

# Revised Constitution of American Samoa

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Whereas the Congress of the United States, in its Act of February 20, 1929, provided that until the Congress shall provide for the Government of the islands of American Samoa, all civil, judicial, and military powers shall be vested in such person or persons and exercised in such manner as the President of the United States shall direct; and

Whereas by Executive Order No. 10264 the President of the United States directed that the Secretary of the Interior should take such action as may be necessary and appropriate and in harmony with applicable law, for the administration of civil government in American Samoa; and

Whereas it is appropriate that, in the process of developing self-government, the people of American Samoa should enjoy certain rights and responsibilities inherent in the representative form of government; and

Whereas it is desirable that these rights and responsibilities be clearly set forth in a Constitution, and the adoption of a Constitution is in harmony with applicable law; and

Whereas the Constitution adopted in 1960 provided for a revision thereof:

Now, therefore, this revised Constitution, having been ratified and approved by the Secretary of the Interior and having been approved by a Constitutional Convention of the people of American Samoa and a majority of the voters of American Samoa voting at the 1966, election, is established to further advance government of the people, by the people, and for the people of American Samoa.

Article I

Bill of Rights

## Section 1. Freedom of religion, speech, press, rights of assembly and petition.

There shall be separation of church and government, and no law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Case notes: Blanket imposition of religious programs on unconsenting inmate violates establishment and freedom of religion clauses of both federal and territorial constitutions. U.S. Const. Amend. I; Rev'd Const. Am. Samoa Art. I, §1. *American Samoa Government v. Agasiva*, 6 A.S.R.2d 32 (1987).

The power to govern a congregational church vests in the whole congregation, or in persons or entities which the majority of the congregation may select as the governing authority for general or particular purposes. U.S. const. Amend. I; Rev. const. Am. Samoa Art. I, § 1. *Lefiti v. Tauanu'u*, 24 A.S.R.2d 68 (1993).

When the identity of the governing authority or authorities within a church is substantially at issue, civil courts must refrain from delving into ecclesiastical laws and practices that may be paramount to resolving the controversy. U.S. const. Amend. I; Rev. Const. Am. Samoa Art. I, § 1. *Lefiti v. Tauanu'u*, 24 A.S.R.2d 68 (1993).

## Section 2. No deprivation of life, liberty or property without due process.

No person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation.

Amendments: 1967 Section formerly provided for payment of compensation "before" the taking of property and for reversion to owner after 3 years of non-user. H.C.R. No. 45, 10th Leg. 1st Spec. Sess., requested Secty. of Int. to revise the section to its present form. This was done at the time of ratification and approval on June 2, 1967.

Case Notes: Due process clause does not require jury trial; however the Chief Justice may so provide by rule. *Pelesasa V. Te'o*, ASR (1978).

Substantive due process is a fundamental right as such must be accorded litigants, nurses suspended by Personnel Advisory Board. *Reed v. Personnel Advisory Board*, ASR (1977).

Argument that license was "revoked" without procedural due process was unfounded where evidence shows license was never granted. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R. 2d 26 (1988).

Procedural due process requirements are not fixed, but vary with circumstances and particular demands of the case; however, some sort of notice and hearing is required before and individual is finally deprived of a property interest. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R. 2d (1988).

Notice and hearing afforded to satisfy procedural due process need not be full judicial hearing. Am. Samoa. Const. Art. I § 2. *Ferstle v.*

American Samoa Government, 7 A.S.R.2d 26 (1988).

To satisfy requirement of procedural due process, opportunity to be heard must be granted at a meaningful time and in a meaningful manner, but need not always be granted prior to the initial deprivation of property. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

Ordinarily, due process is satisfied by proceedings less than a full evidentiary hearing prior to adverse administrative action, and the sufficiency of such proceedings is to be determined in light of 1) the private interest that will be affected by the official action, 2) the risk of an erroneous deprivation of the interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards, and 3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would impose. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R. 2d 26 (1988).

Procedural due process is satisfied by piecemeal proceedings wherein parties were advised of the required showing, the proofs were considered promptly by the regulating agency, parties were advised of the agency's findings of insufficiency, parties submitted further proofs which agency considered and again advised parties that such proof was insufficient but did not issue a denial and remained open to further submission of proofs. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

Due process requirements of notice and opportunity to be heard are not triggered until adverse administrative action constituting a "final" deprivation of property has taken place. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R. 2d 26 (1988).

Recurring and intentionally dilatory tactics by agency may constitute "final" action sufficient to trigger due process requirements of notice and hearing. Am. Samoa. Const. Art I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

The expected benefit of a license which issues subject to articulated standards of qualification is a property interest giving rise to due process protection, although not to the full range of pre-deprivation procedural protections applicable to entitlements that are less contingent than the expectation of a license. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

Because in most cases licensing will be a straightforward process, quasi-judicial evidentiary hearing in all licensing proceedings would needlessly increase government expenditures and such hearings are required only where the proposed action on a license application will be final. Am. Samoa. Const. Art. I § 2., A.S.C.A. § 31.1508. *Ferstle v. American Samoa Government*, 7 A.S.R. 2d 26 (1988)

A "taking" of property by ASG requires it to provide just compensation. U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. *Solomona v. Governor of American Samoa*, 17 A.S.R.2d 186 (1990).

A land use regulation may effect a constitutional taking if it fails to "substantially advance legitimate state interests" or "denies an owner economically viable use of his land." U.S. Const. Amend. V; Rev. Const. Am. Samoa art. I, § 2. *Solomona v. Governor of American Samoa*, 17 A.S.R.2d 186 (1990).

Coastal zone regulations might effect a taking, and thus require compensation to the landowner, if they effectively prohibit any "economically viable" use of private property. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2. *Solomona v. Governor or American Samoa*, 17 A.S.R.2d 186 (1990).

No. "taking" occurs when government merely restrains property uses which are tantamount to publicnuisances. U.S. Const. Amend. V; Rev. Const. Am. Samoa, 17 A.S.R.2d 186 (1990).

In some cases, such as when an illegal sentence was pronounced on a defendant unrepresented by counsel or when the circumstances surrounding an error of law made it impossible for counsel to call it to the Court's attention within ten days, a statutory ten day limit might amount to an unconstitutional denial of liberty without due process of law. U.S. Const. Amends. V, XIV; Revised Const. of American Samoa Government v. *Falefatu*, 17 A.S.R.2d 114 (1990).

Requiring criminal counsel to serve without compensation is generally not an unconstitutional taking of property without just compensation. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2. *American Samoa Government v. Wilson* 23 A.S.R.2d 159 (1993).

In order to have a cognizable claim for deprivation of procedural due process, one must first possess a "liberty" or "property" interest in the government action complained of. Am. Samoa. Const. Art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

The expected benefit of a license which issues subject to articulated standards of qualification is a property interest giving rise to due process protection, although not to the full range of pre-deprivation procedural protections applicable to entitlements that are less contingent than the expectation of a license. Am. Samoa. Const. art. I § 2. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

Provisions of territorial constitution prohibiting deprivation of life, liberty, or property without due process of law prohibits prosecution from suppressing any evidence favorable to an accused where the evidence is material either to guilt or punishment. Rev'd Const. Am. Samoa Art. I § 2. *American Samoa government v. Talamoa*, 19 A.S.R.2d 14 (1989).

General request by defense counsel for any evidence in the possession of the prosecution that might tend to exculpate the defendant was within the scope of rule prohibiting suppression of material evidence favorable to the accused. Rev'd Const. Am. Samoa Art. I § 2. *American Samoa Government v. Talamoa*, 10 A.S.R.2d 14 (1989).

The right of a family member to use communal land is a proprietary right within the due process clause of the territorial constitution. Rev'd Const. of Am. Samoa I § 2. *Lutu v. Taesaliali'i*, 11 A.S.R.2d 80 (1989).

The right of a family member to use land owned by a Samoan communal family is a property right protected by the territorial constitution's due process clause. Rev. Const. Am. Samoa Art. I, § 2. *Seventh Day Adventist Church of American Samoa v. Maneafaiga*, 23 A.S.R.2d 150 (1993).

Though the Immigration Board's documents are confidential by statute, this statute may not be used to deny constitutionally guaranteed due-process rights, nor does it prohibit the court from ordering the Attorney General to produce these records when needed. U.S. constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0307. *Farapo v. American Samoa Government*, 23 A.S.R. 2d 136 (1993).

A non-capital criminal defendant is not constitutionally or procedurally entitled to a list of the prosecution's prospective witnesses. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 2; T.C.R.Cr.P. 16 (a) (2). *American Samoa Government v. Wilson*, 24 A.S.R.2d 26 (1993).

An alien in a deportation proceeding is entitled to cross-examine the government's witnesses, and an improper curtailment of this right constitutes a violation of procedural due process. U.S. Constitution Amend. V; Rev. Const. Am. Samoa Art. I, § 2; A.S.C.A. § 41.0250(7)( c ); A.S.A.C. § 41.0807( a ). *Farapo v. American Samoa Government*, 23 A.S.R.2d 136 (1993).

### Section 3. Policy protective legislation.

It shall be the policy of the Government of American Samoa to protect persons of Samoan ancestry against alienation of their lands and the destruction of the Samoan way of life and language, contrary to their best interests. Such legislation as may be necessary may be enacted to protect the lands, customs, culture, and traditional Samoan family organization of persons of Samoan ancestry, and to encourage business enterprises by such persons. No change in the law respecting the alienation or transfer of land or any interest therein shall be effective unless the same be approved by two successive legislatures by a two-thirds vote of the entire membership of each house and by the Governor.

Case Notes: Territory has compelling interest in preserving the lands of Samoa for Samoans; laws in conflict with U.S. not displaced. *Craddick v. Territorial Registrar*, ASR (1979).

Under Constitution of American Samoa the Legislature, and particularly the Senate which is composed of traditional chiefs chosen according to Samoan custom, has a peculiar relationship to the preservation of land and culture. Rev. Const. of Am. Samoa Art. 1§ 2, Art. II § 4. *Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

### Cross-References:

Government policy to protect persons against alienation of their lands.

Treaty of Cession of Tutuila and Aunu'u.

US. obligated to protect Samoan property rights.

14th Amendment, US. Constitution.

#### 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.

#### Section 5. Protection against unreasonable searches and seizures.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Evidence obtained in violation of this section shall not be admitted in any court.

Case Notes: Pervasively regulated businesses, which have long been subjected to close inspection and supervision, such as barbershops, may in proper circumstances be subjected to warrantless search. Am. Samoa. Const. Art. I § 5. *Ferstle v. American Samoa Government*, 7 A.S.R.2d 26 (1988).

Reflecting the "ancient common-law rule" that an officer may make a warrantless arrest if reasonable grounds of a felony's commission exist, even if it occurred outside of his presence, a warrantless arrest is not invalid merely because a warrant could have been obtained but was not. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5. *American Samoa Government v. Gotoloi*, 23 A.S.R.2d 65 (1992).

Reflecting the common-law rules, the exceptions to American Samoa's arrest-warrant requirement include arrests of felony suspects near a crime scene shortly after a crime's commission, arrests for misdemeanors and felonies committed in an officer's presence, and arrests based on "reasonable grounds" that a felony or breach of the peace has been committed. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. *American Samoa Government v. Gotoloi*, 23 A.S.R.2d 65 (1992).

The meaning of statutory provisions generally requiring an arrest warrant must be ascertained in light of the purpose of promoting efficient law enforcement, while protecting individual rights, and of the traditional and almost universal practice of warrantless arrests. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. *American Samoa Government v. Gotoloi*, 23 A.S.R. 2d 65 (1992).

Evidence obtained from an illegal search and seizure is inadmissible, not only in criminal proceedings but also in probation revocation proceedings. Rev'd Const. Am. Samoa Art. I § 5. *American Samoa Governmental v. Peni Samana*, 8 A.S.R.2d 1 (1988).

Search and seizure clause of territorial constitution requires an independent finding of probable cause by a neutral and detached magistrate Rev'd Const. Am. Samoa Art. I, § 5. *In re Siaumau*, 12 A.S.R.2d 11 (1989).



In making an independent judicial finding of probable cause for a search, the judge may not rely merely on the prosecutor's decision to file a complaint. Rev'd Const. Am. Samoa Art. I, § 5. In re Siaumau, 12 A.S.R.2d 11 (1989).

Judge may independently find adequate basis for probable cause in a criminal complaint, which not only contains directly incriminating information but also identifies the source of such information. Rev'd Const. Am. Samoa Art. I, § 5. In re Siaumau, 12 A.S.R.2d 11 (1989).

Factual allegations given their common sense meaning may be sufficient to constitute probable cause for certain crimes. Rev'd Const. Am. Samoa Art. I, § 5. In re Siaumau, 12 A.S.R.2d 11 (1989).

Criminal complaint containing factual allegations of complainant officer and sources upon which the officer based such allegations, including personal investigation with interviews of identified victim, eyewitness, and treating physician, was sufficient to sustain independent judicial finding of probable cause. Rev'd Const. Am. Samoa Art. I, § 5. In re Siaumau, 12 A.S.R.2d 11 (1989).

A warrantless arrest is improper if the government does not present evidence on which a court may judge "reasonableness." Rev. Const. Am. Samoa Art. I, §5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32 (1992).

Although the time differential and intervening circumstances may sever the relationship between an illegal arrest and a confession, the culpability of the police does not abrogate the application of the territorial constitution's exclusionary rule. Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32 (1992).

Merely giving Miranda warnings is insufficient to constitute an "intervening circumstance" severing the causal relationship between an illegal arrest and a confession, and such a confession must be suppressed. Rev. Const. Am. Samoa Art. I, § 5. American Samoa Gov't v. Sefo, 21 A.S.R.2d 32 (1992).

Generally, an arrest, whether with or without a warrant, must be supported by probable cause. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). American Samoa Gov't v. Luki, 21 A.S.R.2d 82 (1992).

A confession will be supported if the government fails to meet its burden of showing that probable cause for a warrantless arrest existed when it was made. Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. § 46.0805(3). American Samoa Gov't v. Luki, 21 A.S.R.2d 82 (1992).

Arrests and searches are treated differently because "unreasonable search and arrest" provisions are concerned with restricting the use of general search warrants, not with prohibiting warrantless felony arrests; as such, warrantless arrests are permissible if supported by probable cause. U.S. Const. Amend. IV; Rev. Const. Am. Samoa Art. I, § 5; A.S.C.A. §§ 46.0801 et seq. American Samoa Government v. Gotoloai, 23 A.S.R.2d 65 (1992).

Section 6. Rights of an accused.

No person shall be subject for the same offense to be twice put in jeopardy of life or liberty; nor shall he be compelled in any criminal case to be a witness against himself; and the failure of the accused to testify shall not be commented upon nor taken against him. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, to be informed of the nature and the cause of the accusation and to have a copy thereof; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence. Every man is presumed innocent until he is pronounced guilty by law, and no act of severity which is not reasonably necessary to secure the arrest of an accused person shall be permitted. All persons shall be bailable by sufficient sureties except where the judicial authorities shall determine that the presumption is great that an infamous crime, which term shall include murder and rape, has been committed and that the granting of bail would constitute a danger to the community. Bail shall be set by such judicial authorities. Excessive bail shall not be required, nor excessive fines imposed nor cruel or unusual punishments inflicted.

Case Notes: Delay In setting trial is violative. *Government of American Samoa v. Tapusoa*, ASR (1979).

“Double jeopardy” protection not violated where crime for which defendant pled guilty and was convicted, was considered a different offense rather than a lesser included part of seine offense. *A.S.G. v. Moafanua*, 4 ASR 2d 33 (1987).

Right to public trial not violated where courtroom cleared during testimony of juvenile victim in rape case where such exclusion was requested by victim to avoid describing sexual acts in front of family members. *A.S.G. v. Masaniai*, 4 ASR2d 156 (1987) (mem).

As officers of the court, members of the bar may be appointed, without compensation if necessary, as counsel to insure that indigent criminal defendants receive legal representation. Rev. Const. Am. Samoa Art. 1 § 6. A.S.C.A. §§ 46.0502(2), 46.1001. *American Samoa Government v. Wilson*, 23 A.S.R.2d 159 (1993).

Right to effective assistance of counsel applies in American Samoa. Am. Samoa Rev. Const. art I, § 6; A.S.C.A. §§ 46.0502, 46.1001. *Suisala v. Moaalitele*, 6 A.S.R.2d 15 (1987).

There is no fixed formula for determining when the right to a speedy trial has been violated; each case must be determined on its own facts. Rev. Const. Am. Samoa, art. 1§ 6. *Pene v. American Samoa Government*, 12 A.S.R.2d 43 (1989).

Relevant factors in determining if right to speedy trial violated include the length of delay, the reasons for the delay, whether defendant demanded trial, and the prejudice to defendant resulting from delay. Rev'd Const. Am. Samoa, art. 1§ 6. *Pene v. American Samoa Government*, 12 A.S.R.2d 43 (1989).

Defendant's right to speedy trial was not violated, even though the delay was over a year and a prompt trial had been demanded, where the reasons for the delay were substantial, including the need to entertain and grant motions to quash many subpoena inappropriately issued by defendant and also to conduct competency examinations; and where defendants was not substantially

prejudiced by the delay, as he was not incarcerated and the documentary nature of the evidence minimized the danger of fading memories. Rev. Const. Am. Samoa, art. 1 § 6. *Pene v. American Samoa Government*, 12 A.S.R.2d 43 (1989).

For double-jeopardy purposes, a crime is a separate offense and not a lesser-included offense if each statutory provision requires proving a fact which the other does not. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 6. *American Samoa Government v. Fealofa'i*, 24 A.S.R.2d 10 (1993).

The entire record, and not simply the information or indictment, is scrutinized in a double-jeopardy challenge. U.S. Const. Amend. V; Rev. Const. Am. Samoa Art. I, § 6. *American Samoa Government v. Meleisea*, 24 A.S.R.2d 32 (1993)

#### Section 7. Habeas corpus.

The writ of habeas corpus shall be granted without delay and free of costs. The privilege of the writ of habeas corpus shall not be suspended except by the Governor and then only when the public safety requires it in case of war, rebellion, insurrection or invasion.

#### Section 8. Quartering of militia.

No soldier or member of the militia shall, in time of peace, be quartered in any house without the consent of the owner or the lawful occupant, nor in time of war, except in a manner prescribed by law. The military authority shall always be subordinate to the civil authority in time of peace.

#### Section 9. Imprisonment for debt.

There shall be no imprisonment for debt except in cases of fraud.

#### 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.

#### Section 11. Treason.

Treason against the Government of American Samoa shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason except on the testimony of

two witnesses to the same overt act, or a confession in open court.

Section 12. Subversives ineligible to hold public office.

No person who advocates, or who aids or belongs to any party, organization, or association which advocates the overthrow by force or violence of the Government of American Samoa or of the United States shall be qualified to hold any public office of trust or profit under the Government of American Samoa.

Section 13. Retroactive laws and bills of attainder.

No bill of attainder, ex post facto law nor any law impairing the obligation of contracts shall be passed.

Section 14. Health, safety, morals and general welfare.

Laws may be enacted for the protection of the health, safety, morals and general welfare, of the people of American Samoa.

Section 15. Education.

The Government shall operate a system of free and non-sectarian public education. The government will also encourage qualified persons of good character to acquire further education, locally and abroad, both general and technical, and thereafter to return to American Samoa to the end that the people thereof may be benefited.

Section 16. Unspecified rights and privileges and immunities.

The enumeration of certain rights in this Constitution shall not be construed to impair or deny other rights retained by the people. No law shall be made or enforced which shall abridge the privileges or immunities of the citizens of American Samoa.

Case Notes: Territorial constitution contains no equal protection clause. Rev. Const. Am. Samoa art. I. American Samoa Government v. Macomber, 8 A.S.R.2d 182 (1988).

Where promulgators of territorial constitution omitted equal protection clause, it would be inappropriate for judicial branch to construe

some other constitutional provision to include an unwritten equal protection clause of the federal constitution. Rev. Const. Am. Samoa art. I. American Samoa Government v. Macomber, 8 A.S.R.2d 182 (1988).

## Article II

### The Legislature

#### Section I. Legislature.

There shall be a Legislature which shall consist of a Senate and House of Representatives. The Legislature shall have authority to pass legislation with respect to subjects of local application, except that:

- . No such legislation may be inconsistent with, this Constitution or the laws of the United States applicable in American Samoa;
- . No such legislation may conflict with treaties or international agreements of the United States;
- . Money bills enacted by the Legislature of American Samoa shall not provide for the appropriation of funds in excess of such amounts as are available from revenues raised pursuant to the tax laws and other revenue laws of American Samoa. Prior to his final submission to the Secretary of the Interior of requests for Federal funds necessary for the support of governmental functions in American Samoa, the Governor shall prepare a preliminary budget plan. He shall submit such plan to the Legislature in joint session for its review and approval with respect to such portions as relate to expenditures of funds proposed to be appropriated by the Congress of the United States. Amended 1971, S.J.R. No.4, effective March 19, 1971.
- . Legislation involving the expenditure of funds other than as budgeted shall include revenue measures to provide the needed funds.

Amendments: 1971 S.J.R. No. 4, 11th Leg. 2nd Reg. Sess., in paragraph (c), at end of the sentence, deleted the words "but excluding therefrom such income as is derived from user charges or service related reimbursements to the Government of American Samoa which is segregated for the use of the activity to which such charges or reimbursements are related"; in present last sentence the word "approval" following "review and" was substituted for the word "recommendation"; the former last sentence was deleted, it read: "With respect to such portions of the preliminary budget plan, the Governor shall adopt such recommendations of the Legislature as he may deem appropriate, but he shall transmit to the Secretary all recommendations he has not adopted".

Case Notes: Subject to supervision in its exercise, the Legislature of American Samoa has been delegated unimpaired power, through the executive branch of the federal government, to give territorial courts authority to sit in admiralty and, as a consequence, to entertain in rem actions and provide procedures for arresting vessels or other property which is the subject of a maritime action. Vessel Fijian Swift v. Trial Division, High Court of American Samoa, 4 ASR. 983 (1975).

Territorial laws which are inconsistent with applicable U.S. laws violate the territorial constitution, which in turn was promulgated under the authority of the U.S. Secretary of the Interior. Rev. Const. Am. Samoa Art. II, § 1(a), Art. V, § 11. *Alamoana Recipe Inc. v. American Samoa Government*, 24 A.S.R.2d 156 (1993).

## Section 2. Membership.

The Senate shall consist of eighteen members, three from the Manu'a District, six from the Western District, and nine from the Eastern District.

The House of Representatives shall consist of twenty members elected from the following representative districts, the number of representatives from each of the districts to be as indicated:

### Representative District No. 1

Composed of Ta'u, Fitiuta and Faleasao: 2 Representatives

### Representative District No. 2

Composed of Ofu, Olosega and Sili: 1 Representative

### Representative District No. 3

Vaifanua — Composed of the Villages of Alao, Aoa, Onenoa, Tula and Vatia: 1 Representative

### Representative District No. 4

Saole — Composed of the Villages of Aunuu, Amouli, Utumea and Alofau: 1 Representative

### Representative District No. 5

Sua No. 1 — Composed of the Villages of Fagaitua, Amaua, Auto, Avaio, Alega, Aumi and Lailii: 1 Representative

### Representative District No. 6

Sua No. 2 — Composed of the Villages of Sailele, Masausi, Masefau and Afono: 1 Representative

### Representative District No. 7

Ma'uputasi No. 1 — Composed of the Villages of Fatumafuti, Fagaalu and Utulei: 1 Representative

### Representative District No. 8

Ma'uputasi No. 2 — Composed of the Village of Fagatogo: 1 Representative

### Representative District No. 9

Ma'uputasi No. 3 — Composed of the Village of Pago Pago: 1 Representative

Representative District No. 10

Ma'uputasi No. 4 — Composed of the Villages of Satala, Atuu and Leloaloe: 1 Representative

Representative District No. 11

Ma'uputasi No. 5 — composed of the Village of Aua: 1 Representative

Representative District No. 12

Ituau — composed of the Villages of Nu'uuli, Fagasa, Matuu, Faganeanea: 2 Representatives

Representative District No. 13

Fofo — composed of the Villages of Leone and Auma: 1 Representative

Representative District No. 14

Lealataua — composed of the Villages of Fagamalo, Fagalii, Poloa, Amanave, Failolo, Agagulu Seetaga, Nua, Atauloma, Afao, Amaluia and Asili: 1 Representative

Representative District No. 15

Ma'upu — composed of the Villages of Tafuna, Mesepe; Faleniu, Mapusaga Fou, Pavaiai, Iliili and Vaitogi: 2 Representatives

Representative District No. 16

Tualatai- composed of the Villages of Futiga, Ituau (Malaeloa), Taputimu and Vailoatai: 1 Representative

Representative District No. 17

Leasina — composed of the Villages of Aitulagi (Malaeloa), Aoloau and Asu: 1 Representative

Senators and representatives shall be reapportioned by law at intervals of not less than 5 years. The adult permanent residents of Swains Island who are United States nationals may elect at an open meeting a delegate to the House of Representatives who shall have all the privileges of a member of the House except the right to vote.

Section 3. Qualifications of members.

A Senator shall;

. be a United States National;

- . be at least 30 years of age at the time of his election;
- . have lived in American Samoa at least 5 years and have been a bona fide resident thereof for at least 1 year next preceding his election; and
- . be the registered matai of a Samoan family who fulfills his obligations as required by Samoan custom in the county from which he is elected.

A Representative shall;

- . be a United States National;
- . be at least 25 years of age at the time of his election; and
- . have lived in American Samoa for a total of at least 5 years and have been a bona fide resident of the representative district from which he is elected for at least 1 year next preceding his election.

A delegate from Swains Island shall have the qualifications of a Representative except that in lieu of residence in a representative district, he shall have been a bona fide resident of Swains Island for at least one year next preceding his election.

No person who shall have been expelled from the Legislature for giving or receiving a bribe or being an accessory thereto, and no person who shall have been convicted of a felony under the laws of American Samoa, the United States, or the laws of any state of the United States, shall sit in the Legislature, unless the person so convicted shall have been pardoned and have had his civil rights restored to him.

No employee or public officer of the Government shall be eligible to serve in the Legislature while holding such position. The prohibition contained herein shall become effective on July 1, 1971. Amended 1971, S.J.R. No.3, approved by Secretary of the Interior, March 19, 1971.

Amendments: 1971 S.J.R. No. 3, 11th Leg. 2nd Reg. Sess., amended last paragraph generally by changing former references to specific government positions to present language covering all employees or public officers.

Case Notes: To be eligible for election to the territorial legislature, one must have lived in the territory for a total of at least five years and have been a bona fide resident of the district from which he is elected for at least one year immediately preceding his election. Rev'd Const. Am. Samoa art. II § 3( c). *Tuika v. Chief Election Officer*, 9 A.S.R.2d 57 (1988).



#### Section 4. Manner of Election.

Senators shall be elected in accordance with Samoan custom by the county councils of the counties they are to represent, the number of senators from a county or counties to be as indicated: Fitiuta, Faleasao and Ta'u, two senators; Olosega and Ofu, one senator; Saole, one senator; Vaifanua, one senator; Sua, two senators; Ma'uputasi, three senators; Ituau, two senators; Ma'upu, two senators; Leasina, one senator; Tualatai, one senator; Fofu, one senator; and Lealataua, one senator. The decisions of the members of the county councils of the counties concerned shall be certified by the county chiefs of such counties.

Representatives shall be chosen by secret ballot of the qualified electors of their respective representative districts.

Case Notes: "Lived in Samoa for a total of at least 5 years" does not mean last 5 years. Section 6.0212 used to explain rules for determining bona fide residence of candidate. *King v. Watson*. ASR (1978).

Where county council announced its decision as to who should be new senator, and the entire council was not in agreement with the decision, county chief who certified the decision wrongly ascertained for himself the decision of the majority and certified another person; and the certification would be set aside and the matter referred back to the council for a proper decision and certification in accordance with Samoan custom. *Faiivae v. Mola*, 4 ASR 834 (1975).

High Court had subject matter jurisdiction in case involving a contested senatorial election by county council where there was a case or controversy, it arose under the constitution, laws or treaties, and the cause was described in jurisdictional statutes. *Meredith v. Mola*. 4 ASR 773 (1973).

Constitution requires that senators be chosen by county council and court cannot submit to names to senate for election. *Meredith v. Mola*, 4 ASR 773 (1973).

Court cannot declare one senatorial candidate victor over another, since it lacks jurisdiction to so do, such being the exclusive province of senate. *Meredith v. Mola*, 4 ASR 773 (1973).

Under Constitution of American Samoa the legislature, and particularly the Senate which is composed of traditional chiefs chosen according to Samoan custom, has a peculiar relationship to the preservation of land and culture. Rev. Const. of Am. Samoa art. I § 3, art. II § 4. *Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

Provision of territorial constitution that county council elect senators to represent the county does not permit election of senators by village councils of certain villages within the county, or by a single member of the county council, or by the senate itself; these bodies may recommend or endorse a particular candidate, but final decision must rest with the county council itself. Rev. Const. Am. Samoa art. II § 4. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

Provision of territorial constitution that county council elect senators in accordance with Samoan custom means that the council is to use the traditional Samoan manner of decision making as it existed at the time the provision was adopted. Rev. Const. Am. Samoa art. II § 4. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

Court will not lay down a rule prescribing the exact method or custom a county council must use to elect a senator in accordance with Samoan custom, especially as custom may vary in different counties. Rev. Const. Am. Samoa art. II § 4. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

Provision of territorial constitution that county council elect senators in accordance with Samoan custom does not include power to delegate the decision completely to a subdivision of the county, since this would allow a new custom, habit, or practice to repeal explicit and unambiguous constitutional provisions. Rev. Const. Am. Samoa art. II § 4. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

Defendant was entitled to summary judgement on plaintiff's claim that she had been duly elected to the senate about four years before the commencement of the term for which she claimed to have been elected. Rev. Const. Am. Samoa art. II §§ 4, 6. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

Cumulative effect of two territorial constitutional provision, one requiring election of senators by county councils and the other providing that each senator shall hold office for four years, is to require that an election be held once every four years by the county council as it is then constituted; since the membership of the county council changes over time, no one particular council can be permitted to lock senatorial selection to serve during subsequent terms. Rev. Const. Am. Samoa art. II §§ 4, 6. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

## Section 5. Elections.

Elections shall be held biennially in each even numbered year beginning on the first Tuesday following the first Monday in November and ending not later than 4 weeks thereafter.

## Section 6. Term of office.

Each senator shall hold office for a term of four years. Representatives including any delegates from Swains Island shall each hold office for a term of two years. The terms of all members of the Legislature including any delegate from Swains Island shall commence at noon on the third day of January following their election, except as otherwise provided.

Case Notes: Defendant was entitled to summary judgement on plaintiff's claim that she had been duly elected to the senate about four years before the commencement of the term for which she claimed to have been elected. Rev. Const. Am. Samoa art. II §§ 4, 6. *Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).

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#### Section 7. Qualifications of electors.

Every person of the age of 18 years or upwards who is a United States national and who has lived in American Samoa for a total of at least two years and has been a bona fide resident of the election district where he offers to vote for at least one year next preceding the election and who meets such registration requirements as may be prescribed by law shall be deemed a qualified elector at such election. No person under guardianship, non compos mentis, or insane shall be qualified to vote at any election; nor shall any person who has been convicted of a felony be qualified to vote at any election unless he has had his civil rights previously restored to him or unless he has maintained good behavior for 2 years following the date of his conviction or his release from prison whichever is the later.

Case Notes: Because the Governor has general supervision and control of all executive departments, agencies and instrumentality's of the Government, personnel decisions are subject to his direction as long as his actions are in accordance with applicable territorial and federal laws and rules. Rev. Const. Am. Samoa Art. II, § 7; A.S.C.A. §§ 4.0102, 4.0111(b). *Sala v. American Samoa Gov't*, 21 A.S.R.2d 14 (1992).

#### Section 8. Legislative sessions.

There shall be two regular sessions of the Legislature held each year, each session to last 45 days, the first session to begin on the second Monday in January each year and the second session to begin on the second Monday in July of each year. The Legislature may meet in special session at the call of the Governor who shall set the time for the beginning of such session and the number of days it may last. Amended H.J.R. No. 1, adopted Feb. 18, 1977, approved by voters Nov. 7, 1978, approved by Sec. of Int. Mar. 1, 1979; amended 1971 S.J.R. No. 3, effective March 19, 1971.

Amendments: 1979 Changed length of sessions from 30 to 45 days.

1971 S.J.R. No. 5. 11th Leg. 2nd Reg.. Sess., substituted present two 30 day sessions for former annual 40 day session commencing on the 2nd Monday in February.

#### Section 9. Enactment of law; vetoes.

The enacting clause of all bills shall be: "Be it enacted by the Legislature of American Samoa," and no law shall be enacted except by bill. Bills may originate in either House, and may be amended or rejected by the other. The Governor may submit proposed legislation to the Legislature for consideration by it. He may designate any such proposed legislation is urgent, if he so considers it.

Every bill, having passed both Houses, shall be signed by the President of the Senate and the Speaker of the House, and shall, before it becomes a law, be presented to the Governor for his approval. If he approves it, he shall sign it and it shall become a law, and he shall deposit it in the office of the Secretary of American Samoa. But if it be not approved by him, he shall return it with his objections to the House in which it originated which shall enter the same in their journal: Any bill not returned by the Governor within 10 days (Sundays excepted) after having been presented to him, shall become a law, whether signed by him or not, unless the Legislature by adjournment prevent such return, in which case it shall not become a law unless the Governor, within 30 days after adjournment shall sign it, in which case it shall become a law in like manner as if it had been signed by him before adjournment; and the Governor shall deposit it in the office of the Secretary of American Samoa.

Not later than 14 months after a bill has been vetoed by the Governor, it may be passed over his veto by a two-thirds majority of the entire membership of each House at any session of the Legislature, regular or special. A bill so repassed shall be represented to the Governor for his approval. If he does not approve it within 15 days, he shall send it together with his comment thereon to the Secretary of the Interior. If the Secretary of the Interior approves it within 90 days after its receipt by him, it shall become a law; otherwise it shall not.

If a bill presented to the Governor should contain several items of appropriation of money, he may object to one or more of such items, or any part or parts thereof, portion or portions thereof, while approving the other items, parts, or portions of the bill. In such a case he shall append to the bill, at the time of signing it, a statement of the items, or parts or portions thereof, to which he objects and the items, or parts or portions thereof, so objected to shall not take effect. As used in this paragraph, the terms "items", "part", "portion" and "portions" shall include a proviso or provisos, a directive, a limitation, or other extraneous substantive legislation included in an appropriations bill or appended to any item of appropriation in such an appropriations bill.

Furthermore, nothing in this section shall be deemed to permit any change in the law respecting the alienation or transfer of land or any interest therein to be effective unless such change shall have been approved by two successive Legislatures by a two-thirds vote of the entire membership of each House and by the Governor as provided in Section 3 of Article I.

Case Notes: Concurrent resolution, given binding effect by law to veto executive branch action, is not a "law" subject to enactment by bill. *Tuika Tuika v. Governor of American Samoa*, 4 ASR2d 85 (1987).

Legislative resolution disapproving lease of government land, pursuant to statute giving binding effect to such resolutions, was not a "law" within the meaning of a constitutional provision requiring all laws to be enacted by bill rather than resolution. *Rev. Const. Am. Samoa art. II § 9. Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

Territorial statute providing for a "legislative veto" of leased of government land did not violate American Samoa Constitution. *A.S.C.A. § 37.2030; Rev. Const. Am. Samoa art. II §§ 9 & 10. Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

#### Section 10. Passage of bills.

A majority of all the members of each House, voting in the affirmative, shall be necessary to pass any bill or joint resolution.

Case Notes: Territorial statute providing for a "legislative veto" of leased of government land did not violate American Samoa Constitution. *A.S.C.A. § 37.2030; Rev. Const. Am. Samoa art. II §§ 9 & 10. Tuika Tuika v. Governor of American Samoa*, 4 A.S.R.2d 85 (1987).

#### Section 11. Powers of each house.

Each house shall keep a journal of its proceedings and publish the same, determine its rules of procedure, punish members for disorderly behavior, and, with the consent of two-thirds of its entire membership, may expel a member, but not a second time for the same offense. Each House shall sit upon its own adjournments, but neither House shall, without the concurrence of the other, adjourn for more than 3 days, nor to any other place than that in which it may be sitting.

Section 12. Freedom from arrest. Senators and representatives and any delegate from Swains Island in all cases except treason, felony, or breach of the peace, shall be privileged from arrest during a session (including a special joint session) of the Legislature, and in going to and returning from the same. No member of the Legislature shall be held to answer before any tribunal other than the Legislature itself for any speech or debate in the Legislature.

### Section 13. Vacancies.

When vacancies occur in either House, the Governor or the person exercising the functions of Governor shall issue writs of election to fill such vacancies except that if any such vacancy shall occur within three months of the next regular election, no special election shall be held and the Governor shall appoint a qualified person to fill such vacancy. Prior to appointing such person, the Governor shall in the case of a representative consult with the county chief or county chiefs in the representative district concerned; and in the case of a senator, with the District Governor and county chiefs in the district concerned. A person elected to fill a vacancy or appointed by the Governor to fill a vacancy shall hold office during the remainder of the term of his predecessor.

### Section 14. Public sessions.

The business of each House, and of the Committee of the Whole, shall be transacted openly and not in secret session.

### Section 15. Reading — Passage of bills.

No bill shall be passed until copies of the same with amendments thereto shall have been made available for the use of the members; nor shall a bill become a law unless the same shall have been read on two separate days in each House previous to the day of the final vote thereon. On final passage of all bills, they shall be read at length, section by section, and the votes shall be by yeas and nays upon each bill separately, and shall be entered upon the journal. The provisions of this section respecting the reading of bills shall be subject to the exception that a bill which has been vetoed by the Governor and reintroduced for passage over the Governor's veto need only be read on the day of the final vote thereon.

### Section 16. Title.

Every legislative act shall embrace but one subject and matters properly connected therewith, which shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be expressed in the title.

### Section 17. Amendments and revisions by reference.

No law shall be amended or revised by reference to its title only; but in such case the act, as revised, or section

or subsection as amended, shall be reenacted and published at full length.

#### Section 18. Appointment to new offices.

No member of the Legislature shall, during the term for which he was elected and for one year thereafter, be appointed to any office which shall have been created or the salary of which shall have been increased by the Legislature during such term.

#### Section 19. Effective date of laws.

An act of the Legislature required to be approved and approved by the Governor only shall take effect no-sooner than 60 days from the end of the session at which the same shall have been passed while an act required to be approved by the Secretary of the Interior only after its veto by the Governor and so approved shall take effect no sooner than 40 days after its return to the Governor by the Secretary of the Interior. The foregoing is subject to the exception that in case of an emergency the act may take effect at an earlier date stated in the act provided that the emergency be declared in the preamble and in the body of the act.

#### Section 20. Legislative counsel.

A legislative counsel, who shall be learned in the law, shall be appointed by the President of the Senate and the Speaker of the House, to advise and assist the Legislature. The position of legislative counsel shall be a fulltime position and compensation for the counsel shall be budgeted by the Legislature at a grade level equivalent to that of Deputy Attorney General of the Government of American Samoa. The legislative counsel shall also be the director of the Legislative Reference Bureau. Amended H.J.R. No. 3, Feb. 18, 1977, approved by voters Nov. 7, 1978, approved by Sec. of Int. Mar. 1, 1979.

Amendments: 1979 Changed manner of appointment of the counsel and changed grade level.

#### Section 21. Quorum.

A majority of each House shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and may compel the attendance of absent members in such manner as each House may provide.

## Section 22. Qualifications and officers.

Each House of the Legislature shall be the judge of the elections, returns, and qualifications of its own members and shall choose its officers.

Case Notes: This section does not give the senate adjudicatory power to determine what needs to be done for the selection of a senator to conform to constitutional requirements and whether those requirements were met; such determinations are for the courts, as the questions are judicial, not political, and are matters of constitutional interpretation. *Meredith v. Mola*, 4 ASR 773 (1973).

If jurisdictional criteria are met, court will consider claim to legislative seat despite this section's provision granting legislature power to judge elections and qualifications of its members. *Meredith V Mola*, 4 ASR 773 (1973).

Court cannot declare one senatorial candidate victor over another, since it lacks jurisdiction to do so, such being the exclusive province of senate. *Meredith v. Mola*, 4. ASR 773 (1973).

Constitution requires that senators be chosen by county council and court cannot submit two names to senate for election. *Meredith v Mola*, 4 ASR 773 (1973).

In view of this section, High Court could not adjudicate dispute whereby candidate for senate claimed that he had been duly qualified and elected and that senator who was sitting had not been; the dispute was for the senate to decide. *Tuitasi V. Lualemaga*, 4 ASR 798 (1973).

This section is a textually demonstrated constitutional commitment to the senate to judge who received the most votes:

therefore, such issue is a political question and not justifiable. *Tuitasi v. Lualemaga*, 4 ASR 798 (1973).

This section is a textually demonstrated constitutional commitment to the senate to judge the qualifications set forth in this constitution for the position of senator; thus, issue of whether a person is qualified is a political question and for the senate and is not justifiable. *Tuitasi v. Lualemaga*, 4 ASR 798 (1973).

High Court had subject matter jurisdiction in case involving a contested senatorial election by county council where there was a case or controversy, it arose under the constitution, laws or treaties, and the cause was described in jurisdictional statutes. *Meredith v. Mola*, 4 ASR 773 (1973).

Provision of territorial constitution that the legislature shall judge election of its members presumes that an election has been held, and therefore does not define the factual question whether the required election ever occurred give rise to as a political question preventing judicial intervention. *Rev. Const. Am. Samoa art. II § 22. Mauga v. Lutu*, 10 A.S.R.2d 115 (1989).



Section 23. Adjourning legislature.

In case of disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper, but no such adjournment shall be beyond the time fixed for the next regular session of the Legislature.

Section 24. Special or exclusive privileges not to be granted; local or special laws.

The power of the Government to act for the general welfare of the people of American Samoa shall never be impaired by the making of any irrevocable grant of special or exclusive privileges or immunities. Corporations may be formed under general laws but shall not be created by special act except for municipal, governmental, or quasigovernmental purposes in cases where the objects of the corporation cannot be attained under general laws. All general laws or special acts passed pursuant to this section may be amended or repealed. The Legislature shall pass no local or special act if a general act can be made applicable.

Section 25. Compensation of the legislature.

The compensation of the members of the Legislature is provided by law. — Amended 1977. H.J.R. No. 6. eff., April 8, 1977.

Amendments: 1971 S.J.R. No. 4, 11th Leg. 2nd Reg. Sess., amended section generally and increased the annual legislative pay to 36.000.00.

Cross-references:

Compensation of legislators, see 2.0102 and 2.0103.

## Judicial Branch

### Section 1. Judicial power.

The judicial power shall be vested in the High Court, the District Courts, and such other courts as may from time to time be created by law.

Case Notes: High Court had subject matter jurisdiction in case involving a contested senatorial election by county council where there was a case or controversy, it arose under the constitution, laws or treaties, and the cause was described in jurisdictional statutes.

Meredith v. Mola, 4 ASR 773 (1973).

It cannot be said that the “judicial power” vested in the High Court by this section is plenary and thus comprehends the authority to sit as a court of admiralty; the question whether the court has power to so sit is one of jurisdiction, and such jurisdiction has not been conferred on any court in the territory by the American Samoa Constitution or the American Samoa Code. Vessel Fijian Swift v. Trial Division. High Court of American Samoa. 4 ASR 983 (1975).

Subject to supervision in its exercise, the Legislature of American Samoa has been delegated unimpaired power, through the executive branch of the federal government, to give territorial courts authority to sit in admiralty and, as a consequence, to entertain in rem actions and provide procedures for arresting vessels or other property that is the subject of a maritime action. Vessel Fijian Swift v. Trial Division. High Court of American Samoa, 4 ASR 983 (1975).

In rem admiralty and maritime jurisdiction in the Trial Division of the High Court cannot be grounded upon “the necessity and importance of in rem Admiralty jurisdiction ... in the orderly administration of justice in this maritime territory such determination is for the legislature. Vessel Fijian Swift v. Trial Division. High Court of American Samoa, 4 ASR 983 (1975).

The High Court of American Samoa exercises judicial power that can be divested only by an Act of Congress. 48 U.S.C. § 1662a; Rev. Const. Am. Samoa art. III § 1. Southwest Marine of Samoa, Inc., v. S & S Contracting, Inc., 5 A.S.R.2d 70 (1987).

### Section 2. Independence of the courts.

The judicial branch of the Government of American Samoa shall be independent of the executive and legislative branches.

Case Notes: Statute explicitly recognizing power of Chief Justice to make exceptions to rules is clearly not inconsistent with constitutional provision for judicial independence. Rev. Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501. American Samoa Government v. Tile, 8 A.S.R.2d 120 (1988).

Reasonable legislative regulation of judicial procedure does not necessarily conflict with judicial independence. Rev. Const. Am. Samoa art. III § 2; A.S.C.A. § 46.0501, American Samoa Government v. tile, 8 A.S.R.2d 120 (1988).

Unlike federal rules of criminal procedure promulgated under the authority of Congress and binding on federal courts to the same extent as statutes, territorial rules are made by the Court itself, so that a time limit provided by territorial rule is not as obviously jurisdictional as a similar limit provided by federal rule. Rev. Const. Am. Samoa art. III § 2; A.S.C.A. § 3.1002(c). American Samoa Government v. Tile, 8 A.S.R.2d 120 (1988).

### Section 3. Appointments.

The Secretary of the Interior shall appoint a Chief Justice of American Samoa and such Associate Justices as he may deem necessary.

## Article IV

### Executive Branch

#### Section 1.

Superseded by U.S. Dept. of the Int. Secretary's Order No. 3009, §§ 2 and 4, Sept. 13, 1977, eff. Sept. 13, 1977, as amended in § 2 by U.S. Dept. of the Int. Secretary's Order No. 3009, Amendment No. 1, Nov. 3, 1977, eff. Nov. 3, 1977.

Reviser's Comment: This section, which provided that "The Governor of American Samoa and the Secretary of American Samoa shall be appointed as provided in the laws of the United States", was impliedly superseded by the above-referred to secretarial orders. See note on the subject under § 2 of this article.

#### Section 2. Governor and lieutenant governor.

The Governor and the Lieutenant Governor of American Samoa shall, commencing with the first Tuesday following the first Monday of November 1977, be popularly elected and serve in accordance with the laws of American Samoa.

Amended 1977, U.S. Dept. of the Int. Secretary's Order No. 3009, §§ 2, 4, Sept. 13, 1977, as amended by U.S. Dept. of the Int. Secretary's Order No. 3009, Amendment No. 1, Nov. 3, 1977. eff. Nov. 3, 1977.

Amendments: 1977 U.S. Dept. of the Int. Secretary's Order No. 3009, §§ 2 and 4, Sept. 13, 1977. amended this section to read "The Governor and the Lieutenant Governor of American Samoa shall, commencing with the first Tuesday in November, 1977, be popularly elected and serve in accordance with the laws of American Samoa."

U.S. Dept. of the Int. Secretary's Order No. 3009, Amendment No. 1, Nov. 3, 1977, amended Order No. 3009, § 2. effective Nov. 3, 1977. by substituting "following the first Monday of" for the word "in" preceding "November 1977".

### Section 3. Secretary.

The Secretary of American Samoa, who may be referred to as Lieutenant Governor of American Samoa, shall have all the powers and duties of the Governor in the case of a vacancy in the office of Governor or the disability or temporary absence of the Governor. He shall record and preserve the laws and executive orders, and transmit copies thereof to the Secretary of the Interior. He shall have and perform such other duties as may be prescribed by law or assigned to him by the Governor.

### Section 4. Secretary of Samoan Affairs.

The Secretary of Samoan Affairs shall be appointed by the Governor from among the leading registered matais. He shall hold office during the pleasure of the Governor. The Secretary of Samoan Affairs shall be the head of the Department of Local Government. In conjunction with the District Governors he shall co-ordinate the administration of the district, county, and village affairs as provided by law and also in conjunction with the District Governors he shall supervise all ceremonial functions as provided by law.

### Section 5. Militia and posse comitatus.

The Governor may summon the posse comitatus or call out the militia to prevent or suppress violence, invasion, insurrection, or rebellion.

### 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.

#### Section 7. Supervision and control by Governor.

The Governor shall have general supervision and control of all executive departments, agencies and instrumentalities of the Government of American Samoa.

#### Section 8. Annual report.

The Governor shall make an official report of the transactions of the Government of American Samoa to the Secretary of the Interior and the Legislature within three months after the close of each fiscal year.

#### Section 9. Pardoning power.

The Governor shall have the power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons after conviction for offenses against the laws of American Samoa.

Case Notes: Statute allowing court to impose detention as a condition of probation did not violate the constitutional provision allowing governor to grant pardons, since any prisoner pardoned by the governor could no longer be incarcerated. Rev. Const. Am. Samoa art. IV § 9; A.S.C.A. § 46.2206. *Atuatasi v. Moaalitele*, 8 A.S.R.2d 53 (1988).

#### Section 10. Recommendation of laws.

The Governor shall give the Legislature information on the state of the Government and recommend for its consideration such measures as he may deem necessary and expedient. He may attend or depute another person to represent him at the meetings of the Legislature, and may give expression to his views on any matter before that body.

#### Section 11. Appointment of officials.

With the exception of elective officials, those appointed by the Secretary of the Interior, and those whose appointments are otherwise provided for, the officials of the Government of American Samoa including district,

county, and village officials shall be appointed by the Governor. Prior to appointing a district governor, a county chief, or a pulenuu, the Governor through the Secretary of Samoan Affairs shall request the recommendation of the appropriate district council as to who shall be appointed in the case of a district governor; of the appropriate county council and district governor, in the case of a county chief; and of the appropriate village council, district governor and county chief, in the case of a pulenuu. The Secretary of Samoan Affairs may also make his own recommendations to the Governor,

#### Section 12. Removal of officers; powers and duties of officers.

The Governor may appoint or remove any officer whose appointment is not otherwise provided for. All officers shall have such powers and duties as may be conferred or imposed upon them by law or by executive regulation of the Governor not inconsistent with any law.

#### Section 13. Publication of laws.

The Governor shall make provision for publishing laws within 55 days after the close of each session of the Legislature and for their distribution to public officials and sale to the public.

### Article V

#### Miscellaneous

##### Section 1. Officers.

For the public convenience and to insure continuity in the operation of the Government all officers of American Samoa, including district, county, and village officers, shall, subject to the right of resignation or removal as may be provided by law, continue to hold their respective offices until the expiration of the time for which they were respectively elected or appointed, except that senators elected at the general election in 1966 shall go out of office at noon on January 3, 1969.

Regardless of any other provision or provisions in this Constitution the House of Representatives shall, prior to noon, January 3, 1969, consist only of those members elected at the general election in 1966 while the Senate prior to noon January 3, 1969, shall consist only of the hold-over senators plus those elected at the general election in 1966. Also regardless of any other provision or provisions in this Constitution any vacancies occurring in either House prior to January 3, 1969 may be filled as provided in Article II, Section 13 of the Constitution which became effective on October 17, 1960.

## Section 2. Existing laws.

All laws of American Samoa not inconsistent with this Constitution shall continue in force until they expire by their own limitation, or are altered or repealed by competent authority.

Case Notes: Territorial laws which are inconsistent with applicable U.S. laws violate the territorial constitution, which in turn was promulgated under the authority of the U.S. Secretary of the Interior. Rev. Const. Am. Samoa Art. II, § 1(a), Art. V, § 11. *Alamoana Recipe Inc. v. American Samoa Government*, 24 A.S.R.2d 156 (1993).

## Section 3. Amendments.

Any amendment to this Constitution may be proposed in either House of the Legislature, and if the same be agreed to by three-fifths of all members of each House, voting separately, such proposed amendment shall be entered on the journals, with the yeas and nays taken thereon. The Governor shall then be requested to submit such proposed amendment to the voters eligible to vote for members of the House of Representatives at the next general election. If a majority of such voters voting approve such amendment, the Governor shall, within 30 days after such approval shall have been officially determined submit the same to the Secretary of the Interior for approval or disapproval within 4 months after its receipt.

## Section 4. Revision of the constitution.

In view of the changing conditions in American Samoa, the Governor shall appoint a new Constitutional Committee five years after the effective date of this Constitution to prepare amendments or a revised draft constitution to be submitted to the Governor who shall call a constitutional convention to consider the same. The delegates to the convention shall be selected by their respective county councils. The number of delegates from each county shall be the number obtained by dividing the population of the county, as shown by the last preceding Federal census, by 400, any fraction in the quotient obtained to be disregarded if such fraction shall be less than one-half and if such fraction shall be one-half or more it shall be considered to be one unit, provided that each county shall have at least one delegate, and provided further that Swains Island shall have one delegate selected in open meeting by the adult permanent residents of the island who are United States nationals. If the convention approves such amendments or draft constitution either with changes made therein by the convention or without changes, the same as approved shall be submitted by the Governor to the voters eligible to vote for members of the House of Representatives at the next general election; and if a majority of the voters voting approve the amendments or proposed revised constitution, the Governor shall submit the same to

the Secretary of the Interior for his approval, and if he approves the same, then the amendments shall become part of the Constitution or the proposed revised constitution shall replace this constitution, as the case may be. Salaries of employees of the Convention and per diem for delegates shall be provided by law. The Government shall furnish the Convention with necessary supplies and other necessary services.

#### Section 5. Existing rights and liabilities.

Except as otherwise provided in this Constitution all existing actions, writs, suits, proceedings, civil or criminal liabilities, prosecutions, judgments, decrees, sentences, orders, appeals, causes of action, contracts, claims, demands, titles, and rights shall continue unaffected notwithstanding the taking effect of this Constitution.

#### Section 6. Oaths.

All officers of American Samoa including district, county, and village officers, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath: "I, \_\_\_\_\_, of \_\_\_\_\_ do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter, and that I will well and faithfully uphold the laws of the United States applicable to American Samoa, and the Constitution and laws of American Samoa. "So help me God."

#### Section 7. Construction.

In this Constitution titles shall not be used for the purposes of construction and wherever any personal pronoun appears it shall be construed to mean either sex; also in this Constitution a special or particular provision shall control a general provision should there be any inconsistency between a special or particular provision and a general provision.

#### Section 8. Provisions self-executing.

The provisions of this Constitution shall be self-executing to the fullest extent that their respective natures permit.

#### Section 9. Seat of government.



The seat of Government shall be at Fagatogo.

Section 10. Political districts and counties.

It is hereby recognized that there are three political districts in American Samoa, viz. Manu'a, composed of the political counties of Ta'u, Faleasao, Fitiuta, Olosega and Ofu; Eastern, composed of the political counties of Sua, Vaifanua, Saole, Itua'u and Ma'uputasi; and Western, composed of the political counties of Fofu, Leasina, Tualatai, Lealataua and Ma'upu.

Section 11. Effective date.

This Constitution ratified and approved on June 2, 1967, by the Secretary of the Interior, action pursuant to the authority vested in him by Executive Order No. 10264, dated June 29, 1951, of the President of the United States, and approved by the Constitutional Convention of the people of American Samoa at its meeting in Fagatogo, American Samoa begun on September 26, 1966, and by a majority of the voters of American Samoa voting in the general election in 1966, shall become effective on July 1, 1967.

Ratified and Approved: Subject to the deletion from Article I, section 2 of all after the title and the insertion in lieu thereof of the text of Article I, section 2 of the Constitution of American Samoa effective October 17, 1960, to wit: "No person shall be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use without just compensation."

Stewart L. Udall

Secretary of the interior

We the undersigned, being the duly appointed Delegates to the Constitutional Convention, do hereby certify that the above and foregoing document was approved by us in Convention assembled as the revised Constitution of American Samoa.

For and on behalf of Sua County.

. Le'iato. T.

. Mulituaopele-Sui'ava

- . Fautanu, P.
- . Mulitauaoepele-Tamotu

For and on behalf of Vaifanua County.

- . Masaniai, T.
- . Tagoa'i, L.
- . Tuiasosopo, T.

For and on behalf of Saole County.

- . Utu, S.
- . Lauvao-Sisifo
- . Fonoti. G.

For and on behalf of Ma'uputasi County.

- . Leota, T.
- . Fano, S.
- . Fanene, F.
- . Pula, N.T.
- . Tua'olo-Lemoe
- . Unutoa, S.L.T.
- . Tua'olo-Maliuga
- . Liufau, M.
- . Mageo, F.
- . Faumuina-loane
- . Lutu. S.A.
- . Paopaoailua, S.
- . Mailo. P.

For and on behalf of Tau County:

- . Rapi Sotoa
- . Taula, M.

For and on behalf of Fitiuta County.

- . Laapui, F.

For and on behalf of Faleasao County.

. Ma'o. T.

For and on behalf of Olosega County.

. Tuiolosega-Tuumamao

For and on behalf of Alataua County.

. Faiivae. E.H.

. Salave'a, O.

. Leoso. M.

. Tuveve, S. A.

. To'omata. T.

. Noa, L.

For and on behalf of Ituuu County

. Lagafuaina. L.

. Atuatasi, M.

. Savusa, S.

. Alo, S.

. Savea, P.

For and on behalf of Ofu County.

. Misa, T.

. Velega, P.

For and on behalf of Tualatai County

. Satele. M.

. Uiagalelei, S.

. Taulapapa. E.L.

For and on behalf of Leasina County.

. Asuemu U. Fuimaono

For and on behalf of Tualauta County.

- . Letuli, T.
- . Sagapolutele, T.
- . Magalei, T.
- . Paogofie-Sasae
- . Muagututi'a-Tuia

For and on behalf of Swains island.

- . Paul Pedro

A.P. Lauvao-Lolo  
Chairman of the Constitutional Convention

Attest:

Mulitauaopele-Sui'ava

Secretary of the Constitutional Convention