to minimize the self-serving aspect of legislators voting to increase their own pay. Recent trends favor independent commissions to set legislators' pay.

Briefing Paper 3, *supra* at 70. Notably, Briefing Paper 3 cites Article 6, Section 33 of West Virginia's Constitution, which states in relevant part:

> The citizens legislative compensation commission is hereby created. It shall be composed of seven members who have been residents of this State for at least ten years prior to the date of appointment, to be appointed by the governor within twenty days after ratification of this amendment, no more than four of whom shall be members of the same political party. The members shall be broadly representative of the public at large. *Members of the Legislature and officers and employees of the State or of any county, municipality or other governmental unit of the state shall not be eligible for appointment to or to serve as members of the commission.* . . . The members of the commission shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as such members.

W. VA CONST. art. VI, § 33 (emphasis added); *see* Briefing Paper 3, *supra* at 70

[3] The Briefing Papers were prepared by lawyers, political scientists and others with relevant expert qualifications in the areas discussed to assist the drafters of the Constitution. Briefing Papers for the Delegates to the Northern Marianas Constitutional Convention, Briefing Paper No. 1: Constitutional Convention Background & Overview 1, 28, 32 (1976).

n.129.

¶ 19 Briefing Paper 3 and its references provide us with two inferences. First, the discussion in Briefing Paper 3 demonstrates the drafters were cognizant of trends favoring independent commissions to determine legislative salaries. Second, the reference to West Virginia's constitution indicates the drafters were provided with at least one example of how to draft a provision precluding legislators' service on the advisory commission. The drafters could have easily used West Virginia's provision as a model, complete with its absolute bar on legislator's membership. And yet, they elected not to add further detail to Section 10 or specifically indicate that members of the legislature were not eligible to be appointed to the commission.[4] We find the drafters' awareness of and election not to adopt language specifying an independent advisory commission and barring members of the legislature from serving on the advisory commission to be compelling. *See, e.g., Hamdan v. Rumsfeld*, 548 U.S. 557, 579–80 (2006) ("Congress' rejection of the very language that would have achieved the result the Government urges weighs heavily against the Government's interpretation.").

¶ 20 As other jurisdictions chose to avoid the appearance of impropriety through prohibitions on legislators' membership on advisory commissions, our drafters ameliorated these concerns through other mechanisms. Specifically, Section 10's mandate that "[a]n increase in salary may not apply to the legislature that enacted it" demonstrates that the drafters considered Briefing Paper 3 and followed it where they thought appropriate. NMI CONST. art. II, § 10; *see also* Analysis of the Constitution, *supra* at 62 ("The section further provides that the legislature that enacts a salary increase may not benefit from the increase."). Briefing Paper 3 noted that where the legislature's compensation was determined by another body, 23 states limited their salary increases from going into effect until the following term. *See* Briefing Paper 3, *supra* at 70. The drafters adopted such a recommendation and likely thought it sufficient to "minimize the self-serving aspect of legislators voting to increase their own pay." *Id.* at 70. Additionally, the requirement that "[n]o change in the salary may be made that exceeds the percentage change in an accepted composite price index for the period since the last change" is preserved regardless of the commission's

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[4] Report No. 3 by the Committee on Governmental Institutions ("Report No. 3") further supports this point. *See* Committee on Governmental Institutions Report No. 3 (Nov. 4, 1976). In the report, the committee specified that it "wished to avoid a situation in which the legislature would be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase." *Id*. at 18-19. The Committee believed Section 10 met this concern, stating as such and explaining that "the requirement of a recommendation by a commission considering the salaries received by members of all three branches of government will eliminate any impression that the legislature is acting out of self interest." *Id*. at 19. Plainly, the commission's independence was not required, as the requirement that the committee consider the salaries of all three branches alleviated the committee's concerns.

composition. NMI CONST. art. II, § 10.

¶ 21 The dissent presumes that if the advisory commission includes legislators, the commission will act unfairly and the legislature will enact possibly inflated recommendations. Even if the advisory commission were composed of diverse members with no legislators present, there is no guarantee that these members would not be beholden to the direction and control of the appointing authority and act in a similarly irresponsible manner. However, should the legislature improperly discharge their duties in connection to the advisory commission, the consequences of such dereliction will likely manifest themselves through the democratic system. The ability to hold advisory commission members accountable through the electoral process, the establishment of upper limits on compensation, and the prohibition against a legislature that enacted a salary increase from benefiting from the increase, are sufficient protections against any nefarious legislators. Thus, although the drafters could have made the advisory commission independent to further diminish any appearance of being self-serving, we believe they found the system enacted sufficient to address such concerns.

¶ 22 We write further, however, to emphasize that the Constitution only establishes minimum requirements for the commission's establishment. The legislature is, of course, free to provide protections greater than what the Constitution mandates. *Dickey v. Florida*, 398 U.S. 30, 47 (1970); *see Couture v. Bd. of Educ. of the Albuquerque Pub. Sch.*, 535 F.3d 1243, 1255 (10th Cir. 2008) ("The Constitution establishes certain minimum thresholds . . . . It is to be expected—and hoped—that states, school boards, police departments, and other agencies will go beyond constitutional minima. . . ."). Because the advisory commission must consider the salaries of executive, legislative, and judicial officers when it convenes, implementing processes that allow all branches to appoint commission members and serve on the commission will further reduce the risk of appearing self-serving and allow diversified views. The First Commission established pursuant to Public Law 2-10, for example, included members from all three branches, *see* Ex. 1 at 4, allowing for salary recommendations to be endorsed by various representatives of the Commonwealth government.[5] But while a practice that incorporates

[5] Section 1 of Public Law 2-10 instructed:

> [T]he Advisory Commission . . . shall consist of seven members as follows: (a) Two members to be appointed by the Governor, (b) two members to be appointed by the Chief Judge of the Commonwealth Trial Court, (c) one member to be appointed by the President of the Senate, (d) one member to be appointed by the Speaker of the House of Representatives, and (e) one representative of the Personnel Office.

PL 2-10, § 1. The division of appointment powers amongst the executive, legislative, and judicial branches, not surprisingly, resulted in a diverse membership. The First Commission included: the mayor of Saipan, Clerk of the Commonwealth Trial Court,

representatives from all three branches in composing the commission has merit, we answer only the question before us, concluding that the Constitution's discussion of independent commissions does not include the advisory commission on compensation.

¶ 23 As such, members of the legislature are not precluded from serving on the commission. We thus conclude the presence of four sitting members of the legislature on the Third Commission did not violate Section 11. We now turn to the second certified question, requiring us to discuss the proper procedure for enacting a salary increase.

B. Procedure

¶ 24 Petitioner argues that each of the legislature's salary increases is unconstitutional because they violated the procedure mandated by the Constitution for enacting a salary adjustment. He asserts that each increase either exceeded the change in an accepted price index, was not based on any price index at all, or exceeded the advisory commission's recommendation. Respondent claims it is not possible to specify a date for each index's adjustment and that the accepted price index does not need to be specified or chosen by the commission. She concedes, however, that the legislature may "not exceed the [salary] increase recommended by the [a]dvisory [c]ommission." Resp. Br. 10.[6] The disagreement requires us to examine the procedure outlined by the Constitution for instituting legislative salary increases.

¶ 25 Like the first question, the second certified question implicates constitutional interpretation and construction. We thus begin with the language of the Commonwealth Constitution, *Cruz*, 2013 MP 15 ¶ 15, and follow our established guidelines for constitutional interpretation. *See Peter-Palican*, 2012 MP 7 ¶ 6.

¶ 26 We first review the text of Section 10. We read the plain language of Section 10 to establish five requirements as to legislative salary increases. First, legislative salaries may not be increased more than once every four years. NMI CONST. art. II, § 10. Second, they may only be increased upon the

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Chief of the Personnel Office of Classification & Compensation, Director of Health Services, Treasurer, Commonwealth Trial Court Judge, and Chief Accountant of the Marianas Public Land Corporation. *See* Ex. 1 at 4.

[6] Although in her Response Brief, Respondent acknowledged the legislature may not exceed the salary recommendation provided by the advisory commission, she maintained that the provision at issue is ambiguous and that we should nonetheless find all three salary increases to be constitutional. Further, Counsel for Respondent clarified during oral argument that she does not concede that a salary increase may not exceed the respective advisory commission's salary recommendation. We thus maintain that our interpretation of Section 10 is rooted in a live controversy and is not advisory in nature. *Contra Taisague v. Inos*, 2014 MP 13 ¶ 9 ("Because this portion of question one and two were conceded, our answer to these questions would be an advisory opinion.").

recommendation of the advisory commission. NMI CONST. art. II, § 10. Third, when the advisory commission is established, it must make recommendations concerning the compensation of executive, legislative and judicial officers. NMI CONST. art. II, § 10. Fourth, no salary change may "exceed[] the percentage change in an accepted composite price index" for the period since the last salary change. NMI CONST. art. II, § 10. And fifth, increases in compensation may not take effect until the start of the next legislative term. NMI CONST. art. II, § 10.

¶ 27 We find the first, third, and fifth requirements unambiguous and the plain language of these provisions controlling. In doing so, we note Public Law 19-51 contravened Section 10's third requirement. The Constitution's text dispels of any ambiguity as to the advisory commission's role in making compensation recommendations for executive, legislative, and judicial officers. It plainly pronounces that the commission, when it convenes, must consider and make a specific recommendation concerning the compensation of each branch. *See* NMI CONST. art. II, § 10. Although Public Law 19-51 acknowledged that its purpose was to "create an [a]dvisory [c]ommission to review and make recommendation on the compensation for the Governor, Lieutenant Governor, the Mayors, Legislators, *Justices, and Judges*." PL 19-51, § 1 (emphasis added), the commission's actual duties differed. As indicated in Section 5(a), its duties were only to "[r]eview, study and evaluate the level of compensation for the Governor, Lieutenant Governor, the Mayors, and Legislators . . . ." PL 19-51, § 5(a). Following such a directive, the advisory commission only made recommendations as to the governor, lieutenant governor, mayors, and legislators, neglecting to include a specific salary recommendation for judicial officers. *See* Ex. 3 at 6. To properly follow the directive of Section 10, the advisory commission, when it convenes, must provide a review of and specific salary recommendation for executive, legislative, and judicial officers.[7] Further, mayors are not included in the Constitution's discussion of the advisory commission, and thus need not be given consideration. *Compare* NMI CONST. art. II, § 10 *with* NMI CONST. art. VI, § 4; *see* Analysis of the Constitution, *supra* at 129–30.

¶ 28 However, we agree with the Parties in that the second and fourth requirements are ambiguous, as both are reasonably susceptible to multiple interpretations. *See Babauta v. Superior Court*, 4 NMI 309, 312 n.18 (1995)

[7] We write further to note that an advisory commission recommendation is not required for changes in judicial salaries. Unlike executive and legislative salaries, the Constitution provides that the compensation of judicial officers "shall be provided by law." NMI CONST. art. IV, § 6. Although the advisory commission is mandated by Section 10 to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers, changes in judicial compensation may be effectuated with or without an advisory commission recommendation, and a recommendation by the advisory commission regarding judicial salaries is not mandatory. Furthermore, the judicial branch's independence is additionally emphasized in that "[t]he salary of a justice or judge may not be decreased during a term of office." NMI CONST. art. IV, § 6; *cf.* U.S. CONST. art. III, § 1.

(explaining a court may go beyond a provision's text "where a statute may reasonably be read in two ways, or where no single path of meaning clearly appears" (citation and internal quotation marks omitted)). We review these interpretations. The requirement that a salary change be made only upon the commission's recommendation ("Second Requirement") may reasonably be read in two ways. The Second Requirement may be interpreted as simply requiring the advisory commission to make a salary recommendation. It may also reasonably be read to require both that the commission make a recommendation and that the resulting salary change be limited by the amount recommended by the commission.

¶ 29 The requirement that the salary increase fall within the percentage change of an accepted CPI for the period since the last change ("Fourth Requirement") may also reasonably be read in at least two ways. The Fourth Requirement may be interpreted to require that a salary increase simply comport with any CPI published by the United States government for the United States or any territory presently or formerly under United States jurisdiction. It may also be read to require that the advisory commission 1) choose a CPI; 2) review the percentage change of that CPI for the period since the last salary change; and 3) make a recommendation that falls within the percentage change of that CPI. Seeing as the constitutional language of the Second and Fourth Requirements "is susceptible to two or more plausible meanings, . . . we may consider context, history of the provision's drafting, and relevant canons of construction to determine which meaning was intended[,]" *Cruz*, 2013 MP 15 ¶ 15 (citations omitted), and effectuate the drafters' intent. *Peter-Palican*, 2012 MP 7 ¶ 6.

1. Second Requirement: Commission Recommendation

¶ 30 In ascertaining the drafters' intent as to the Second Requirement, we begin with the Analysis. It describes the Second Requirement as follows:

> This section permits the legislature to adjust the amount of salary *only upon* the recommendation of an advisory commission . . . . The Constitution does not include any limitation on or requirement with respect to the number, term of office or compensation of the members of the commission. The Constitution *does* prevent the legislature from enacting a salary adjustment that is *more than the maximum amount recommended by the commission.* If no commission is established or if a commission is established and does not report, no salary adjustment may be enacted by the legislature.

Analysis of the Constitution, *supra* at 61–62 (emphases added). We have always considered the Analysis an extremely persuasive authority. *Tenorio*, 2003 MP 12 ¶ 71. Here, too, we find guidance in its explanation of the advisory commission's recommendation requirement.

¶ 31 We read the Second Requirement of Section 10 as creating an upper limit for legislative salary enactments. Specifically, we find the Constitution creates,

and Analysis explains, the mandatory nature of the commission's recommendation, which is both required to be made and not able to be exceeded. *See RLS Assocs., LLC v. United Bank of Kuwait PLC*, 380 F.3d 704, 710 (2d Cir. 2004) ("Whether a permissive or mandatory construction is applicable depends on the apparent intention as gathered from the context, considering the whole instrument in which it is used.") (citation omitted); *State ex rel. Blume v. Yelle*, 52 Wn.2d 158, 162 (Wash. 1958) (noting language which may be seen as permissive is to be given a mandatory construction where context reflects such an intent upon the part of the drafters). The Constitution restricts the legislature from enacting a salary adjustment greater than the maximum amount of the commission's recommendation and no change in the salary may be made that exceeds the percentage change in an accepted composite price index for the period since the last change. Therefore, where the advisory commission recommends a salary range, the legislature may enact a salary adjustment within the range recommended. Where the advisory commission recommends a fixed number, however, the legislature is limited to enacting an adjustment congruent to the commission's recommendation. But whether the recommendation is a range or fixed number, the legislature is, of course, free to leave salaries unchanged.

¶ 32 We thus interpret the Second Requirement as containing three mandatory components. First, an advisory commission must be established by the legislature to make recommendations concerning the compensation of Commonwealth executive, legislative and judicial officers. Second, the advisory commission must issue a report containing its findings and recommendations. And third, the resulting salary increase must be no greater than the maximum amount provided in the commission's recommendation.[8] Only when a salary increase is enacted

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[8] We further discern the framers' intent on the commission recommendation requirement for legislative compensation based on the Analysis' discussion of the governor and lieutenant governor's compensation:

> Under article II, section 10, the legislature may establish an advisory commission on executive, legislative, and judicial compensation. If such a commission is established and makes a recommendation, the legislature may increase or decrease the governor's and lieutenant governor's salaries in any amount but *only within the range recommended by the commission*. For example, if the commission recommends that the governor's salary be increased from $25,000 to $35,000, the legislature cannot decrease the governor's salary, but can increase it by any amount from $25,000 to $35,000. If no commission is created, no salary increases or decreases may be enacted. Similarly, if the Commission is created but does not make a recommendation, no salary increases or decreases may be enacted.

See Analysis of the Constitution, *supra* at 77 (emphasis added); NMI CONST. art. III, § 5. This provision clearly notes three requirements: 1) the creation of an advisory commission; 2) a salary recommendation by the commission; and 3) a salary increase within the range of the commission's recommendation. *See* NMI CONST. art. III, § 5. We recognize that this provision explains Article III, Section 5 of the NMI Constitution,

according to these prerequisites does it comply with Section 10's Second Requirement.

2. *Fourth Requirement: Consultation of Composite Price Index*

¶ 33 We begin our review of Section 10's Fourth Requirement by putting the drafters' references to CPI in context. *See Cruz*, 2013 MP 15 ¶ 18 (citation and internal quotation marks omitted) ("To reconcile [a] textual ambiguity, we proceed to consider context."); *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) ("But oftentimes the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context."). A price index is broadly defined as a:

> [M]easure of relative price changes . . . show[ing] the average change in prices between periods or the average difference in prices between places. Price indexes were first developed to measure changes in the cost of living in order to determine the wage increases necessary to maintain a constant standard of living. They continue to be used extensively to estimate changes in prices over time and are also used to measure differences in costs among different areas or countries.

Price Index, 2018 ENCYCLOPEDIA BRITANNICA, https://www.britannica.com/topic/price-index. Generally speaking, price indexes measure the increase or decrease in the price of goods or services over time in a particular geographical or demographic category. *See* Gregory C. Sisk, *The Essentials of the Equal Access to Justice Act: Court Awards of Attorney's Fees for Unreasonable Government Conduct (Part Two)*, 56 LA. L. REV. 1, 137 (1995) ("Any price index or other measure of cost of living changes must be linked to a particular geographical or demographic category within which purchasing behavior and changes in item prices are measured."); *see, e.g.*, Consumer Price Index (CPI) Databases, UNITED STATES DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, https://www.bls.gov/cpi/data.htm. Given that price indexes provide an estimate of the average change in prices over time, they are often used to measure rates of inflation. *See* Katherine K. Yunker, *Addressing the Real Problems for Law and Economics of Factoring Interest Rates, Earnings Growth and Inflation into Awards for Lost Future Earnings*, 56 U. PITT. L. REV. 1, 29 n.76 (1994) ("There is no way to know precisely how much inflation any economy is experiencing. . . . The best approximations available are price indexes, particularly the consumer price index, the producer price index, and the implicit GNP deflator."); *see, e,g., Arkansas Louisiana Gas Co. v. Federal Energy Regulatory Com*., 654 F.2d 435, 443 n.19 (5th Cir. 1981) ("Economists generally rely upon three traditional measures of inflation in the nation's economy the Consumer Price Index and the Wholesale Price Index published by the Department of Labor, and the GNP implicit price deflator published by the

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not Section 10. Still, we find the congruent structure of this analogous provision persuasive.

Department of Commerce."). Contextualizing the meaning and purpose of a CPI provides guidance as to the drafters' intent in requiring its consultation during the enactment of salary increases.

¶ 34 Indeed, the importance of the selection of a CPI is evinced by the Analysis. The Analysis provides specific instruction as to the CPI's role:

> The legislature is further limited to enacting salary adjustments that fall within the percentage change in an accepted composite price index for the period since the last salary adjustment. *An accepted composite price index may be* one published by the United States government for the United States or any territory presently or formerly under United States jurisdiction. *This language would also permit the use* of an index developed specially for the Northern Mariana Islands so long as it was prepared in accordance with professionally accepted standards.

Analysis of the Constitution, *supra* at 62 (emphases added); *see* NMI CONST. art. II, §10. We find the Analysis' discussion instructive. First, we read "an accepted price index may be" and "this language would also permit the use" together to indicate that a CPI is to be "accepted" and "used" while making a salary determination. Such language reflects the drafters intended the body recommending the salary adjustment, the advisory commission, to choose a CPI from those described and use it in determining its recommendation. Such a method is the only way to ensure the legislature enacts adjustments that fall within the requisite calculation—as opposed to blindly comparing an increase to thousands of CPIs after the fact. Further, given that CPIs are generally used to measure price changes and determine wage increases necessary to maintain a certain standard of living, the drafters likely intended for legislators' standard of living to follow those of the indexes indicated.

¶ 35 The drafters' concern regarding tailoring legislative salaries to economic growth is further clarified by reviewing the relevant historical documents. First, Report No. 3 by the Committee on Governmental Institutions ("Report No. 3"):

> In dealing with the question of compensation, the Committee balanced four considerations. First, it wanted to ensure that the salaries for members of the legislature would be adequate to attract competent people to public service. *Second, the Committee wished to avoid extravagance. Third, the Committee wanted to provide a system flexible enough to adjust to changing economic circumstances.* Finally, the Committee wished to avoid a situation in which the legislature would be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase.

Report No. 3, *supra* at 18–19 (emphasis added). In particular, the committee's second and third considerations indicate an intention to create a balanced approach as to the question of compensation. Plainly, the system created by the

Constitution was meant to enable legislative salary increases enacted as an adjustment to economic circumstances, while preventing salary increases enacted simply for extravagance. Thus, given that the advisory commission was established for the purpose of determining salary increases, it follows that the drafters tasked the commission with ensuring such a balance is maintained.

¶ 36 An approach tailoring legislative salaries to economic circumstances is buttressed by Briefing Paper 3. The section as to legislative salaries begins by highlighting that the convention must confront whether to allow concurrent office-holding and employment. Briefing Paper 3, *supra* at 68. It explains that such a decision "will affect not only the amount of legislative salaries but the frequency with which they must be revised." Briefing Paper 3, *supra* at 68.[9] The next decision listed is whether legislators should earn a salary at all (or only be reimbursed for expenses).[10] It warns that should the drafters choose to compensate legislators:

> It appears unwise to specify any dollar figure in the Constitution. Constitutional provisions in this regard necessarily are inflexible because they can be changed only through the burdensome process of constitutional amendment. Current inflation rates quickly render such figures obsolete, requiring either constitutional amendment or unlawful salary increases, and most states leave the matter to the legislature. On the other hand, the Convention may be reluctant to leave to the legislators a question in which they have so high a personal stake.
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> . . . . .
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> If the Convention leaves questions of compensation to the determination of the legislature or another agency, it should consider two further possibilities. First, the Constitution could specify an upper limit on how much the legislature could set for compensation. Second, state constitutions often provide that no legislator may receive a salary increase during the term for which he was elected.

Briefing Paper 3, *supra* at 68–70 (citations omitted). An approach tailoring salaries to economic circumstances in order to maintain a constant standard of living is supported by these instructions. Namely, instead of a dollar amount requiring constitutional amendment, the drafters provided a formula for enacting

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[9] Notably, the drafters chose to allow concurrent employment by legislators. *See* Analysis of the Constitution, *supra* at 63–64 (allowing concurrent private employment); NMI CONST. art. II, § 11 (restricting legislators from Commonwealth government employment only). The necessary implication of such a decision is that legislative salaries are to be lower and revised less frequently.

[10] Although the drafters ultimately chose to compensate legislators for their service, they nonetheless limited expenses to only those that are reasonable. *See* NMI CONST. art. II, § 10 (allowing "reasonable allowances for expenses provided by law").

salary increases. *See* NMI CONST. art. II, § 10. They made sure the formula would allow salaries to be raised in line with current inflation rates, and created an advisory commission separating the legislature from directly determining the question of compensation. *See* NMI CONST. art. II, § 10. The drafters also limited the change in compensation to that of the percentage change of the CPI accepted by the commission, and per the fifth requirement, ensured salary increases would not go into effect until the subsequent term. *See* NMI CONST. art. II, § 10.

¶ 37 We thus find that contextualizing and reviewing the historical foundation of the drafters' references to CPI sufficiently clarifies the ambiguity of the Fourth Requirement.[11] Reading the Fourth Requirement to require the advisory commission's consultation and selection of a specific CPI realizes the framers' goals. Specifically, selection and use of a specific CPI to calculate salary recommendations allows the advisory commission to review the economic conditions of the CNMI since the last increase and choose the CPI that best allows legislators to maintain a constant standard of living. Choosing a CPI also allows legislative salaries to be adjusted to changing economic circumstances without accidentally implementing an extravagant or needlessly excessive increase. Further, accepting Respondent's interpretation of matching increases to CPIs after-the-fact would leave no way to ensure CPI limits are complied with and salaries are tailored to economic growth—a patently absurd result. We therefore interpret Section 10's Fourth Requirement to mandate that the advisory commission 1) choose a CPI; 2) review the percentage change of that CPI for the period since the last salary change; and 3) make a salary recommendation that

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[11] Still, more evidence of the drafters' focus on ensuring salaries are commensurate with the Commonwealth's economic conditions is visible in floor discussions:

> We need to base the salary, first on the need, and then on the available resources. . . . At the present time the Northern Marianas are capable of generating only slightly over a one million dollars per annum. . . . In the interest of our meager economy, $8,000 for the annual salary of our legislator's is still high compared to the average wage earner, who earns $3,000 per annum. This can be remedied in the future and we have provided a remedy in the Constitution for an adjustment to be made if it is warranted.

Journal of the Northern Mariana Islands Constitutional Convention, 37th Day 172 (1976). Even proposals to raise legislators' salaries were tied directly to measures of inflation:

> I would like to call the attention of the Delegates to the Consumer Price Index in the Pacific Daily News on November 23rd. On page 6A, it shows that the cost of living has gone up 31 percent within four years. . . . Should we trap the new legislators at the $8,000 per year salary with the cost of living, rising as fast as it is?

Convention Journal 37th Day, *supra* at 173.

falls within the percentage change.

V. CONCLUSION

¶ 38 For the foregoing reasons, we answer the first certified question by holding that legislators are not precluded from serving on the advisory commission on compensation. The presence of four sitting members of the legislature on the Third Commission did not violate Section 11. We answer the second question in finding that salary increases for the legislature must be: 1) calculated based off of a specific accepted CPI; 2) within the percentage change of the accepted CPI for the period since the last salary increase; and 3) no greater than the maximum salary recommended by the advisory commission. Because each of the salary increases enacted by Public Laws 4-32, 7-31, and 19-83 contravene at least one of these mandates, they are unconstitutional.

¶ 39 We make one final note as to the effect of our decision. Following the mandate of Article IV, Section 11 of the NMI Constitution and NMI Supreme Court Rule 14(b), we accepted the questions of law raised by the Parties and statement of facts necessary to answer them. Although "we are empowered to exercise our discretion to reframe the certified questions before us so as to provide the guidance actually sought," *Kabir v. CNMI Pub. Sch. Sys.*, 2009 MP 19 ¶ 39 n.22, we believe we have fully resolved the dispute regarding the constitutionality of Public Laws 4-32, 7-31, and 19-83. We, however, were not asked to determine the necessary effect of such a ruling, nor do we have the proper record before us to make such a determination. And further, as an appellate court, we are not a finder of fact. *See In re Estate of Roberto*, 2010 MP 7 ¶ 72 (Torres, J., dissenting) (role of appellate court distinct from trial court's role as factfinder).

¶ 40 We leave to the trial court in *Manibusan v. Larson*, Civ. No. 17-0047 (NMI Super. Ct. Feb. 9, 2017), to determine whether the salary increases enacted as a result of Public Laws 4-32, 7-31, and 19-83 should be void ab initio or prospectively. In doing so, we encourage the court to apply principles of reasonableness and fairness:

> [B]road statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official. *Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination.* These questions are among the most difficult of those which have engaged the attention of courts, state and

> federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.

Bd. of Trs. of the N. Mariana Islands Ret. Fund v. Ada, 2012 MP 10 ¶ 23 (quoting *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371, 374 (1940)). We thus instruct the trial court to lift its stay and make the requisite determination.

SO ORDERED this 30th day of August, 2018.

/s/
ALEXANDRO C. CASTRO
Chief Justice

/s/
ROBERT J. TORRES
Justice Pro Tempore

MANGLOÑA, J., dissenting in part:

¶ 41 I join the majority as to Part B (¶¶ 24–37) of this opinion but respectfully dissent as to Part A regarding legislators' membership on the advisory commission. Our Constitution's drafters did not intend for members of the legislature to serve on the advisory commission established by Section 10.

¶ 42 Before reviewing the authority in support of the advisory commission's independence, I highlight the picture painted by the majority's decision. Going forward, the legislature will draft bills establishing advisory commissions that allow legislators to determine the entire commission. Commissions will be created where, instead of representing a diverse membership, each member is a legislator. The commission, instead of fairly evaluating the Commonwealth's economic conditions, will recommend the highest salary increase possible amongst available CPIs, claiming it is needed. The legislature will, unsurprisingly, enact possibly inflated recommendations from a commission comprised entirely of legislators. Such a scenario clearly evinces that avoiding determining the commission's classification will lead to an absurd result that contravenes the drafters' intent.

¶ 43 The majority uses the fact that the drafters failed to specifically label the advisory commission as independent as the North Star of its analysis. In doing so, it attempts to circumvent the principle that "[w]e are duty-bound to give effect to the intention of the framers of the NMI Constitution . . . ." *Aldan-Pierce v. Mafnas*, 2 NMI 122, 163 (1991); *see, e.g.*, *Pangelinan v. NMIRF*, 2009 MP 12 ¶ 20 (finding our textual interpretation of Article III, Section 20(b) "entirely consistent with the apparent intent of the framers"). The relevant constitutional history guides the proper interpretation as to the intended function of the advisory commission. *See Palacios v. Yumul*, 2012 MP 12 ¶ 5. In particular, the Analysis, Briefing Paper 3, and Report No. 3 all reflect a similar intent of avoiding conflicts of interest for legislators and minimizing the legislature's appearance as self-serving.

¶ 44 The Analysis, for example, prescribes a sweeping prohibition on legislators' service in "any other government position . . . ." Analysis of the Constitution, *supra* at 63 ("[Section 11] prohibits members of the legislature from serving in any other Commonwealth government position, including independent . . . commissions established by the Constitution or by law. . . . All government positions . . . fall within the scope of this section."). Thus, both the text of Section 11 and the Analysis explicitly ban legislators from serving in any other government position, a broad prohibition which membership on the advisory commission inevitably falls into. Plainly, although legislators may be permitted to assume outside employment, the founders intended to restrict alternate government employment.

¶ 45 And although the Analysis denotes a minor exception to legislators' blanket employment prohibition for dependent commissions, this exception only further highlights the independence of the advisory commission. The Analysis

notes legislators' membership is permitted on a "dependent board, agency, authority or commission established by the legislature, reporting directly to the legislature and performing a task incidental to the lawmaking process." Analysis of the Constitution, *supra* at 63. First, the advisory commission was created by the Constitution—not by the legislature. Second, each advisory commission is established by law, requiring the approval of both the legislature and the governor. Third, although the advisory commission ultimately submits its findings to the legislature, it must generally also consult with other government officials prior to doing so. *See, e.g.*, PL 19-51, § 5(b) (requiring consultation with the governor); PL 7-8, § 5(b) (requiring consultation with governor, presiding judge, representative to the United States, and mayors); PL 2-10, § 5(b) (same). Finally, if any meaning is to be retained as to the distinction between independent and dependent bodies, a dependent board or commission is reasonably interpreted as a legislative committee established by legislative rule. *See Commonwealth v. Lot No. 218-5 R/W*, 2016 MP 17 ¶ 24 ("[W]hen possible . . . the interpretation of a . . . constitutional provision will be harmonized with other . . . provisions to avoid unreasonable or absurd results."); *see, e.g.*, OFFICIAL RULES OF THE SENATE, R. 7 § 1 (2017) ("There shall be standing committees created by these rules. Special committees shall be established by the President as required to consider and report on such special or temporary matters as are referred to them."). With such considerations in mind, the advisory commission is patently distinguishable from a dependent commission.

¶ 46 Moreover, our historical documents illuminate the reasoning behind a government employment restriction. In discussing the question of the legislature's compensation, Report No. 3 further explains:

> [T]he Committee balanced four considerations. First, it wanted to ensure that the salaries for members of the legislature would be adequate to attract competent people to public service. Second, the Committee wished to avoid extravagance. Third, the Committee wanted to provide a system flexible enough to adjust to changing economic circumstances. *Finally, the Committee wished to avoid a situation in which the legislature would be tempted to give itself an undeserved salary increase, or would appear to have given itself such an increase.*
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> The Committee believes that the draft article meets each of these concerns. . . . Flexibility is guaranteed by giving the legislature authority to change this amount, but the requirement of a recommendation by a commission considering the salaries received by members of all three branches of government will *eliminate any impression that the legislature is acting out of self interest*. The limitation to one salary change in four years and the delay in effectiveness of changes will also reduce the likelihood of needless increases. The Committee reserved to the legislature power over expenses, however, as traditional and necessary.

Report No. 3, *supra* at 18–19 (emphasis added). When read in conjunction with Briefing Paper 3's observation that "[r]ecent trends favor independent commissions to set legislators' pay," Briefing Paper 3, *supra* at 70, it becomes clear that an independent commission was the mechanism intended by the drafters to meet their concerns. After all, the drafters' goal of preventing the legislature from giving itself an undeserved salary increase, or appearing to have done so, can hardly be said to have been met if the standard created allows an all-legislator advisory commission to make salary recommendations which are then voted on by those same legislators. Practically, an interpretation that does not allow legislators to independently determine their compensation is the one which best effectuates our drafters' intent.

¶ 47 I acknowledge that these documents do not explicitly label the commission as an independent advisory commission. But I read our historical guidance to prioritize substance over form. In doing so, it becomes clear that effectuating the framers' intent requires prohibiting legislators' service on the advisory commission. A decision to the contrary would, in effect, allow an advisory commission not only to be composed of a majority of legislators, as is the case for Public Law 19-83, but would allow an advisory commission's membership to consist *only* of legislators. Such a result would directly contravene the drafters' intent in avoiding the appearance of impropriety or self-serving actions. As such, I would hold the Constitution does not permit legislators' service on the advisory commission.

/s/
JOHN A. MANGLOÑA
Associate Justice